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RANKIN ELLISON CASE NOTES

Can a Worker make more than one claim for permanent impairment compensation?

Jasbir Singh v B & E Poultry Holdings Pty Ltd (26 July 2018) WCC

Rankin Ellison successfully defended a claim for permanent impairment compensation in circumstances where the Applicant sought to recommence his previously discontinued claim and to be re-assessed by an Approved Medical Specialist.

Material Facts

The Applicant, Jasbir Singh, was employed by the Respondent, B & E Poultry Holdings Pty Ltd. He suffered an accepted lumbar spine injury in the course of his employment in 2013. In 2015, the Applicant made a claim for permanent impairment compensation in respect of 13% Whole Person Impairment ("WPI") resulting from that injury. The Respondent disputed liability on the basis that the Applicant did not satisfy the 11% WPI threshold for entitlement to permanent impairment compensation under Section 66 of the *Workers Compensation Act 1987* (NSW) ("1987 Act"). In 2016, the Applicant initiated proceedings in the Workers Compensation Commission ("WCC") and was referred to an Approved Medical Specialist ("AMS") for determination. The AMS issued a Medical Assessment Certificate ("MAC") assessing 14% WPI in respect of the Applicant's lumbar spine injury. However, the Applicant discontinued proceedings before the Commission had an opportunity to issue a Certificate of Determination.

In 2018, the Applicant made a claim in respect of 16% WPI in respect of his lumbar spine injury. The Respondent determined the claim by making an offer in respect of 14% WPI in accordance with the 2016 MAC. The Respondent asserted that the Applicant was bound by the 2016 MAC in accordance with Section 66(1A) of the 1987 Act and Section 322A of the Workplace Injury Management and Workers Compensation Act 1998 ("1998 Act"). The Applicant re-commenced proceedings in the WCC claiming 16% WPI in respect of his lumbar spine injury. The Respondent maintained that:-

1. The Applicant was not entitled to make a further lump sum compensation claim.
2. The Applicant was not entitled to a reassessment by an AMS.

The matter proceeded to determination by an Arbitrator in the WCC.

Rule 15.7 of the *Workers Compensation Rules 2011* (NSW) permits an injured worker to discontinue his/her workers compensation claim and later recommence same at any time without penalty. Relying on *Avni v Visy Industrial Plastics Pty*

Ltd [2016] NSWWCCPD 46, the Applicant contended that a dispute is not determined until such time as the Commission issues a Certificate of Determination ("COD"). Further, the Applicant submitted that a MAC is only binding in respect of the proceedings in which it is issued. On that basis, the Applicant contended that he was entitled to recommence proceedings and be reassessed by an AMS.

The Respondent submitted that the decision in *Avni v Visy Industrial Plastics Pty Ltd [2016]* NSWWCCPD 46 was erroneous to the extent that it permitted an injured worker to recommence a discontinued claim in circumstances where a MAC had already been issued. The Respondent contended that Section 66(1A) of the 1987 Act strictly limits an injured worker to one claim for lump sum compensation in respect of a work injury. For the purposes of this case note, we note that injured workers who made claims for permanent impairment compensation prior to 19 June 2012 are permitted one further claim. With reference to *Woolworths Ltd v Stafford [2015]* NSWCCPD 3, the Respondent contended that the word "claim" simply means a valid claim. It does not necessarily mean a claim that has been determined (whether in favour of the Applicant or otherwise).

As a matter of procedure, the Arbitrator accepted that the Applicant was entitled to discontinue his claim at any time prior to a Certificate of Determination being issued. Notwithstanding, the Arbitrator determined that the Applicant was bound by the provisions of Section 66(1A) of the 1987 Act and Section 322A of the 1998 Act. That is to say, the Applicant was limited to one lump sum compensation "claim" and one permanent impairment assessment in relation to the subject injury. In respect of the former, Arbitrator accepted the Respondent's submission that the word "claim" does not necessarily mean a claim that has been finally determined. Rather, it is a claim that has been made in accordance with Sections 260 and 261 of the 1998 Act. In respect of the latter, a MAC issued in connection with a permanent impairment assessment is the only MAC that can be used in respect any claim for permanent impairment compensation.

Implications

The WCC took a very literal interpretation of the provisions in Sections 66 of the 1987 Act and Section 322A of the 1998 Act. The salient points of this determination are:

1. A "claim" in the context of Section 66 of the 1987 Act means a claim that satisfies the requirements set out in Sections 260 and 261 of the 1998 Act. A "claim" does not necessarily mean one that is determined, whether in favour of the Applicant or otherwise.
2. Pursuant to Section 322A, an injured worker is entitled to only one permanent impairment assessment in respect of a particular work injury. The MAC issued in connection with that permanent impairment assessment is binding in respect of all current and future medical disputes in respect of permanent impairment.

If you have any questions about a particular workers compensation matter, please contact our team by phoning 02 4929 9333 (Newcastle) or 02 8297 5900 (Sydney).