WORKERS COMPENSATION COMMISSION

STATEMENT OF REASONS FOR DECISION OF THE APPEAL PANEL IN RELATION TO A MEDICAL DISPUTE

Matter Number:	**M1-5420/19**
Appellant:	**Grace Worldwide (Australia) Pty Limited trading as Grace Removals Group**
Respondent:	**Bradley Howarth**
Date of Decision:	**3 April 2020**
Citation:	**[2020] NSWWCCMA 69**

Appeal Panel:	
Arbitrator:	**R J Perrignon**
Approved Medical Specialist:	**Dr Mark Burns**
Approved Medical Specialist:	**Dr David Crocker**

BACKGROUND TO THE APPLICATION TO APPEAL

1. The appellant employer, Grace Removals Group (Grace), appeals from the Medical Assessment Certificate of Approved Medical Specialist Dr Ackroyd dated 16 December 2019.

2. The respondent worker, Mr Howarth, was employed as a removalist by Grace. On 31 May 2014, he slipped off a step while carrying a heavy sofa down carpeted stairs, and suffered a hyperextension injury to his left knee, rupturing his left anterior cruciate ligament. In August 2014, he came to reconstruction surgery at the hands of Dr Osborne. He was prescribed Mobic, which belongs to a class of drugs known to be a rare cause of nephrotic syndrome. He developed that syndrome within weeks of first ingesting the drug.

3. On 24 December 2014, he was admitted to hospital with chest pains. A large right lung pulmonary embolus was identified on a CTPA scan. He was treated in hospital with anticoagulant medication. On 2 January 2015, he suffered a further pulmonary embolus, requiring his admission to hospital. He was commenced on a different anticoagulant.

4. In 2019, he commenced proceedings in the Workers Compensation Commission claiming lump sum compensation for whole person impairment as a result of injury on 31 May 2015. He claimed that he had suffered injury to the left knee and two consequential conditions, namely pulmonary embolism and nephrotic syndrome. Both conditions were alleged to result from medication for the left knee injury.

5. On 8 November 2019, the Registrar referred three body systems to Approved Medical Specialists for assessment of whole person impairment as follows:

    (a) left lower extremity – to Dr Pillemer as lead assessor;

    (b) urinary and reproductive system – to Dr Garvey, and

    (c) cardiovascular system – to Dr Ackroyd.

6. By a Medical Assessment Certificate dated 16 December 2019, lead assessor Dr Pillemer assessed a 26% whole person impairment (4% left lower extremity, 14% urinary and reproductive system; 11% cardiovascular) as a result of injury on 31 May 2014. This reflected the assessments made of the relevant body system by each of the three assessors in accordance with the referrals to each of them.

7. In his Medical Assessment Certificate dated 16 December 2019, Dr Ackroyd assessed a 3% whole person impairment in respect of 'cardiovascular – swelling' and a 5% whole person impairment in respect of 'cardiovascular – hypertension' to which he added 3% for treatment effect. The 5% related to intermittent swelling of the legs, and the 3% related to hypertension.

8. The appellant employer appeals only from the Medical Assessment Certificate of Dr Ackroyd, in respect of his assessments of 5% and 3%. It says that these two assessments related to the effects of the pulmonary embolus which, according to Dr Ackroyd, had resolved as at the date of examination. In the alternative it says that Dr Ackroyd exceeded the terms of the referral by assessing swelling and hypertension as a result of the pulmonary embolus. It says he should have confined his assessment to the cardiovascular system itself, resulting in a 0% whole person impairment as the embolus had resolved.

9. On 11 February 2020, the Registrar by his delegate was satisfied that the ground of demonstrable error was made out in respect of Dr Ackroyd's assessment of the cardiovascular system, and referred the matter to this Appeal Panel for determination.

10. On 31 March 2020, the Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment* (4th edition) (the Guidelines). Though it identified error on one of the grounds relied on by the appellant, it was unnecessary to refer the respondent for further examination because the error was capable of correction without examination.

Submissions

11. The Appeal Panel has had regard to the written submissions filed by both parties. It is unnecessary to set them out here in full, but appropriate to summarise them as follows.

12. The appellant employer submits that the Medical Assessment Certificate of Dr Ackroyd demonstrates error and the application of incorrect criteria, for the following reasons:

    (a) Assessment of the cardiovascular system is governed by Chapter 14 of the Guidelines. (We read that as a reference to Chapter 15.) Chapter 15 provides that Chapters 3 and 4 of AMA 5 apply. Chapter 4 AMA 5, and in particular Table 4-6, applies to the assessment of the pulmonary arteries [3.4].

    (b) In his Application to Resolve a Dispute, the respondent worker claimed compensation for the condition of pulmonary embolism. Dr Ackroyd found that the pulmonary embolism had fully resolved, and that there was no permanent impairment resulting from it. That compelled an assessment of 0% in respect of the pulmonary embolism [3.5].

    (c) By assessing the swelling in the lower extremities as he did, Dr Ackroyd assessed peripheral vascular disease, specifically renal vein thrombosis. This was not open to him, as the worker did not claim compensation for any of the following in these proceedings [3.7, 3.10, 4.1]:

        (i) peripheral vascular disease,

        (ii) secondary injury resulting from pulmonary embolism, or

(iii) secondary injury resulting from peripheral vascular disease (specifically, renal vein thrombosis).

(d) The parties in their evidence did not raise the issue of renal vein thrombosis [3.7].

(e) Dr Ackroyd assessed the hypertensive condition by reference to Table 4-2 AMA 5. That was not open to him, as the worker does not claim compensation for any of the following in these proceedings [3.9, 3.11, 4.1]:

(i) injury in the nature of hypertension,

(ii) secondary injury resulting from hypertension (specifically, hypertensive cardiovascular disease).

(f) Dr Ackroyd erred by commenting that Professor Haber had calculated impairment for hypertension. He did not.

13. The respondent submits in reply as follows.

(a) The Registrar's referral to Dr Ackroyd did not purport to limit his assessment of the cardiovascular system [3].

(b) By letter dated 8 June 2018 the worker had claimed lump sum compensation. That claim referred to and relied on Dr Haber's report, which included an assessment of whole person impairment in respect of hypertension under Table 4-2 AMA 5. The claim was not confined to impairment calculated by reference to a pulmonary embolism [6,7].

(c) Dr Ackroyd's assessment of lower limb swelling fell within the terms of the Registrar's referral [7b, c].

(d) The appellant employer understood that the claim included a claim for compensation for hypertension, because its independent medical examiner Dr Young answered the claim in his report.

Reasoning of the Approved Medical Specialist

14. Dr Ackroyd examined the worker on 26 November 2019. He took a history of injury on 31 May 2014 and its sequelae, consistent with the summary above. He noted at [5]:

> "With regard to his left knee he continues to have pain [and] occasional swelling and difficulty standing ….
>
> From the point of view of his nephrotic syndrome this appears to have settled to the extent that he can now take prednisone if and when he has an episode of leg swelling. He has also required antihypertensive medication namely Ramipril during this illness whereas hitherto he has been normotensive."

15. Prednisone is an oral corticosteroid agent used to treat swelling, among other things. Though the Approved Medical Specialist did not expressly say so, we interpret his reasons as implying that a symptom of the nephrotic syndrome was swelling, which was treated with prednisone.

16. Dr Ackroyd diagnosed 'one major episode of pulmonary embolus as seen on his CTPA', which had subsequently cleared [7]. Noting that 'nephrotic syndrome tends to cause thrombotic episodes and indeed can lead to renal vein thrombosis', he expressed the view that 'the renal veins and possibly propagation into the vena cava were the source of his pulmonary embolus'.

17. He noted at [7] that the worker 'has required Ramipril for hypertension that has developed pari passu with the nephrotic syndrome and its treatment'.

18. He considered that the worker's need to take anticoagulant and antihypertensive medications resulted from his workplace injury [10a]. This, together with the assessment made, necessarily implied a finding that both the embolus (which was treated with anticoagulants) and hypertension resulted from injury.

19. He noted that 'Dr Haber calculates an impairment for hypertension' though he did not quantify that calculation [10c].

Consideration

20. The submissions of the appellant employer are divided into submissions on the assessment of swelling in the legs and of hypertension. It is convenient to consider them in that order.

Assessment of swelling

21. As indicated, in his Application to Resolve a Dispute, the worker had claimed compensation for whole person impairment resulting from injury to the left knee, and from consequential conditions of pulmonary embolus and nephrotic syndrome. Both conditions were alleged to have resulted from medication taken for the left knee injury.

22. The Registrar referred the cardiovascular system to Dr Ackroyd for assessment, referring other body systems to Dr Pillemer and Dr Garvey.

23. Dr Ackroyd diagnosed 'one major episode of pulmonary embolus' [7] which had 'now fully resolved' [10a].

24. He found that medication (Mobic) taken as a result of the left knee injury caused the development of a nephrotic syndrome. That syndrome, he found, 'tends to cause thrombotic episodes and indeed can lead to renal vein thrombosis' [7]. A pulmonary embolism is a form of thrombosis in the lung. He considered that the pulmonary embolism probably came from the renal veins and possibly propagation into the inferior vena cava. We interpret his findings to mean that the pulmonary embolism itself was caused by thrombosis in the renal veins, which in turn was caused by a nephrotic syndrome resulting from the ingestion of Mobic for the left knee injury. That amounts to a finding, not disputed on appeal, that the embolus resulted from injury on 31 May 2014.

25. Dr Ackroyd assessed a 3% whole person impairment by reference to swelling of the legs.

26. The appellant employer asserts that this exceeded the terms of the Registrar's referral, because the swelling was not assessable as part of the cardiovascular system. It also asserts that no claim for compensation was made for impairment resulting from peripheral vascular disease or its effects.

27. Assessment of the cardiovascular system is governed by Chapter 15 of the Guidelines, which requires the application of Chapters 3 and 4 AMA5. Chapter 4 includes Table 4-5. Dr Ackroyd purported to assess swelling by reference to Table 4-5. That Table lists five methods of assessment which are available for the assessment of the cardiovascular system, referring in each case to the applicable assessment Table.

28. The last two methods of assessment listed in Table 4-5 are:

    (a) 'peripheral vascular disease', assessed under Table 4-4, and

    (b) 'pulmonary circulation disease' assessed under Table 4-6.

29. Contrary to the appellant's submission, Dr Ackroyd did not diagnose peripheral vascular disease, or purport to assess impairment by reference to it. He attributed the pulmonary embolus to renal vein thrombosis. The latter is not a form of peripheral vascular disease.

30. Pulmonary circulation disease includes a pulmonary embolus. This is assessable as part of the cardiovascular system. Dr Ackroyd found that the embolus had fully resolved. It follows that the pulmonary circulation disease had resolved. It was incapable of supporting any greater than a 0% whole person impairment (cardiovascular system).

31. In his Table [10a], Dr Ackroyd purported to assess a 3% whole person impairment (cardiovascular) by reference to 'swelling'. Swelling is one of the cardinal signs and effects of nephrotic syndrome. That syndrome is caused by kidney damage, which causes the cells of the body to release protein into the urine. That in turn causes fluid retention and swelling. Neither nephrotic syndrome, nor the swelling which results, are assessable as part of the cardiovascular system.

32. Nephrotic syndrome is caused by a condition of the urinary and reproductive system, and if present is relevant to any assessment of that system, which is governed by Chapter 7 of the Guidelines. In his Medical Assessment Certificate, Approved Medical Specialist Dr Garvey chose to assess the urinary and reproductive system under Table 7.1 of Chapter 7, which lists criteria for rating impairment due to urinary diversion disorders. Dr Garvey diagnosed 'recurrent nephrotic syndrome as a renal side effect of Mobic administration' at [7]. On examination of the left lower extremity, he found at [5] 'no peripheral oedema', though at [10a] he took account of the fact that a year earlier the worker had developed swelling of the hands, and on 23 July 2019 had suffered a recurrence of nephrotic syndrome necessitating his admission to hospital.

33. In the circumstances of this case, the existence or absence of swelling was relevant to the assessment of impairment of the urinary and reproductive system. It was not a sign of damage to the cardiovascular system, and was not available as a method of assessing impairment of the cardiovascular system. In assessing whole person impairment by reference to swelling resulting from nephrotic syndrome, Dr Ackroyd exceeded the terms of the Registrar's referral, and his assessment of 3% whole person impairment demonstrates error. To that extent, his Medical Assessment Certificate must be set aside.

34. It is unnecessary to consider whether the claim for compensation included whole person impairment by reference to peripheral vascular disease.

Assessment of hypertension

35. Dr Ackroyd diagnosed hypertension 'that has developed pari passu with the nephrotic syndrome and its treatment' [7]. He found that the worker 'now has to take a host of medications as a result of his workplace accident including … antihypertensives …' [10a]. When read together, those passages amount to a finding that hypertension resulted from the nephrotic syndrome, which was itself resulted from medication for the left knee injury.

36. As indicated, Dr Ackroyd assessed a 5% whole person impairment (cardiovascular) as a result of hypertension, in accordance with Table 4-2 AMA 5.

37. The employer does not complain that that this assessment exceeded the terms of the Registrar's referral, presumably because hypertension is a disease of the cardiovascular system, which was referred for assessment. It is regarded as a disease of the cardiovascular system, and assessable as such, even if caused by nephrosis.

38. However, the employer claims that the assessment was beyond power, because hypertension was not the subject of the original claim of 8 June 2018, or of any specific claim in the Application to Resolve a Dispute.

39. The claim for compensation was made on the basis of Professor Haber's assessment. He did not express a view that the worker suffered from hypertension, or that hypertension resulted from injury to the left knee. He did, however, assess a 9% whole person impairment as a result of injury on 31 May 2014. That assessment appears in a table at page 6 of his report dated 30 November 2016.

40. In his report, Professor Haber diagnosed a pulmonary embolism resulting from a nephrotic syndrome predisposing the patient to clots. The syndrome, he considered, was caused by taking Mobic. Though he does not mention hypertension in the report, in his assessment table he describes the basis for assessing a 9% whole person impairment as, 'Chap 1, p 66 Tablet 4-2' [sic].

41. Table 4-2 appears at page 66 of AMA 5. The Table sets out the criteria for rating permanent impairment due to hypertensive cardiovascular disease. According to Table 4-2, a Class 1 impairment is rated between 0% and 9% whole person impairment. We infer that the words 'Chap 1, p 66 Table 4-2' were intended to mean, 'Class 1, p 66 Table 4-2', and that Professor Haber was assessing a 9% whole person impairment by reference to hypertension, within Class 1, resulting from injury on 31 May 2014.

42. There are other errors in Professor Haber's table. He refers to Chapter 8 of the Guidelines, and to pages 41 and 42. That chapter and those pages relate to the respiratory system. As Professor Haber is a cardiologist, it is highly likely that those references were in error, and that he intended to refer to Chapter 15, which governs the assessment of the cardiovascular system.

43. It follows that, in our view, Professor Haber assessed the cardiovascular system by reference to hypertension, as a result of injury on 31 May 2014. His report was expressly relied on by the worker in his letter of claim. It follows that the claim, correctly interpreted, included a claim for whole person impairment with respect to the cardiovascular system.

44. In response to the claim, the insurer qualified respiratory physician, Professor Young, to assess the worker. In his report of 5 July 2019, Professor Young expressly referred to Professor Haber's assessment on the basis of hypertension. Professor Young suggested that Professor Haber be asked to comment on the reasons why he considered that hypertension resulted from injury. Professor Young understood that Professor Haber had concluded there was a causal nexus between hypertension and injury, and had assessed whole person impairment on that basis.

45. On 7 August 2019, the insurer declined the claim for compensation and declined to make any offer. It relied expressly on the report and opinion of Professor Young.

46. We are comfortably satisfied that, at all relevant times, the appellant was on notice that the worker was claiming compensation pursuant to section 66 in respect of the cardiovascular system, assessed by Professor Haber by reference to hypertension.

47. Both the letter of claim, and Professor Haber's report, were attached to the Application to Resolve a Dispute, filed in the Commission. As indicated, the Registrar referred the cardiovascular system for assessment, as well as other body systems. There is no evidence before us to suggest that either party objected to the referral of the cardiovascular system for assessment.

48. The absence of specific mention of the cardiovascular system in Form 2 of the Application to Resolve a Dispute does not derogate from the fact that a claim was properly made for compensation for impairment of the cardiovascular system, was understood to be such a claim by the insurer, and was determined by the insurer in such a way as to give rise to a dispute, justiciable by the Commission. The letter of claim and Professor Haber's report were annexed to the Application to Resolve a Dispute.

49. For those reasons, the dispute as to whether impairment of the cardiovascular system was compensable (and, if so, its quantum) was before the Commission, the Registrar was entitled to refer the cardiovascular system for assessment, and Dr Ackroyd was correct to assess impairment of the cardiovascular system by reference to hypertension.

50. To support an assessment, he had first to determine whether the hypertension resulted from injury. He did so, as indicated above. We can identify no error.

Replacement Medical Assessment Certificate

51. Dr Ackroyd assessed a 3% whole person impairment for treatment effect. No submission was made to the effect that this assessment was in error, though the appellant submitted correctly [submissions, 4.4] that if it were successful in whole, total whole person impairment (cardiovascular) should be assessed at 0%. It has succeeded in part only. We are satisfied that a 3% whole person impairment for treatment effect is supportable, having regard to the worker's ongoing need to take antihypertensive medication.

Conclusion

52. For the reasons given, the appeal is allowed in part. The Medical Assessment Certificate of Dr Ackroyd dated 16 December 2019 is set aside and replaced with the attached Medical Assessment Certificate.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS FOR DECISION OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar

WORKERS COMPENSATION COMMISSION

APPEAL PANEL
MEDICAL ASSESSMENT CERTIFICATE

Injuries received after 1 January 2002

Matter Number: **5420/19**
Applicant: **Grace Worldwide (Australia) Pty Limited trading as Grace Removals Group**
Respondent: **Bradley Howarth**

This Certificate is issued pursuant to s 328(5) of the *Workplace Injury Management and Workers Compensation Act* 1998.

The Appeal Panel revokes the Medical Assessment Certificate of Dr Ackroyd and issues this new Medical Assessment Certificate as to the matters set out in the Table below:

WPI Body Part or System	**Date of Injury**	**Chapter, Page and Paragraph number in NSW workers compensation guidelines**	**Chapter, Page, Paragraph, Figure and Table numbers in AMA5 Guides**	**% WPI**	**%WPI deductions pursuant to s 323 for pre-existing injury, condition or abnormality**	**Sub-total/s % WPI** (after any deductions in column 7)
Cardiovascular - Hypertension	31/05/2014	Chap 15 p77	P66 table 4-2	5%	0%	5%
Treatment	31/05/2014	Chap 1, page 6, paras 1.31, 1.32		3%	0%	3%
					TOTAL WPI	**8%**

R J Perrignon
Arbitrator

Dr Mark Burns
Approved Medical Specialist

Dr David Crocker
Approved Medical Specialist

I CERTIFY THAT HIS IS A TRUE AND ACCURATE RECORD OF THE MEDICAL ASSESSMENT CERTIFICATE OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar