

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 294/20
Applicant: Ritvik Ritvik
Respondent: Castle Hill RSL Limited
Date of Determination: 19 March 2020
Citation: [2020] NSWCC 83

The Commission determines:

1. The applicant suffered an injury to his right lower extremity (foot and ankle) in the course of his employment with the respondent on 6 August 2017.
2. The MRI scan of the right foot and ankle as proposed by Dr Bedi is reasonably necessary.
3. The respondent is to pay the costs of an incidental to the proposed MRI scan.

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 Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Mr Ritvik Ritvik (the applicant) suffered an agreed injury to his right foot and ankle whilst working with Castle Hill RSL Ltd (the respondent) on 6 August 2017. On that occasion, the applicant was walking from the kitchen towards a lift, pushing a trolley full of trays when his foot caught in a hole in a floor, causing it to twist and the trays to fall on his foot. He suffered immediate pain, discomfort and swelling to his right foot and ankle.
2. The respondent has denied liability for the cost of an MRI of the applicant's right foot on the basis that the effects of the agreed injury have passed and resolved.

ISSUES FOR DETERMINATION

3. The parties agree that the only issue in dispute is whether the proposed MRI scan is reasonably necessary.

PROCEDURE BEFORE THE COMMISSION

4. The parties attended a hearing on 17 March 2020. 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.
5. At the hearing, Mr C Tanner of Counsel instructed by Ms J Zigouris, solicitor, appeared for the applicant, Mr F Doak, of counsel appeared for the respondent.

EVIDENCE

Documentary evidence

6. The following documents were in evidence before the Commission and taken into account:
 - (a) Application to Resolve a Dispute (the Application) and **attached** documents;
 - (b) Reply and **attached** documents.

Oral evidence

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

FINDINGS AND REASONS

Is the Proposed MRI Reasonably Necessary?

8. The applicant's evidence is that he continues to suffer from symptoms as a result of the agreed injury. He says he is unable to walk for more than five minutes, whereupon he develops increased pain in his right foot. He complains of a limp which is causing difficulties in his right hip and also of late, his left hip. He complained of swelling and pain to his right foot since the accident.
9. The respondent denies liability on the grounds that the effects of the agreed injury have passed, and accordingly an investigative scan is not reasonably necessary.

10. There is a long line of authority in cases such as *Bartolo v Western Sydney Area Health Service* [1997] 14 NSWCCR 233 (*Bartolo*) and *Rose v Health Commission (NSW)* [1986] 2 NSWCCR 32 (*Rose*) as to what is required in order to determine whether the proposed treatment is reasonably necessary. In reaching this decision, I have taken those factors into account.
11. The applicant bears the onus of proving that the medical treatment claimed is reasonably necessary. The relevant test for establishing reasonable necessity is set out in the decision of Deputy President Roche in *Diab v NRMA Limited* [2014] NSWCCPD 72 (*Diab*). In that matter, the Deputy President cited with approval the test articulated by his Honour Judge Burke in *Bartolo*. Thus, treatment will be considered reasonably necessary if the Commission finds that it is preferable that the worker should have the treatment than it be forborne.
12. There are other considerations which are also relevant to deciding whether treatment is reasonably necessary. These include, but are not limited to, the appropriateness of the treatment, the availability of alternative treatment and the potential effectiveness of the alternative, the cost of the proposed treatment, the actual potential effectiveness of the proposed treatment and the acceptance by medical experts of the treatment as being appropriate and likely to be effective.
13. In *Diab*, Roche DP also noted that the word “reasonably” operates to qualify the effect of “necessary”, such that the injured worker does not need to prove the treatment is absolutely necessary.
14. In relation to the issue of cost, there is no suggestion the expenses of the proposed scan is prohibitive.
15. The effectiveness of the treatment is also not in issue. There is no question that an MRI scan is a widely accepted and regarded form of investigation into symptoms and the extent of an injury. The soundness of the treatment itself is not an issue.
16. The potential effectiveness of the treatment is also not contested. An MRI is a thorough and appropriate investigative tool.
17. Mr Doak submitted the high point of the applicant’s case was the opinion of Dr Bedi in his report dated 18 July 2019. In that report, Dr Bedi suggested an MRI was appropriate because the applicant’s symptoms were ongoing.
18. Mr Doak took the Commission to an MRI which was conducted in February 2018, found at page 19 of the Reply. That report noted normal residual issues by way of “minimal residual oedema.” He said the Commission would prefer the opinion of Dr Machart, independent medical examiner (IME), for the respondent who said the pathology in the ankle had resolved, even though the applicant continued to complain of symptomology. Mr Doak criticised Dr Bedi for doing nothing more than suggesting an MRI is necessary to assess the ankle without saying why that is so.
19. With respect, I disagree with Mr Doak’s submissions. There is no issue the applicant suffered an injury on 6 August 2017. On 3 May 2018, the applicant was successful in a merit review application which found on that date he had no ongoing capacity for employment. Mr Tanner submitted, and I accept, that the lack of any capacity for employment is strongly suggestive of the applicant continuing to be troubled by his injury as at May 2018. Coincidentally, this was the month when Dr Machart first saw the applicant and indicated he had recovered from the effects of that injury.
20. I reject the views of Dr Machart regarding the ongoing effects of the injury, as although he states as a conclusion that the effects of the injury had ceased, his report is replete with qualified acknowledgement of ongoing symptomology. For example, he refers to a lack of

"severe" symptoms, and there being "minor discomfort". Mr Tanner submitted, and I accept, that those findings on examination are inconsistent with the doctor's overall conclusion that the effects of the injury have ceased. I also note Dr Machart's finding of mild swelling and tenderness together with a limp at the injury site, direct and objective findings which are contrary to the doctor's own view that the effects of the injury had passed. Dr Machart acknowledged that "minor and not disabling symptoms may still be evident."

21. I accept Mr Tanner's submission that the applicant does not need to establish the presence of disabling symptoms, merely that symptoms are ongoing and require treatment. The findings of Dr Machart on examination are broadly consistent with those of Dr Bedi, who also found persisting pain over the right lateral midfoot of the applicant. In my view, the preponderance of the medical evidence in this matter is strongly suggestive of the applicant continuing to suffer from symptoms relating to his agreed workplace injury.
22. Having made that finding, and taking into account the requirements to determine the reasonable necessity of treatment as set out in decisions such as *Bartolo*, *Rose* and *Diab*, I am satisfied that the proposed MRI scan of the applicant's right foot and ankle as requested by Dr Bedi is reasonably necessary in the circumstances of this case.
23. The previous MRI from 2018 does not, in my opinion, exclude the presence of ongoing pathology and symptomology. It refers to residual oedema being present, which in my view supports a finding that at the time of that scan, the effects of and the pathology behind the applicant's injury had not yet resolved.
24. When one weighs up the medical evidence and the statement of the applicant as to his ongoing symptoms, in my view, the onus of proof has been satisfied and establishes that the effects of the applicant's injury remain ongoing and the proposed MRI scan is reasonably necessary.

SUMMARY

25. For the above reasons, the respondent is ordered to pay the costs of and associated with the proposed MRI scan of the applicant's right foot and ankle.

