

RECENT DECISIONS

Amended section 66 claim rejected as earlier MAC prevails

Jasbir Singh v B & E Poultry Holdings Pty Ltd (26 July 2018)

[Link to decision](#)

Background

The worker made a claim for lump sum compensation for 13% WPI following a work injury to his lumbar spine for which he had undergone surgery. The degree of permanent impairment was disputed.

The worker commenced proceedings in the Workers Compensation Commission and the dispute was referred to an Approved Medical Specialist ('AMS') for determination.

A Medical Assessment Certificate ('MAC') was subsequently issued on 29 June 2016 in which the AMS assessed the worker as having a 14% WPI.

Remarkably, the worker discontinued the proceedings prior to a Certificate of Determination being issued that would have determined his lump sum entitlement in accordance with the MAC.

The worker then brought an 'amended' claim for 16% WPI that was the subject of further proceedings in which a threshold claim for work injury damages was also made. The respondent offered to resolve the matter based on the previous MAC issued in June 2016 to which it was asserted the worker was bound.

The offer was rejected by the worker and the matter proceeded to determination by the Commission.

The worker argued that he was entitled to recommence his claim in accordance with the principles stated in *Avni v Visy Industrial Plastics Pty Ltd* [2016] NSWCCPD 46.

In *Avni*, President Keating held that Rule 15.7 of the 2011 Rules, preserves a worker's rights to recommence proceedings at any time, without penalty and that

the issuing of a MAC was not a final determination of proceedings.

The respondent accepted the principles in *Avni*, namely, that a worker could recommence a claim but disputed that a worker who discontinued a claim after a MAC had been issued was entitled to bring a new claim for the same injury on which the earlier MAC was based following the 2012 amendments to the legislation.

The respondent submitted that the worker was bound by section 66(1A) of the *Workers Compensation Act 1987* (the '1987 Act') and Clause 11 of Schedule 8 of the 2016 Regulations, which provided that a worker is prevented from bringing a second claim for lump sum compensation unless the first claim was made prior to 19 June 2012.

Decision

The matter came before Arbitrator Moore who found the worker was not entitled to bring the 'amended' claim under section 66(1A) of the 1987 Act and section 322A of the *Workplace Injury Management and Workers Compensation Act 1998* (the '1998 Act').

The arbitrator stated that the terms of section 322A of the 1998 Act were explicitly clear i.e. if a MAC has been issued in respect of an injury, a worker cannot simply obtain a further assessment of the degree of impairment.

The arbitrator observed that the only relief available to the worker would have been to seek a reconsideration of the findings of the MAC as provided by section 329 of the 1998 Act.

In short, the arbitrator found that the worker was bound by the terms of section 66(1) of the 1987 Act and that in the absence of a claim for lump sum compensation

being brought prior to 19 June 2012, the worker was only permitted to bring one claim for lump sum compensation.

Arbitrator Moore concluded that the decision in *Avni* was not relevant in the circumstances of the case.

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