RECENT DECISIONS

Injury on journey to obtain medical treatment establishes real and substantial connection

Khullar v ANZ Banking Group Limited [2019] NSWWCC 230 (1 July 2019)

Link to decision

Summary

The employer was found liable for an aggravation of a prior work injury where the aggravation resulted from a motor vehicle accident that occurred when the worker was returning from a medical appointment.

The worker had attended the appointment to receive treatment for the earlier injury. The arbitrator found that the worker had established a journey claim in accordance with sections 10(3)(c) and met the real and substantial connection test under 10(3A) of the *Workers Compensation Act* 1987 (the '1987 Act').

Background

The worker was a personal banker who resided at Mount Annan but worked at the Sydney Airport Branch. On 21 May 2018, the worker suffered an injury to her right eye while using a cash counting machine. As the worker was handling the notes, a rubber band broke and flicked up into her right eye. This caused her to reel backwards and hyperextend her neck. The worker claimed that she suffered neck and shoulder pain as a result of the incident.

On 7 June 2018, the worker attended an early morning appointment with her ophthalmologist at Camden to receive treatment for her right eye injury. After leaving the appointment, at approximately 7.20am, the worker was involved in a motor vehicle accident when she was struck from behind by another vehicle at a roundabout.

There were a number of issues that arose to be determined by Arbitrator Wynard, including whether the injuries sustained in the motor vehicle injury were an exacerbation of the original injury at work and the extent of any incapacity for employment suffered as a result. Most notably, the arbitrator was required to consider whether the journey on which the motor accident occurred was one to which section 10(3)(c) applied.

If the worker was injured in the course of a journey the arbitrator then had to decide whether the provisions of section 10(3A), were satisfied. This would require the worker to establish that there was a *real and substantial connection* between her employment and the motor vehicle accident.

Decision

Arbitrator Wynyard referred to a number of decisions of President Judge Keating in his determination of the matter. In the case of *Bina v ISS Properties Pty Ltd* [2013] NSWWCCPD 72, Keating J stated that the mere fact that a worker must travel to or from work does not establish a causal connection between an injury sustained on that journey and the worker's employment.

In *State Super Financial Services Australia Limited v McCoy* [2018] NSWWCCPD 26 Keating J stated at [69]:

> *…The test under s 10(3A) of a "'real and substantial connection" may, but does not necessarily, convey the notion of a causal connection. It requires an association or relationship between the employment and the accident or incident, which may be provided by establishing that the employment caused the accident or incident. However, employment does not have to be the only, or even the main cause.*

In the present case, the worker claimed that she was injured at work which required treatment, so that it was reasonably necessary for her to travel to Camden to attend her ophthalmologist appointment. The worker also argued that she would not have been on the road in that location at the time of the accident if it weren't for the need for her to travel in the opposite direction to her place of employment.

The Arbitrator found for the worker, holding that there was a 'real and substantial' connection between the worker's employment and her injury from the motor vehicle accident, as her original eye injury required her to travel to Camden to obtain treatment on a journey that she would not otherwise have made. He did not specifically determine that there were two separate injuries as Keating J had in *Warwar v Speedy Courier (Australia) Pty Ltd* (2010) NSWWWCPD 92.

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Implications

Although the decision does not create any precedent in relation to journey claims under the 1987 Act, it does recognise the broader measure by which any relationship between a journey and injury under section 10(3A) can be established.

Unlike section 4 of the 1987 Act, for a journey claim under section 10(3), it is not necessary to show that the employment is a *substantial contributing factor* or the main cause of the injury. It is sufficient to establish that there is an 'association or relationship' to the employment in order for a finding of a *real and substantial connection* under the section.

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