



## Medical Panel Certificate – Not Just another Medical Opinion!

*G v SAFECOM* [2012] SAWCT 17

### Introduction

Our previous “Limelight” discussed the test case of *Butto*<sup>1</sup> which found that a Medical Panel’s Certificate was inadmissible.

A further test case on this topic, *G v SAFECOM* [2012] SAWCT 17, found both that a Medical Panel’s Certificate was admissible and should be admitted into evidence.

### Background

In *G*’s case<sup>2</sup>, the worker was a volunteer fire fighter with the Country Fire Service. He injured his back in the course of that work (“the work disability”).

The Compensating Authority accepted the work disability as compensable and paid the worker weekly payments of income maintenance.

Subsequently, the Compensating Authority obtained a Certificate of Opinion from a Medical Panel to the effect that the worker had ceased to be incapacitated by the work disability.

On the basis of the Medical Panel’s Certificate, the Compensating Authority determined that the worker had ceased to be incapacitated by the work disability and discontinued weekly payments.

The worker disputed the Compensating Authority’s determination.

The worker asserted that the Medical Panel’s Certificate should not be admitted because the members of the Medical Panel were not called to give evidence.

The worker further argued that the Medical Panel’s Certificate should not be admitted for numerous other “judicial review” type reasons, e.g. the Panel considered the wrong disability in coming to its conclusion, the reasons of the Panel were inadequate because they did not explain why the worker’s history was not accepted or why his credit was doubted, there was a denial of procedural fairness, the Panel misunderstood the law as to the meaning of incapacity etc.

### Analysis

His Honour Deputy President Judge Hannon rejected the worker’s objection and held that the Medical Panel’s Certificate should be admitted into evidence.

Judge Hannon explained that the introduction of Medical Panels involved a significant change to the dispute resolution process.

Taking into account these changes, Judge Hannon ruled that, contrary to the position at common law, it was not necessary for any member of the Medical Panel to be called to give evidence: “*I do not consider that Parliament can have intended that the admissibility of a Certificate could stand or fall upon a decision by a member or members of the Medical Panel to exercise the statutory right to decline to give evidence*”.

Furthermore, Judge Hannon ruled that, contrary to the position at common law, it was unnecessary to independently prove the documentary evidence provided to and referred to by the Medical Panel (for example medical reports and radiological evidence sent to the Medical Panel to assist it to form its view).

In the context of these observations, Judge Hannon stated that the common law rules in relation to the admissibility of an expert medical opinion do not apply.

The fact that a Medical Panel opinion must be certified in a statutory context gives the Certificate a different status in terms of admissibility to that of any other expert opinion.

It is not just another medical opinion.

Judge Hannon also stated that, in considering admissibility, he was not required to consider the worker’s “judicial review” type arguments.

His Honour explained; “*It is not for this Tribunal to fall into the role of conducting a de facto judicial review whether by reference to the adequacy of the medical opinion reasoning or otherwise.... These are not proceedings in the ordinary courts. The role of the Tribunal is to determine the merits of the dispute consistently with the objects of a statutory scheme which has integrated the Tribunal’s ultimate dispute*

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<sup>1</sup> [2012] SAWCT 8

<sup>2</sup> The worker’s name has been suppressed by the WCT.

*resolution powers with a procedure for obtaining Medical Panel opinions which provide for a "speed and definitive ruling on medical matters".*

### **Further Hearing**

This was a preliminary ruling in relation to the application by the Compensating Authority to tender the Medical Panel's Certificate. As this was the only evidence relied upon by it to reach its determination, the Compensating Authority did not seek to adduce any additional lay or expert evidence and closed its case.

The hearing is to be resumed in relation to the worker's case.

### **Conclusions**

The "G" decision is a significant further development in the formulation of legal principles involving the role of Medical Panels in the dispute resolution process.

The decision emphasises the distinction between a Medical Panel Certificate and the opinion of an expert medical witness. The former is not subject to the usual common law principles applicable to an expert opinion.

This decision marks a significant progression in the statutory objective of achieving "*speedy and definitive rulings in medical matters*".

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