

To Combine Or Not To Combine?

A case study in pure mathematics



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Tips & Traps

- MMI – ensuring it has been reached
- Who can be nominated as assessor
- Impairment Assessment Guidelines
- To “disregard” prior impairments
- Terms of referral
- What issues should not be included
- Critique the PIA report
- Peer review
- What if you don't like the report?
- Impact of surgery

To combine or not combine

- Important issue where multiple impairments, injuries and sequelae are involved
- Know the difference between *Marrone* and *Martin*
- *Marrone* dealt with overuse type injuries developing at a later date
- *Martin* deals with consequences of medication/surgery

Prior injuries/impairment

- Clause 1.23 of Impairment Assessment Guidelines vs Clause 1.30/section 58(7)
- Difference between prior injury/aggravation and new injury to same body part
- Percentage deduction vs monetary deduction



It's only a flesh wound

The Original Incident

In 2005 there is an incident in which a worker bends down to pick up a book at work and feels a sharp pain in the lower back.

Scans later reveal a L5/S1 prolapse.

In 2006 the worker undergoes a microdiscectomy, but this fails to relieve the worker's pain.

Later in the year, the worker undergoes a L5/S1 spinal fusion.

In 2007 the Compensating Authority determines the worker has suffered a 17.5% loss of function and impairment of the lower back and lumbar spine and the worker receives \$19,040 compensation for non-economic loss.

- What is the relationship between the worker's pre-2008 assessment of impairment and "whole person impairment"?
- How is the lump sum payment of \$19,040 factored in to any later entitlement the worker is deemed to have?
- If this was the worker's only injury, what rights exist for a further assessment under the *Return to Work Act*?

Complications

The worker continues to suffer pain after the spinal fusion surgery and uses opioid medication for pain relief. As a consequence the worker suffers from constipation, which eventually progresses to faecal compaction.

The worker occasionally requires hospitalisation to treat the faecal compaction.

In 2014 the worker is diagnosed with adjacent segment disease and undergoes revision of the spinal fusion. The revision leads to an extension of the fusion to the L4 level. The worker continues to suffer right sided lumbar radiculopathy.

Poll:

How common is it for your workers, who suffer a back injury, to use opioid medication for more than 5 weeks?

- a. Not very common;
 - b. Only those who suffer serious disc injuries; or
 - c. Very common.
- How are the adverse effects of medication assessed under the Permanent Impairment Guidelines?
 - Does the second surgery in 2014 create a further entitlement for the worker? – See the decisions in *Nemisis* and *Martin*.

Another Accident

Returning to work in 2015, the worker suffers a fall while on a ladder trying to reach a box on a mezzanine.

The worker's difficulty in balancing as a consequence on the lumbar spinal fusion is a significant contributing factor to the fall.

The worker suffers a fracture of the surgical neck of the left humerus.

Poll:

The worker makes a claim for a further aggravation of the lower back injury. Do you:

- a. Accept the claim as part of the worker's ongoing back claim?
 - b. Accept the claim as a new injury?
 - c. Reject the claim on the basis that the aggravation does not give rise to an entitlement?
- Is the worker's left shoulder injury a new injury?
 - Does the fall constitute a new trauma?
 - What impact would the fall have on the worker's entitlements if it exacerbated the lumbar spine injury?

The Assessment Request

Prior to 1 July 2016, the worker makes a request for a further assessment.

It has taken until now for all the worker's injuries to stabilise.

The worker requests an assessment of the:

- Lower back;
- Digestive System;
- Mastication and deglutition; and
- Left shoulder.

- What injuries does the worker have an entitlement to be assessed?
- What injuries should be combined, and which should be assessed separately?
- What information should be provided to the permanent impairment assessor?
- The worker has never had an accepted claim for mastication and deglutition. Is there an entitlement to an assessment for this injury?

The Assessment

The report comes back from the Assessor, but there are some issues, namely:

- Since the report request is made, clinical imaging and records are discovered which establish that the worker had a symptomatic degenerative back condition prior to the initial injury;
- Surveillance of the worker around the time of the assessments shows the worker engaging in activities that are not consistent with the level of incapacity reported to the assessor; and
- The assessor has concluded that radiculopathy is present, but has not made a record of any of the criteria set out in paragraph 4.19 of the Impairment Assessment Guidelines.

- When should you ask the assessor to reconsider their assessment? How do you do this?
- What if the assessor refuses to reconsider their assessment?
- How should you determine a worker's entitlement if you do not consider that you have a compliant report?

Questions

