

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 2299/19
Applicant: Alan Frederick Moston
Respondent: Goldenfields Water County Council
Date of Determination: 27 August 2019
Citation: [2019] NSWCC 282

The Commission determines:

1. The applicant suffered a psychological injury (deemed to have occurred on 3 July 2015) in the course of his employment with the respondent owing to the nature and conditions of that employment.
2. The matter is remitted to the Registrar for referral to an Approved Medical Specialist (AMS) for determination of the permanent impairment arising from the following:
 - (a) Date of injury 31 July 2015 (deemed)
 - (b) Body systems to be assessed: psychological/psychiatric injury.
 - (c) Method of assessment: whole person impairment.
3. The documents to be forwarded to the AMS to assist in their determination are to include the following:
 - (a) This Certificate of Determination and Statement of Reasons;
 - (b) The Application to Resolve a Dispute and attachments, and
 - (c) The Reply and attachments, except for any surveillance footage (on disc) of Gary Cox Investigations of various dates which was attached to the Reply and which is not to be referred.
4. The documents marked Exhibit A (letter from Bartier Perry to Dr Ingram dated 6 May 2019) and Exhibit 1 (letter from Bartier Perry to the Registrar dated 4 June 2019) will not be included in any referral to the AMS.

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

Cameron Burge
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 CAMERON BURGE, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Jackson

Ann Jackson
A/Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Alan Frederick Moston (the applicant) suffered a psychological/psychiatric injury in the course of his employment with Goldenfields Water County Council (the respondent), with a deemed date of injury of 3 July 2015. That injury was caused by the nature and conditions of his employment with the respondent, and is not in dispute for the purpose of these proceedings.
2. The applicant brings a claim for lump-sum compensation in respect of a whole person impairment of 25% allegedly arising from the above injury. That claim was made by way of letter dated 5 December 2018 from the applicant's solicitors to the respondent's insurer.
3. The claim having been declined, the applicant commenced these proceedings by way of Application to Resolve a Dispute (Application) on 14 May 2019.
4. By Reply dated 5 June 2019, the respondent accepted the psychological injury in accordance with its section 78 notice dated 15 May 2019, but contended the applicant is not entitled to recover lump-sum compensation for his injury as he has not been assessed with an impairment of 15% or more in accordance with the provisions of section 65A(3) of the *Workers Compensation Act 1987* (the 1987 Act).
5. There is no question that these proceedings will be referred to an Approved Medical Specialist (AMS) for determination of the applicant's degree of whole person impairment arising from the injury at issue. The matter in issue before the Commission is which documents should be referred to the AMS to assist with their determination.
6. In particular, the respondent seeks to put before the AMS surveillance footage taken by Gary Cox Investigations together with the surveillance reports of that investigator dated 5 July 2017, 9 August 2017, 16 May 2018, and 15 April 2019. The respondent also seeks to rely upon a supplementary report of Dr Ingram dated 15 May 2019, together with a letter of instruction to the doctor which was admitted into evidence and marked exhibit A.
7. The applicant, for reasons which will be discussed later in these reasons, opposes all of those documents being referred to the AMS.

ISSUES FOR DETERMINATION

8. The parties agree that the only issue for determination by the Commission is whether the documents referred to as being in issue between the parties should be forwarded to the AMS to assist in their assessment of the applicant's whole person impairment.

PROCEDURE BEFORE THE COMMISSION

9. 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. The parties were informed of my intention to determine the dispute without holding a conciliation conference or arbitration hearing.

10. As previously noted, the parties attended a hearing on 15 July 2019. 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.
11. At the hearing, Mr J Dodd of counsel appeared for the applicant, and Mr F Doak of counsel appeared for the respondent.

EVIDENCE

Documentary evidence

12. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) The Application and attached documents;
 - (b) The Reply and attached documents;
 - (c) The Application to Admit Late Documents (AALD) filed by the applicant and attachments;
 - (d) A letter dated 6 May 2019 from the respondent's solicitors to Dr Lee Ingram, admitted into evidence and marked exhibit A, and
 - (e) A letter addressed to the Registrar of the Workers Compensation Commission from the respondent's solicitors dated 4 June 2019 admitted and marked exhibit 1.

Oral evidence

13. There was no oral evidence called at the hearing.

SUBMISSIONS

14. For the applicant, Mr Dodd sought to exclude both the video surveillance and investigation reports from any referral to an AMS. He referred to the Workers Compensation Medical Dispute Assessment Guidelines (the Guidelines) which were gazetted on 21 December 2018. Part two of the Guidelines refers to the referral process to an AMS. Paragraph 2.25 of the guidelines states:
 - “2.25. When the Registrar refers the matter to the AMS, the Registrar is to provide the AMS with:
 - 2.25.1. All documentation admitted on behalf of a party to proceedings relevant to the medical dispute referred in compliance with the 2016 regulation;
 - 2.25.2. Any applicable provisions of the workers compensation rules 2011, and
 - 2.25.3. Any orders of the Court or the Commission.”

15. Relevantly, paragraph 2.26 of the guidelines provides:

“2.26. The Commission file may contain video surveillance material obtained as part of investigators’ reports. **Video surveillance shall not be disclosed to the AMS unless ordered by the Commission in exceptional circumstances.**” (emphasis added)

16. Mr Dodd noted that Dr Ingram, Independent Medical Examiner (IME) for the respondent first assessed the applicant on 4 February 2019. He noted that the investigation reports and surveillance footage dated 5 July 2017, 9 August 2017 and 15 May 2018 all predated the qualification of Dr Ingram as an IME by the respondent. In the circumstances, Mr Dodd submitted that if the respondent was of the view that this material was relevant in assisting Dr Ingram (and by extension the AMS) with his assessment, then the respondent had the opportunity to place it before the doctor and chose not to.

17. In relation to the surveillance report dated 15 April 2019, Mr Dodd noted that it was a report obtained after Dr Ingram had provided his initial report. The material within the report showed the applicant in his local cycling group, which he attends twice per week. Mr Dodd submitted that when the applicant was seen by Dr Ingram, he provided a history to the doctor consistent with the activities shown in the footage and referred to in the reports. Mr Dodd emphasised that at no time had the applicant denied that he was involved in the cycling group, and submitted that Dr Ingram’s initial assessment relating to social activities under the Psychiatric Impairment Rating Scale (PIRS) scales referred to the applicant undertaking that activity.

18. Given the applicant had disclosed to Dr Ingram the nature and extent of his social activities, Mr Dodd submitted there can in no way be exceptional circumstances which would give rise to the Commission allowing the material to go before an AMS.

19. Mr Dodd took the Commission to the supplementary report of Dr Ingram, attached to the Reply from page 81. Dr Ingram was asked whether the surveillance evidence put before him altered his view of the applicant. Dr Ingram said:

“Mr Moston told me that he regularly participates in bike riding and so the surveillance is not inconsistent with his reports.

I would note the surveillance was taken more than a year ago and would not be indicative of his current mental state or functioning.

However, there was some discrepancy between his reports of going to clubs and the surveillance suggested that he did go to clubs regularly after bike riding. Again, this is not inconsistent with his reports of his functioning.

The surveillance does suggest that his social functioning is somewhat better than he reported. It is difficult however for surveillance tapes to get a clear picture of this.”

20. In answer to a direct question as to whether surveillance material causes him to reassess his opinion of the applicant’s capacity and/or impairment as outlined in his initial report, Dr Ingram said:

“No, my opinion with regards to his diagnosis remains unchanged based on my assessment of his functioning. It is worth noting that surveillance tapes only capture some of his psychological functioning beyond which he reported.

However, I would note that mental health conditions fluctuate considerably with periods of better functioning and further deterioration in his functioning over time.”

21. Dr Ingram was then asked to consider the surveillance evidence and was asked whether his assessment of whole person impairment has changed in light of it. The doctor said:

“I would reconsider my whole person impairment. The surveillance indicates that his social functioning is above that which he indicated. I would therefore assess his social functioning as a Class 2 which would change my overall assessment.”

The doctor then went on to make an assessment under the PIRS scale which led to the applicant receiving a whole person impairment assessment of 10%.

22. Mr Dodd submitted that one of the reasons why the guidelines provide for the provision of surveillance material to an AMS in only exceptional circumstances is because such material can paint the applicant's condition in a different light to that which accurately reflects the psychological functioning of an injured worker.
23. The comments contained in the reports which attached the surveillance material are, submitted Mr Dodd, outrageous. He noted that Dr Ingram had changed his assessment under the heading social functioning from Class 3 to Class 2, and it was that change which led to the applicant's assessed whole person impairment dropping below the threshold for receiving lump sum compensation.
24. Mr Dodd submitted that even on Dr Ingram's assessment, the applicant has given histories which are consistent. Dr Ingram had changed his assessment, Mr Dodd submitted, from 20% WPI to 9% WPI based on a wrong characterisation. He also submitted the respondent had not indicated what exceptional circumstances stopped them from providing the film to Dr Ingram at the time of his first report.
25. The applicant submitted that the surveillance material, the factual investigation reports and the supplementary report of Dr Ingram dated 15 May 2019 together with exhibit A should not be referred to the AMS. He submitted that in circumstances where the applicant has provided a history consistent with what was demonstrated on the film, there can be no exceptional circumstances warranting the inclusion of the material in any referral to an AMS.
26. In relation to the first factual report found at page 5 of the Reply, Mr Dodd noted that page 12 of the report referred to various attachments, however, those attachments were not attached and accordingly the report is incomplete and should not be referred. At page 11 of the Reply, Mr Dodd noted that the report referred to an annexure 5, which was dated from September 2014, a date before which the applicant even ceased employment. In summary, Mr Dodd said that there are no exceptional circumstances that had been put forward which would warrant the report or the surveillance footage going before an AMS, and in any event the report and the film was of no probative value, particularly when it is incomplete.
27. Concerning the report dated 9 August 2017, Mr Dodd referred to a number of the observations made by the investigator who had compiled the report. He noted there were comments such as the applicant “leading the conversation” and noted the surveillance footage was taken from some distance away, such that the investigator could in no way know who was leading any conversation, or indeed what was being said. In the words of Mr Dodd, “This is the sort of junk that goes to Dr Ingram and which leads to him changing a factor in his assessment. It is objectionable.”
28. In summary, Mr Dodd submitted this report that contained so many assertions and impressions of the investigator who authored it that both the report and the film lacked any probative value and were overly prejudicial. Mr Dodd also referred to an entry in the report at page 25 of the Reply, where the investigator sees fit to make what Mr Dodd referred to as an orthopaedic diagnosis of the applicant's condition. He submitted that the various conclusions and observations contained within the factual investigation report had no probative weight at all and in fact have the effect of being misleading.

29. Likewise, when dealing with the assertions made at page 63 of the Reply, Mr Dodd noted an entry in the report to the effect that the applicant “may have been on holidays”. He rhetorically asked how the investigator could possibly have known this was the case, and submitted this was a summary which had been provided to Dr Ingram before he altered his conclusions in his supplementary report.
30. In addressing the contents of exhibit 1, Mr Dodd submitted that there are a number of assertions and conclusions within that letter to the Commission which were completely baseless, and which certainly were not sufficient to give rise to finding the existence of exceptional circumstances.
31. In summary, Mr Dodd submitted that the Commission should be guided and directed by the Guidelines, and accordingly the surveillance material should be kept from the AMS when they make their assessment. He submitted this was particularly the case in circumstances where the applicant told Dr Ingram the truth, and the doctor himself states in the body of his report that the surveillance material is of little to no benefit to him and does not cause him to change his opinion.
32. Mr Dodd also submitted that the number, nature and extent of the inferences and conclusions drawn in the investigation reports themselves was such that they were full of “nonsense” and assertions which should not go before an AMS. He submitted the onus is on the respondent to show that exceptional circumstances exist, and they have demonstrably failed to do so.

The respondent’s submissions

33. Mr Doak submitted that the provision of the Guidelines provides for video surveillance “material” and submitted that that reference extends to both the reports and film.
34. In relation to “exceptional circumstances”, Mr Doak relied upon the contents of exhibit 1, namely the letter from his instructing attorneys to the Commission’s Registrar. He referred in particular to paragraph 7 of that letter which recounted Dr Ingram’s comments in relation to reassessing his degree of permanent impairment.
35. Mr Doak submitted there are three basis for finding exceptional circumstances, namely:
 - There are no reported decisions on the clause in issue, and accordingly the Commission should give the expression “exceptional circumstances” its ordinary meaning, namely something “unusual” or “outside the normal”. The question is whether the circumstances of this matter are unusual and if so, should the material be referred to an AMS;
 - The material was not forwarded to Dr Ingram for comment at the time of his first report, because until such time as the applicant gave what the respondent describes as inconsistent responses at the time of the first examination, there is no apparent inconsistency which warrants Dr Ingram commenting on the surveillance material, and
 - The material contained within the surveillance reports and the film itself does not mislead or misdirect Dr Ingram. When Dr Ingram goes to the question of clarifying his opinion, he indicates that he has reviewed the material but maintains his diagnosis of the applicant.

36. Mr Doak submitted that in light of the new evidence, it was apparent that Dr Ingram had reassessed the applicant as suffering only a mild impairment regarding his relationships, and that contrary to the assertions made by the applicant to Dr Ingram, the factual investigation material clearly shows his relationships are intact. He said the material clearly showed the applicant was socialising and there was no evidence of factors such as him having a short fuse, which he had referred to at the time of his examination.
37. Mr Doak indicated that the phrase “exceptional circumstances” should be given its ordinary meaning. He said that if the material was not put before any AMS, then the applicant’s history regarding having lost his friends and stopped cycling would be before the AMS, and it is contrary to what is shown in the material.
38. The respondent submitted that Dr Ingram was clearly entitled to change his assessment based upon the material, that Dr Ingram’s assessment does not bind an AMS, but the inclusion of the material would leave the AMS with a proper basis to make their opinion.
39. Mr Doak submitted material which is not strictly speaking admissible frequently goes before an AMS, because the rules of evidence do not apply in the Commission. He submitted that if there was any concern regarding a misdirection of the AMS arising from the surveillance material, a direction could be made that the surveillance reports do not go before the AMS but the raw video surveillance material does.
40. In summary, Mr Doak submitted that exceptional circumstances exist in relation to the material and that it should go before the AMS.

The applicant’s submissions in Reply

41. Mr Dodd submitted that the guideline in question being expressed in the negative, the onus is on the respondent to prove exceptional circumstances. He said the respondent had not raised a word in submissions concerning the investigation reports and what is in them, because it is undeniable that their contents should not go before an AMS and indeed should not have gone before Dr Ingram.
42. Mr Dodd said that whilst the respondent suggested the applicant’s evidence was “contrary to what he told the doctor earlier”, this was not the case. Indeed, Mr Dodd pointed out that Dr Ingram himself had noted that the material placed before him did not contradict that which the applicant had mentioned when he examined him.

CONSIDERATION

43. The phrase “exceptional circumstances” has been considered by Presidential members of the Commission in cases such as *Erskine v Cowzine Pty Limited* [2018] NSWCCPD 9 (*Erskine*). In that matter, Deputy President Snell dealt with an appeal lodged substantially out of time, and noted at paragraph 20:

“The extension of time is governed by r 16.2(12) of the Workers Compensation Commission Rules 2011 (the Rules), which provides:

‘The Commission constituted by a Presidential member may, if a party satisfies the Presidential member, in exceptional circumstances, that to lose the right to appeal would work demonstrable and substantial injustice, by order extend the time for making an appeal.’

The presence of ‘exceptional circumstances’ is to be ‘considered by the Presidential member as a matter within jurisdiction as opposed to a precondition’: *Bryce v Department of Corrective Services*. The meaning of ‘exceptional circumstances’ was considered in *Yacoub v Pilkington (Australia) Ltd*. These principles have been frequently applied in the Commission, in Presidential decisions dealing with r 16.2(12). It is appropriate also, in exercising the discretion, to have regard to the principles discussed in the judgment of McHugh J in *Gallo v Dawson*.”

44. In *Yacoub v Pilkington (Australia) Ltd* [2007] NSWCA 290 (*Yacoub*), Campbell JA dealt with the meaning of the phrase “exceptional circumstances” in the context of the Uniform Civil Procedure Rules 2005 (UCPR). His Honour said:
- “(a) Exceptional circumstances are out of the ordinary course or unusual, or special, or uncommon. They need not be unique, or unprecedented, or very rare, but they cannot be circumstances that are regularly, routinely or normally encountered: *R v Kelly (Edward)* [1999] UKHL 4; [2000] 1 QB 198 (at 208).
 - (b) Exceptional circumstances can exist not only by reference to quantitative matters concerning relative frequency of occurrence, but also by reference to qualitative factors: *R v Buckland* [2000] EWCA Crim 1; [2000] 1 WLR 1262; [2000] 1 All ER 907 (at 1268; 912–913).
 - (c) Exceptional circumstances can include a single exceptional matter, a combination of exceptional factors, or a combination of ordinary factors which, although individually of no particular significance, when taken together are seen as exceptional: *Ho v Professional Services Review Committee No 295* [2007] FCA 388 (at [26]).
 - (d) In deciding whether circumstances are exceptional within the meaning of a particular statutory provision, one must keep in mind the rationale of that particular statutory provision: *R v Buckland* (at 1268; 912–913).
 - (e) Beyond these general guidelines, whether exceptional circumstances exist depends upon a careful consideration of the facts of the individual case: *Awa v Independent News Auckland* [1996] 2 NZLR 184 (at 186).”
45. In this matter, it is common ground that the respondent, as the party seeking to rely on them, bears the onus of demonstrating the existence of exceptional circumstances.
46. In *The Estate of the Late John Koutsomihalis v Coles Supermarkets Australia Pty Ltd* [2013] NSWCC369 (*Koutsomihalis*), Arbitrator Sweeney dealt directly with the question of the status of the Guidelines in an identical context to this matter, where a respondent was asking the Commission to allow surveillance film to be placed before an AMS. At paragraph 10, Arbitrator Sweeney noted the 1998 Act expressly empowered the then equivalent of the State Insurance Regulatory Authority to issue guidelines with respect to the assessment of the degree of permanent impairment. An analogous provision is found at section 376 of the 1998 Act. The Arbitrator then noted section 322(1) of the 1998 Act, which provides:
- “The assessment of the degree of permanent impairment of an injured worker for the purposes of the Workers Compensation Acts is to be made in accordance with Workers Compensation Guidelines (as in force at the time the assessment is made) issued for that purpose.”

Relevantly, that provision has not changed since Arbitrator Sweeney’s decision.

47. In my view, and consistent with Arbitrator Sweeney's decision, the guidelines are delegated legislation which are "part of the fabric of laws which govern practice and procedure in the Workers Compensation Commission" (*Koutsomihalis* at [11]). It is therefore not open to an Arbitrator to direct the referral of evidence to an AMS contrary to the Guidelines. To that extent, the Guidelines in issue differ from those considered in decisions such as *Tan v National Australia Bank Ltd* [2008] NSWCA 198 (21 August 2008) and *Fletcher International Exports Pty Ltd v Barrow & Another* [2007] NSWCA 244 (13 September 2007), which were concerned with different Guidelines and with the question of whether the jurisdiction of the Commission could be limited by those Guidelines.
48. As Harrison As J noted in *Strbac v QBE Insurance (Australia) Limited* [2010] NSWSC 602 (8 June 2010) where considering the guidelines for the Evaluation of Permanent Impairment:
- "Guidelines in general have varying legal effects. Some guidelines amount to delegated legislation and are inflexible. Others exhibit no legislative intention to create precise or inflexible rules: see *Riddell v Secretary, Department of Social Security* [1993] FCA 261; (1993) 42 FCR 443 and *Apthorpe v Repatriation Commission* (1987) 77 ALR 412 that are instructive."
49. Having found that the Guidelines set out the basis on which material may be referred to an AMS, the question arises as to whether there are exceptional circumstances in these proceedings, and which material that phrase applies to.
50. Mr Doak conceded without contradiction, that the phrase "video surveillance material" extends not only to the film, but also to the reports arising from the surveillance. With respect, I do not agree with that interpretation of the Guidelines. The relevant Guideline refers to video surveillance obtained as "part of investigators' reports." It follows that when the Guideline refers to excluding "video surveillance", it is referring to surveillance footage itself, rather than any report to which it might be attached. As a result, the question of whether exceptional circumstances exist is therefore limited to the film attached to the various surveillance reports.
51. In my view, the circumstances relied upon by the respondent in this matter are not exceptional. This is not a matter where the applicant has failed to disclose a significant recreational or vocational activity which he in fact undertakes, and which is disclosed in the footage. It is not a matter where he has been shown in paid employment when he says he cannot work. Rather, as Dr Ingram noted, the applicant informed him that he was involved in his bike riding club and that he attended rides regularly.
52. Slight variations between histories provided to doctors and activities shown in footage are a regular part of personal injury litigation. As noted in *R v Kelly (Edward)* [1999] UKHL 4; [2000] 1 QB 198 (Kelly), exceptional circumstances cannot be regularly, routinely or normally encountered. In my view, the circumstances in which this footage was obtained and the activities it discloses are of the kind which are regularly and routinely seen in the course of litigation in this jurisdiction.
53. I also note that the majority of the footage was obtained well before the applicant first saw Dr Ingram. I have taken into account Mr Doak's submission that until such time as the applicant provided his history to Dr Ingram there was no need for the footage to be forwarded to the doctor. I reject that submission. Ideally, the footage would be forwarded to the respondent's IME for consideration, and if anything concerned the doctor, those matters could be squarely put to the applicant and he could respond to them. Instead, the respondent has chosen, no doubt for forensic reasons, to hold back the footage from Dr Ingram until after he had examined the applicant.

54. Having regard to the submissions of counsel, I agree with Mr Dodd as to the nature and extent of much of the commentary in the investigation reports. Those comments are made by an investigator who is not a party to conversations or activities, and are made from some distance away from the applicant. They are made by a lay person who is retained for reward by a party to the proceedings. Given the nature of the opinions of the investigator and the fact the opinions are those of a lay person, I attach little weight to them.
55. Nevertheless, as Mr Doak noted, the rules of evidence do not apply in the Commission. Given the reports were filed with the Reply in accordance with the Rules and the applicant has responded to both the investigation material and to the reports of Dr Ingram in the supplementary statements attached to his AALD, I do not believe there is any prejudice to the applicant in the investigation reports being sent to the AMS.
56. In my opinion, no criticism can be levelled at the applicant for dealing with the matters contained in the investigation reports and Dr Ingram's supplementary report late in the proceedings, given that he could not have known of the contents of either until they were served on his solicitors. Whilst it would no doubt have been preferable for Dr Ingram to have had the factual material before he examined the applicant so any matters of concern could be put to him squarely before the IME report was prepared, the applicant has dealt with any prejudice as best he can by providing updated statements.
57. I should indicate that in commenting on the respondent's course of action with regards to the footage, I do not criticise Dr Ingram in any way. He has provided his reports and opinions based upon the material before him at any given time.
58. As is the case with the investigation reports, Dr Ingram's two reports have been served in accordance with the Rules. In my view, notwithstanding Mr Dodd's submissions to the contrary, it would be inappropriate to allow one report from an IME into evidence, but not another when both are served within the times set out in the Rules and the applicant has had opportunity to respond to both reports.
59. Accordingly, the two reports of Dr Ingram will be forwarded to the AMS.
60. Exhibit 1, the letter to the Registrar of the Commission, will not be forwarded to the AMS. The letter is not evidence, but rather legal submissions. The Guidelines preclude the parties forwarding submissions to an AMS.
61. In my view, the letter of referral to Dr Ingram marked exhibit A should not go before the AMS. The AMS will have the surveillance reports and can take them into account to the extent thought appropriate. Exhibit A seeks to summarise the contents of the investigation reports. Given the AMS will have the reports themselves, I do not consider it appropriate or necessary for the AMS to have a letter of referral to another medical expert.

SUMMARY

62. In light of the above reasons, the Commission will make the findings and orders set out on page 1 of this Certificate of Determination.

