

**RECENT DECISIONS**

## Lack of diagnosis no bar to a finding of consequential injury

*Arquero v Shannons Anti Corrosion Engineers Pty Ltd* [2019] NSWCCPD 3 (29 January 2019)

[Link to decision](#)

### Background

The worker injured his right knee in the course of his employment with Shannons on 18 December 2000. He subsequently underwent three surgeries to the knee including a high tibial osteotomy.

The worker received two lump sum compensation payments firstly in 2003 for 27% permanent loss of efficient use of his right leg at or above the knee and then in 2011 for a further 13% loss.

The worker then made a further claim for lump sum compensation pursuant to s66 for additional loss of efficient use of the right leg.

However, the worker also alleged that he suffered from a consequential left knee condition as a result of the right knee complaints for which he was entitled to be compensated.

The worker gave evidence that he had walked with a limp since 2005 and had first noticed symptoms in the left knee in 2014. He believed that any symptoms suffered prior to 2014 were masked by strong pain killing medication. There was no evidence to contradict the worker's evidence.

### Decision

The Arbitrator initially determined that the worker had not discharged the onus of proof required in order to establish that he suffered from a consequential condition in his left leg as a result of his right leg injury.

The worker appealed from the decision that was determined by Deputy President Wood of the Workers Compensation Commission.

DP Wood reviewed the evidence and found that the worker's left knee symptoms arose as a consequence of his right knee injury.

DP Wood accepted that Dr Patrick gave a sufficiently rational explanation for the onset of the left knee symptoms. That is, the symptoms and condition in the worker's right knee had worsened since 2011 with reduced flexion and malalignment. The worker then placed greater weight on the left knee and the surgery undertaken in 2005 was known to cause undue strain on the opposite limb over an extended period of time.

DP Wood concluded that the worker had established the factual basis for his claim. The historical medical evidence provided proof of the facts relied upon and Dr Patrick gave a logical explanation for the development of left knee symptoms as a result of the right knee injury.

DP Wood found that the Arbitrator had taken into account an irrelevant consideration (no diagnosis) in arriving at his conclusion in respect of Dr Patrick's evidence and had failed to take into account historical material evidence and the worker's statement which provided a logical basis on which the necessary causal connection could be established.

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## Implications

Although the delay between the original injury and the onset of symptoms for a consequential condition is a relevant consideration, this must be balanced against the nature of the injury sustained, treatment provided and the symptomatology that follows.

The absence of any reference to symptoms in contemporaneous clinical notes will not necessarily be determinative of the question of causation.

The decision emphasises the need to review all of the evidence as a whole in any case.

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