

SHORT SHOTS

***State of NSW v Stockwell* [2017] NSWCA 30 (1 March 2017)**

The worker disputed a section 54 notice informing him that he was no longer entitled to weekly compensation payments based on the assumption that the 2012 Amendments (which came into force from 27.06.12) applied to him. The worker asserted that the amendments didn't apply to him as he was an exempt worker within the meaning of CI 5 Part 19H Schedule 6 of the WCA and was at all material times a paramedic.

The Court of Appeal dismissed the employer's appeal on the basis that the worker had retained the status of a paramedic at the relevant time and that the 2006 Award that applied did not specify that any failure by him to comply with the proviso to undertake fresh courses and examinations would affect his status as a paramedic.

***Spence v Roof Safe Services Pty Ltd* [2017] NSWCCA 27 (3 February 2017)**

The worker suffered an injury to his left knee in January 2015 when he slipped on a ladder. The worker sought approval to undergo a total knee replacement. The insurer accepted that the procedure was reasonably necessary but disputed that the need resulted from the injury. The issue on causation was required to be determined by an Arbitrator who observed that the work injury did not have to be the only or even the substantial cause of the need for the relevant treatment. He found that the injury had materially contributed to the need for surgery being the result of both the worker's pre-existing disease and aggravation as a result of the work injury contributing to the need for surgery so as to be reasonably necessary medical treatment.

***Hill v SL Hill and Associates Pty Ltd (Deregistered)* [2017] NSWCC 11 (12 January 2017)**

The worker initially commenced proceedings in the Workers Compensation Commission that was listed for four teleconferences but on each occasion was not ready to

proceed and was eventually discontinued at an arbitration hearing. The worker commenced new proceedings that were listed for two teleconferences and the matter was still not ready to proceed at a conciliation/arbitration. At a third teleconference, the worker's representatives advised they were waiting for further information and evidence. The Arbitrator determined that the matter had been poorly prepared and taking account of the history with there being little or no prospect of the matter being advanced, determined the proceedings to be a nullity and struck the matter out for want of prosecution.

***Jaffari v Quality Castings Pty Ltd* [2017] NSWCCPD 2 (28 February 2017)**

This case involved the determination of an appeal from the decision of an arbitrator by Acting President Michael Snell in a matter that was previously the subject of an earlier determination by a presidential member and appeal to the NSW Court of Appeal with the matter being remitted for re-determination by a different Arbitrator. On this occasion, the determination by the Senior Arbitrator was the subject of an application for re-consideration (declined) and a further appeal to the presidential member who upheld the Senior Arbitrator's determination.

***Johnson v Oztag Merchandise Pty Ltd* [2017] NSWCC 77 (21 March 2017)**

The Arbitrator determined that the employer had failed to establish the worker's psychological injury was wholly or predominantly caused by its action with respect to demotion so that the defence under section 11A(1) failed accordingly.

The worker was informed at a meeting that there would be a number of operational changes due to a restructure of the business and that she was to be demoted and her wage reduced. The worker was upset and distressed following the meeting and ceased work the next day and sought medical attention.

The Arbitrator noted that the employer has the onus of establishing that on the balance of probabilities, both the action was at least the predominant cause of the worker's injury and that the action was reasonable. The Arbitrator had regard to the worker's evidence of how she had been treated from the time that she was informed that a consultant had been appointed to oversee the operation of the business and that she was required to report to him.

The worker described feeling ostracised and uncertain about her position as well as being humiliated and embarrassed by what other staff might think.

The meeting was then held approximately four months after the consultant was engaged and the worker stated that this was "the final incident that pushed me over the edge."

The Arbitrator had regard to witness statements and took account of the events occurring prior to the meeting that the employer argued unsuccessfully formed part of the action taken or proposed to be taken with respect to the demotion before finding that the meeting that day was the first time that the worker was made aware of any such action.

Jande v Broad Spectrum (Australia) Pty Ltd [2017] NSWWC 79 (3 April 2017)

A decision by an Arbitrator who held that the worker had suffered a consequential condition to her left shoulder arising from an injury to her right shoulder and that proposed surgery was reasonably necessary as a result.

The worker was employed by Transfield as a permanent part time cleaner and as part of her duties was required to use a long handle above shoulder height to remove cobwebs on ceilings and cornices. The worker was performing these duties one day when she felt immediate severe pain in her right shoulder, it felt as if something had ripped. The worker subsequently underwent surgery on her right shoulder and returned to work some months later in a restricted capacity.

The worker's evidence was that she had started to notice pain in her left shoulder particularly when she was unable to use her right arm. She had sought physiotherapy and received injections of steroid and local anaesthetic none of which afforded her long term relief. The worker claimed that she had overused her left shoulder due to the injury to her right shoulder and sustained a consequential injury.

The arbitrator accepted the worker's evidence and determined that the further surgery proposed was reasonably necessary. In doing so, the Arbitrator rejected the respondent's medical evidence that attributed the worker's complaints to adhesive capsulitis being an entirely different diagnosis from the treating surgeon. Instead, she preferred the opinion of the treating surgeon who considered the worker to suffer subacromial impingement and bursitis in her left shoulder that supported the applicant's claim for a consequential condition.