

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 5699/19
Applicant: Gengiz Ates
Respondent: Secretary, Department of Transport
Date of Determination: 18 February 2020
Citation: [2020] NSWCC 48

The Commission determines:

1. Pursuant to section 4(b)(ii) of the *Workers Compensation Act 1987* the applicant sustained injury to his thoracic spine sustained in the course of his employment with the respondent.
2. The lump sum claim is referred to the Registrar for referral to an Approved Medical Specialist for assessment of permanent impairment of the cervical spine, thoracic spine, lumbar spine, right upper extremity and right lower extremity in relation to the deemed date of injury 31 March 2017.
3. The documents to be referred to the Approved Medical Specialist are those attached to the Application to Resolve a Dispute, Reply and the Application to Admit Late Documents dated 22 January 2020 and a copy of this Certificate of Determination and Statement of Reasons.

A brief statement is attached setting out the Commission's reasons for the determination.

Josephine Bamber
Senior Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF JOSEPHINE BAMBER, SENIOR ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

Sarojini Naiker
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. The legal identity of the respondent is Secretary, Department of Transport: *Kelly v Secretary Department of Family and Community Services*¹. In these reasons when reference is made to the respondent it includes the State Transit Authority of New South Wales.
2. Mr Gengiz Ates commenced working as a bus driver for the State Transit Authority of New South Wales on 12 May 1996. He continued in this employment until 4 January 2018 when he says he was terminated on medical grounds.² He last performed work duties on a date March 2017³.
3. In these proceedings Mr Ates claims lump sum compensation pursuant to section 66 of the *Workers Compensation Act 1987*. He alleges he sustained injuries to his cervical spine, thoracic spine, lumbar spine, right upper extremity and right lower extremity. In his Application to Resolve a Dispute (ARD) he describes his injuries as being caused by the nature and conditions of his employment from about 1 January 2002 to 31 March 2017 due to sitting and driving for prolonged periods, lifting, bending, twisting, filing duties. He also states on 10 September 2003 he experienced an exacerbation of right buttock, hip and leg pain and on 8 July 2004 he had exacerbation of pain in the back, right shoulder, right arm and both hips and right leg. He also states in about March/April 2016 he experienced an exacerbation of pain in the cervical, lower thoracic, lumbar spine and both legs during the course of performing his bus driving duties.
4. The respondent disputes the alleged injury to the thoracic spine. It agrees the other body parts for which permanent impairment is claimed can be referred to an Approved Medical Specialist (AMS) for assessment.

PROCEDURE BEFORE THE COMMISSION

5. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.
6. At the conciliation conference /arbitration hearing held on 23 January 2020 Mr Ates was represented by Mr Jim Jobson, counsel, instructed by Bibi Laggas, solicitor. The respondent was represented by Mr Tony Baker, counsel.

EVIDENCE

Documentary Evidence

7. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) ARD and attached documents;
 - (b) Reply and attached documents; and
 - (c) Application to Admit Late Documents dated 22 January 2020

¹ [2014] NSWCA 102 at [11]

² ARD page 11

³ At ARD p42 Letter from respondent dated 4 December 2017 refers to 8 March 2017, but the statement of Mr Ates at ARD p11 refers to 13 March 2017 as the last day of work duties.

Oral Evidence

8. There was no oral evidence. Submissions were made by both counsel orally and sound recorded. A copy of the recording is available to the parties.

FINDINGS AND REASONS

9. There is limited evidence before the Commission about Mr Ates thoracic spine. The entirety of the evidence from both parties is summarised below.

Mr Ates' statements and claim forms

10. Mr Ates has provided statements dated 9 October 2003, 4 October 2005, 26 March 2009 and 26 September 2019 in which he makes reference to his duties as a bus driver. Mr Ates relates that he experienced "back pain" from about 2003. None of the statements specifically refer to the thoracic spine or the mid back area.
11. The injury incident form dated 26 September 2003 only refers to right hip and leg symptoms⁴.
12. The worker's claim for compensation form dated 26 September 2003 only refers to injury to the right leg and hip⁵ and the corresponding employer's report of injury form refers to the buttock, right hip and leg (thigh)⁶.
13. The injury/incident form dated 8 July 2004 refers to lower back pain and the right shoulder and arm⁷. The worker's claim for compensation form dated 12 July 2004 refers to "lower back, right shoulder + arm, hips"⁸ and the corresponding employer's report of injury form refers to the body parts affected as the lower back and right shoulder.⁹
14. However, in the injury/incident form dated 21 June 2007 Mr Ates refers to having a stiff neck and pain in the upper back which he says happened by "irritation when driving bus". He states on this form he reported this and was sent to the medical centre and a report was sent to the OHS officer.¹⁰
15. In an injury/incident form dated 27 April 2016 Mr Ates reported back pain which he said had developed over three weeks from constant sitting and whilst driving the bus. The employer's representative Pamela Reid noted on that form that Mr Ates insisted on attending his own physiotherapist for treatment¹¹.
16. In a document titled Provisional Payment Application Initial Notification dated 29 April 2016 Pamela Reid, Health Services Officer, Waverley Bus Depot, referred to the injury as lumbar back strain claimed due to prolonged sitting and driving the bus.¹²

⁴ ARD p13

⁵ ARD p15

⁶ ARD p16

⁷ ARD p18

⁸ ARD p19

⁹ ARD p20

¹⁰ Late documents page 1

¹¹ ARD p22

¹² ARD p23

Medical Assessment Certificate 10 April 2006

17. A prior lump sum claim was made which did not include the thoracic spine. AMS Dr Drew Dixon issued his Medical Assessment Certificate (MAC) on 10 April 2006. The history and present symptoms recorded by the AMS refers to lower back pain, and to other body parts, but not to complaints of pain in the upper or mid back.¹³ I find no particular weight can be placed on the absence of complaint to the AMS given the thoracic spine was not a body part referred to him for assessment.

Medical Appeal Panel 19 September 2006

18. The respondent appealed the AMS's MAC and the Medical Appeal Panel provided its Statement of Reasons on 19 September 2006. The MAC was revoked, and Mr Ates was assessed to have 6% whole person impairment for the right upper extremity.

Dr Mahmood

19. Dr Mahmood was Mr Ates general practitioner and a partial copy of a Centrelink certificate dated 2 October 2004 is in the ARD¹⁴. There are several references in that document to lower back pain.
20. Extracts from the handwritten clinical notes from Dr Mahmood cover the period from 9 May 1997 to 1 February 2005 and the only references to the back appear to be in relation to the lower back¹⁵.
21. There are various WorkCover NSW Medical Certificates, non-work cover certificates and WorkCover NSW-certificates of capacity in the ARD but none refer to the thoracic spine and some refer to the lower back or lumbar spine¹⁶.

Dr Woo

22. Dr Alexander Woo, orthopaedic surgeon, reported to Dr Mahmood on 4 and 11 October 2003 in relation to the right hip and back. It is apparent that the reference to "back" is to the lumbar spine as this was the area of examination by Dr Woo and he ordered a CT scan of the lumbar spine, which revealed a small disc protrusion at L4/5¹⁷.
23. In Dr Woo's subsequent reports dated 12 and 26 November and 22 December 2003, he identified the problem as being more related to Mr Ates right hip.¹⁸

Dr Stenning

24. Dr Henry Stenning, who describes himself as a Practitioner in Musculoskeletal Medicine, provided a medico-legal report dated 1 March 2005 for Mr Ates former solicitors. He does not refer to the thoracic spine and did not assess it for permanent impairment. He assessed the "Lumbar Spine (back)" at 0%.¹⁹

¹³ ARD p45

¹⁴ ARD pp67-72

¹⁵ ARD pp73-82

¹⁶ ARD pp169-185

¹⁷ ARD pp83-84

¹⁸ ARD pp86-88

¹⁹ ARD p141

Dr Rao

25. Dr Rao provided a medico-legal report on 19 May 2005. He refers to back pain and at times to lower back pain. He does not specifically refer to the thoracic spine or mid or upper back. He diagnosed for the back minor degenerative disc disease at L4/5, spina bifida occulta and musculoligamentous strain²⁰.

Dr Bleasel

26. Dr Bleasel, neurosurgeon, provided medico-legal reports to Mr Ates' former solicitors dated 28 June 2005. There is no mention of the thoracic spine in the main report and Dr Bleasel did not make an examination of it or assess WPI for the thoracic spine.²¹

Dr Capa

27. Dr Altan Capa answered a questionnaire dated 20 March 2017 sent to him by the case manager from the respondent Champika Phegan. His handwritten responses are at times difficult to read but seem to refer to the lower back as tenderness was identified at L2 to L5. A diagnosis was made of mechanical back pain²².
28. In a report dated 4 October 2019, Dr Capa said he had been Mr Ates family doctor for about 20 years. He advises that Mr Ates back pain started to get gradually worse after 2015 and as a result of significant deterioration after 2017 Mr Ates had to stop driving buses. Dr Capa says that Mr Ates "has mechanical back pain with minor disc bulges on 3 lumbar levels, he has also developed neck and bilateral shoulder pain". Dr Capa does not specifically refer to the thoracic spine²³.
29. In the Reply are the clinical notes from the Main St Family Medical Centre where Dr Capa practices²⁴. There are many references to lower back pain. On 10 December 2011, Dr Capa refers to "upper back pain. No neurological symptoms. O/E spinal tenderness ROM restricted". Analgesia was recommended and a medical certificate given²⁵.
30. On 13 August 2015, Dr Linda Mai Tran refers to back pain and to a one-week history of lower central back pain. On examination she refers to nil midline spinal tenderness. Tender paravertebral muscles L5/S1. The reason for contact was "back-pain – lumbo-sacral". On 21 August 2015 Dr Tran refers to two weeks of lower central back pain. I find I cannot infer this refers to the thoracic spine as in the examination findings there is reference to improved range of active movement lower back in all directions.

Physiotherapy/ chiropractor

31. Dr Capa referred Mr Ates for physiotherapy. The report from Sweta Patel, physiotherapist, dated 20 April 2016 says Mr Ates had low back pain for two weeks after prolonged driving with pain aggravated by bending, prolonged sitting and lifting. In the "objective assessment" it is noted "Stiff T9-L1 central and facet joint".²⁶

²⁰ ARD p144

²¹ ARD 154-168

²² ARD pp89-92

²³ ARD p93

²⁴ Reply pp17-118

²⁵ Reply p40

²⁶ ARD p95 and Late Documents p2

32. On 7 February 2017, Mr Gokce Oncu, chiropractor wrote to Dr Dong from the Main St Medical Centre reporting that Mr Ates had chronic low back pain associated with prolonged hours of driving the bus. In his assessment he noted “limited right lateral flexion/rotation at T12/L1. P-A provocation positive T12, L5/L5. Hypertonic lumbar erector spinae, quadratus lumborum, multifidus, thoracic erector spinae, trapezius. Trunk flexion test positive, trunk endurance test positive (weakness in core and glutes). Neurological testing negative.”²⁷
33. Handwritten notes are contained in the records from Physio Clinic according to the index with the Late Documents. There is a diagram of the body depicting a rear view. This is dated 31 January 2017²⁸. It has black shading across the waist region and up the spine in a triangular shape with its apex on the spine in line with the bottom of the shoulder blades. This was relied upon by Mr Ates’ counsel as depicting pain in the thoracic region. The respondent submitted it could be an area of referred pain from the lumbar spine. I do not accept that submission as there is no medical evidence to support such contention. Also, in the box on the right hand bottom place on that page is a heading “treatment” and there is a reference to the L4/5 and on the next line “+T6 flex WL”. This indicates to me that the thoracic spine was being treated.
34. The handwritten entries appearing on the next page for February 2017 are difficult to interpret because of the abbreviations used.
35. Thereafter, several pages of clinical notes from 24 August 2015 to 22 August 2019 refer to pain but mostly do not identify what area of the body is being treated. Some refer to the lumbar spine. In 2010 there was treatment of the shoulders.

Dr Needham

36. Dr Capa referred Mr Ates to Dr Geoffrey Needham, Consultant in Rehabilitation and Pain Medicine. In the report dated 30 November 2016 Dr Needham refers to “back pain” which tended to come on towards the end of his working day. He adds that Mr Ates advised that his symptoms had been aggravated by recent building renovation for a family member. On a copy of this report is what appears to be a handwritten note from Dr Guirgis dated 29 August 2017 which says that he was not involved in any physical work. Given the report from Dr Needham does not refer to the thoracic spine I do not place weight on it. I also do not place weight on the handwritten note because it does not seem to make sense when it also states that “the renovation was in 12-2016 (9/12 after the onset of his complaints.)” because this does not sit consistently with Dr Needham’s reference to the renovation as his report is dated before this, on 30 November 2016²⁹.
37. Dr Needham’s subsequent reports dated 26 April 2017, 17 May 2017, 4 June 2017, and the answers to the questionnaire dated 15 May 2017 all only refer to the lumbar spine and psychological issues.³⁰

Dr Guirgis

38. Dr Capa referred Mr Ates to Dr Guirgis, orthopaedic surgeon. Dr Guirgis reported on 29 August 2017 that Mr Ates had post-traumatic mechanical derangement of the cervical, lower thoracic and lumbar area of the spine. Dr Guirgis states this was caused by sitting for long periods of time and whole-body vibration from his work as a bus driver³¹.

²⁷ Late Documents p3

²⁸ Late Documents p4

²⁹ ARD p122

³⁰ ARD pp123-128

³¹ ARD p96

39. Dr Guirgis repeated this diagnosis in his reports to Dr Capa dated 18 April 2018, 28 June 2018, and 13 September 2018³². In a medico-legal report to Mr Ates' solicitors dated 8 December 2018 Dr Guirgis assessed the thoracic spine and the other body parts for which injury and permanent impairment is claimed by Mr Ates. In the part of the report dealing with ongoing current symptoms, Dr Guirgis focuses on the "lower half" of Mr Ates' back.
40. In his examination of the thoracic spine, Dr Guirgis found tenderness over T8-12 spines and lists his findings about movements of the thoracic spine and says there was guarding of the paraspinal lumbar muscles on exceeding that range. He found no neurological deficits.
41. Dr Guirgis repeats his prior comments about causation and states that employment was and remains a substantial contributing factor to the injuries. The doctor assesses 5% WPI for the thoracic spine finding clinical features of muscle guarding/spasm, asymmetric loss of range of movement and localised tenderness and nonverifiable radicular complaints with no objective radiculopathy³³.

Immex Waterloo

42. Notes from this practice are in the Reply. There is a copy of an x-ray of the cervical and thoracic spine dated 2 March 2009 conducted at the request of Dr William Ma. The clinical history is "recurrent neck and upper back pain³⁴." The radiologist noted his impression as follows:

"Degenerative intervertebral disc changes present in the thoracic spine most prominent in the mid thoracic spine. Facet joint degenerative changes present in the upper cervical spine."

43. Unfortunately, the clinical note for the attendance on Dr Ma when this referral was made is not before the Commission. The only medical certificate from Dr Ma in the Late Documents is dated 21 June 2007 referring to muscular neck pain.

Dr Papatheodorakis

44. Dr Papatheodorakis, Occupational Medicine and Injury Management Consultant, provided a medico-legal report to the respondent dated 22 December 2017³⁵. The doctor refers to Dr Guirgis's report dated 21 August 2017, which diagnoses a thoracic injury, but Dr Papatheodorakis does not appear to have examined the thoracic spine or comment about it. His focus is on the lumbar spine.

Dr James Powell

45. Dr Powell, Orthopaedic Surgeon, provided a medico-legal report to the respondent dated 9 July 2019³⁶. In relation to the thoracic spine Dr Powell found on examination:

"Thoracolumbar contours appeared normal.

Range of motion was symmetric and would be considered full, and the synchrony of movement between the mid and upper lumbar region extending into the thoracic region would be considered normal with no signs of localised irritability."

³² ARD pp98-103

³³ ARD pp104-116

³⁴ Reply p131 and p141

³⁵ Reply p1

³⁶ Reply pp7-16

46. Dr Powell found no injury to the thoracic spine. He states:

“In relation to the thoracic spine, there is no diagnosis, with Mr Ates making no complaint with respect to his thoracic spine, did not indicate any symptoms arising from the thoracic region, and no investigations have been identified, provided neither by Mr Ates nor yourselves, going back as far as 2003 of the thoracic region to indicate that Mr Ates had any reason to have the area imaged which would suggest that he had no symptoms, or at least sufficient to consult his doctor, in the thoracic region.”

47. Dr Powell added there was no indication that the nature of Mr Ates’ work would predispose him to thoracic spine pathology.

Discussion

48. It is evident from the summary above that the following documents refer to the thoracic spine:

- (a) The injury/incident form dated 21 June 2007 when Mr Ates refers to having a stiff neck and pain in the upper back;
- (b) 2 March 2009 x-ray of the thoracic spine with a history of recurrent neck and upper back pain;
- (c) The findings on the x-ray of degenerative changes most prominent in the mid thoracic spine;
- (d) On 10 December 2011 Dr Capa refers to “upper back pain”;
- (e) 20 April 2016 Ms Patel physiotherapist notes “Stiff T9-L1 central and facet joint”;
- (f) On 31 January 2017 the body diagram in the physiotherapist notes includes the thoracic spine;
- (g) Dr Guirgis opinion; and
- (h) Dr Powell’s opinion.

49. The respondent’s counsel submitted that Mr Ates’ statements do not refer to the thoracic spine, even though he deals specifically with other body parts. This is correct and it would have been desirable for Mr Ates to have addressed this, particularly since the respondent had issued a notice declining the same. However, the absence of statement evidence dealing with the thoracic spine is not necessarily fatal to Mr Ates’ case.

50. Mr Ates’ counsel submitted that at all times during attendances at doctors it appears that Mr Ates had given a history of “back” pain rather than to specific areas of his spine. However, I am not persuaded that I can infer that such references to “back” include to the thoracic spine, because, with the exception of the entries I have listed above, the medical practitioner on such attendances specifically treated the lumbar spine.

51. It was also submitted by the respondent that there is nothing in the records from Dr Mahmood which refers to the thoracic spine. This is correct and there is no report from the doctor to clarify the nature of complaints made to him by Mr Ates. In addition, the respondent submits there is nothing in the x-ray of 2 March 2009 to indicate the thoracic spine was work-related. It is unfortunate that the full clinical records of Dr Ma are not before the Commission. The clinical entry of Dr Ma corresponding to his referral of Mr Ates for this x-ray may have clarified if there was a work-related cause for the complaint of pain to the thoracic spine, which was obviously present from the history on the x-ray of recurrent pain.

52. Mr Ates' counsel relies on the description of pain in the back in the report of Dr Stenning. However, I do not accept that Dr Stenning's report establishes an injury to the thoracic spine because the doctor did not give an WPI assessment thoracic spine. I do not accept that I can infer that when the doctor refers to the "back" he is including the thoracic spine because I note that when he assessed the WPI of the lumbar spine he expressed it as "Lumbar Spine (back)" and this suggests to me that his references to back earlier were to the lumbar area. The respondent also relied upon the numerous specialists' reports, which I have summarised previously, that do not refer to the thoracic spine.
53. The respondent's counsel also placed emphasis on the fact that Dr Capa, who had treated Mr Ates for 30 years, does not refer to the thoracic spine. This is troubling; however, Dr Capa does have a reference in the clinical note of 10 December 2011 to "upper back pain. No neurological symptoms. O/E spinal tenderness ROM restricted". Analgesia was recommended and a medical certificate given. Although, there is no reference to Mr Ates' work in this entry.
54. Mr Ates' counsel refers to the physiotherapy clinical notes referencing to C7-T3 as an area of treatment³⁷. However, I find that I cannot accept this aspect of his submission because it is not clear what the physiotherapist's abbreviations mean. This handwritten note was made on 30 April 2010 and is after the main assessment on 8 April 2010 with a body diagram indicating the pain was in the shoulders. So, in this context, I cannot conclude that the entry on 30 April 2010 was for treatment of the thoracic spine.
55. Mr Ates' counsel also relied upon the report of Mr Oncu, chiropractor dated 7 February 2017 which refers to limited right lateral flexion at T12/L1 and other findings. However, Mr Oncu in his heading "presenting complaints" only refers to "Chronic low back pain associated with prolonged driving of the bus". Without something further from Mr Oncu explaining his findings I have not placed weight on these findings as they seem to be more related to the injury to the lumbar spine, although I acknowledge that the physiotherapist's diagram of 31 January 2017 did cover the T12/L1 area.
56. Mr Ates' counsel also relies on the entry by Dr Tran where she refers to lower central back pain. However, as I explained previously, I find I cannot infer this refers to the thoracic spine as in the examination findings there is reference to improved range of active movement in the lower back in all directions. There is no reference there to the thoracic spine. The word "central" equally could refer to the central part of the lumbar spine rather than the thoracic spine.
57. In relation to Dr Powell's opinion it was submitted by Mr Ates' counsel that there were several aspects that were not correct. For instance, Dr Powell said there were no investigations of the thoracic spine whereas there was the 2009 x-ray of the thoracic spine.
58. I find that Dr Powell relied heavily in forming his opinion on his understanding that Mr Ates had never complained about thoracic pain. It is apparent that Dr Powell did not have available to him the claim form of 21 June 2007 which does refer to injury of the upper back and the records listed above that do refer to the thoracic spine. Dr Powell does comment that there is no indication that the nature and conditions of Mr Ates' work as a bus driver would predispose him to thoracic pathology. But he has not considered whether Mr Ates, with the degenerative changes shown on the x-ray, could have experienced an aggravation of the same with pain in the thoracic spine. Dr Powell does not comment on the thesis put forward by Dr Guirgis that sitting, and the vibration of the bus, could have caused an aggravation injury including to the thoracic spine.
59. For these reasons, I find I cannot place weight upon Dr Powell's opinion.

³⁷ Late Documents p7

60. Mr Ates has the onus of proof. While the evidence before the Commission is scant, I am satisfied that there is evidence that Mr Ates experienced thoracic pain during his employment with the respondent. The history on the 2009 x-ray report refers to recurrent thoracic pain and reveals the presence of degenerative changes. Dr Capa's note on 10 December 2011 refers to "upper back pain" for which he prescribed analgesia and on 20 April 2016 the physiotherapist found stiffness at T9-L1 in the central and facet joints. On 31 January 2017 the body diagram in the physiotherapist's notes includes the thoracic spine.
61. Having accepted there is evidence of thoracic symptoms, the question is whether Mr Ates has established the causal connection to his employment. I find the injury/incident form dated 21 June 2007 wherein Mr Ates refers to having a stiff neck and pain in the upper back from irritation driving the bus is highly significant to show an employment connection, when coupled with the opinion of Dr Guirgis.
62. Mr Ates' counsel relies on the opinion of the treating orthopaedic surgeon, Dr Guirgis and argues it should be preferred to that of Dr Powell. Counsel submitted that Dr Guirgis had reported to Dr Capa on a constant basis and included in his diagnosis injury to the thoracic spine. He notes the doctor took a history of severe pain and stiffness in the lower half of the back and submitted that the doctor did not confine this to the lumbar spine.
63. The respondent's counsel was critical of Dr Guirgis' opinion because the doctor expresses it as being "post-traumatic mechanical derangement". Counsel queries what was the trauma? And where is the evidence of mechanical derangement? Counsel submits that there is no history of any trauma put to Dr Guirgis. Counsel submitted that Dr Guirgis refers to sitting, but he argues that the way that he deals with this thesis is more suggestive of it causing lumbar problems. The respondent also submitted it was relevant that Dr Guirgis never referred Mr Ates for investigations of the thoracic spine, but he did refer him off for a scan of the lumbar spine.
64. Dr Guirgis found tenderness from T8-12 and some limitation on forward flexion and rotation. The respondent submitted that this tenderness was due to referred pain. However, I do not accept this submission as it is not supported by medical opinion. Dr Guirgis does not only causally relate the thoracic injury to sitting, he refers to the vibration of the bus and says when acting together they create a risk of intervertebral disc pathology. He also refers to driving the bus over up and down bumps in the road would cause vertical jarring of the spinal motion segments. Even though Dr Powell had Dr Guirgis's report he does not in any reasoned way challenge this thesis. Mr Ates' claim form referred to irritation driving the bus causing pain the upper back. I accept Dr Guirgis's description of the bus driving and that the vibration is consistent with Mr Ates experiencing, as he puts it, irritation. Therefore, I accept the opinion of Dr Guirgis.
65. Even though the evidence is scant in many respects, I consider there is persuasive evidence to find that Mr Ates' employment with the respondent over many years driving buses has caused injury to his thoracic spine by way of aggravation of degenerative changes. I find Dr Guirgis's opinion is consistent with a finding under section 4(b)(ii) of the 1987 Act, that the employment was the main contributing factor to the aggravation of disease. Whether or not Mr Ates has an assessable whole person impairment of the thoracic spine is perhaps a moot point but is a matter for the AMS.
66. Accordingly, the lump sum claim is referred to the Registrar for referral to an Approved Medical Specialist for assessment of permanent impairment of the cervical spine, thoracic spine, lumbar spine, right upper extremity and right lower extremity in relation to the deemed date of injury 31 March 2017.

67. The documents to be referred to the Approved Medical Specialist are those attached to the ARD, Reply and the Application to Admit Late Documents dated 22 January 2020 and a copy of this Certificate of Determination and Statement of Reasons.