

# SUPREME COURT OF QUEENSLAND

CITATION: *Stagg v North & Ors* [2014] QSC 8

PARTIES: **FIONA MERYL STAGG**  
(Applicant)

v

**DR J NORTH, DR W SUGARS AND DR P  
SHARWOOD CONSTITUTING THE MEDICAL  
ASSESSMENT TRIBUNAL - ORTHOPAEDIC**  
(First Respondent)

and

**STATE OF QUEENSLAND**  
(Second Respondent)

FILE NO/S: BS 9916 of 2013

DIVISION: Trial Division

PROCEEDING: Originating application

ORIGINATING  
COURT: Supreme Court of Queensland

DELIVERED ON: 12 February 2014

DELIVERED AT: Brisbane

HEARING DATE: 3 February 2014

JUDGE: Philip McMurdo J

ORDER: **The originating application is dismissed**

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW –  
GROUNDS OF REVIEW – UNREASONABLENESS – the  
applicant claimed to have suffered a work related injury – the  
applicant was referred to the Medical Assessment Tribunal –  
the Tribunal found that the applicant had not sustained a work  
related injury for the purpose of the *Workers’ Compensation  
and Rehabilitation Act 2003* (Qld) – the applicant seeks a  
statutory order of review of the Tribunal’s decision – whether  
the Tribunal’s decision was an improper exercise of power.

*Judicial Review Act 1991* (Qld), s 20(2)(e), s 23(b), s 23(g)  
*Workers’ Compensation and Rehabilitation Regulation 2003*  
(Qld), s 92  
*Workers’ Compensation and Rehabilitation Act 2003* (Qld),  
s 179

*Ergon Energy Corporation Limited v Rice-McDonald* [2010]  
1 Qd R 516

*Thompson v WorkCover Queensland* [2002] QSC 119  
*York v The General Medical Assessment Tribunal* [2003] 2  
 Qd R 104

COUNSEL: O K Perkiss with N Paschetto for the applicant

S McLeod for the first respondent

No appearance for the second respondent

SOLICITORS: Dwyer Law Group for the applicant

Crown Law for the first respondent

- [1] The applicant seeks a statutory order of review of the decision of the first respondents, constituting the Medical Assessment Tribunal - Orthopaedic, which rejected the applicant's case that she has sustained a certain injury for the purpose of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) ("the Act").
- [2] In 2010, the applicant injured her right knee in the course of her employment. She returned to work in January 2013. But as a result of her return to work, her existing knee injury was aggravated. On 24 January 2013, she lodged an application for compensation under the Act for injuries which she said she sustained upon her return to work. One alleged injury was the aggravation of osteoarthritis in her right knee. The Tribunal determined that this injury was suffered and that her existing lower limb permanent impairment was thereby increased from its previous seven per cent to a level of 20 per cent. The applicant makes no complaint about those findings.
- [3] A further injury which was claimed by the applicant, again relating to her right knee, was complex regional pain syndrome ("CRPS"). The Tribunal concluded that the applicant had not sustained such an injury. It is that decision which the applicant challenges by the present proceeding.
- [4] It is common ground that the relevant legislation required the Tribunal, in determining whether the applicant was suffering CRPS, to apply the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment ("the AMA4").<sup>1</sup>
- [5] The applicant's submissions concede that the Tribunal referred to the AMA4 in its decision, but contend that "what is in issue is whether the [Tribunal] correctly applied the methodology prescribed by the [AMA4] ...". That submission has the appearance of an attack upon the merits of the Tribunal's decision, rather than an identification of a ground for review under the *Judicial Review Act 1991* (Qld) ("the JRA"). But this argument was further developed: it is submitted that the Tribunal failed to take a relevant consideration into account, namely relevant parts of the AMA4, so that the Tribunal's decision involved an improper exercise of its power thereby providing a ground for review under s 20(2)(e) of the JRA.
- [6] A further submission for the applicant is that the Tribunal failed to consider some of the evidence which had been presented to it, namely a report of Dr Marc Walden

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<sup>1</sup> By the terms of s 179 of the Act and s 92 of the *Workers' Compensation and Rehabilitation Regulation 2003* (Qld), as they were in force at the time of the Tribunal's decision on 25 September 2013.

and certain submissions which were based upon that report. In its written decision of 25 September 2013, the Tribunal made no reference to Dr Walden's report and incorrectly stated that no submissions had been received from the applicant. When this was queried by the applicant's solicitor with an officer of Q-COMP on 1 October 2013, she was told that the relevant file of the Tribunal, which is kept electronically, recorded that the submissions, Dr Walden's report and other documents which had been provided on behalf of the applicant had been sent to the three doctors who constituted the Tribunal in this case. And this was confirmed by a document signed by the three Tribunal members, dated 10 October 2013, when they wrote that they had "viewed the [relevant] information submitted by [the applicant's solicitors] at the Tribunal on 25 September 2013 [and that] this information was left off the original Tribunal decision due to an administrative error".

- [7] Further and alternatively, the applicant argues that the decision of the Tribunal was such that no reasonable person could have so exercised the power, thus providing a ground for review according to s 20(2)(e) and s 23(g) of the JRA.

### **The Tribunal's findings**

- [8] The Tribunal's decision recorded that the applicant complained of swelling in the right knee. But it also recorded that, upon their examination of the applicant, the Tribunal members did not see any "gross or palpable swelling in the knee". They made these further observations from that examination:

"The skin over the right lower limb had the same temperature as that on the left side. Moisture in the skin was the same as that on the left side. Colour was the same as that on the left side, although there were several areas where varicosities changed colour in a minor way. Hair growth on both lower limbs was equal and symmetrical. Nail growth on both limbs was equal and symmetrical."

- [9] They appear to have accepted that the applicant suffered pain in her right leg, but of course there was also their uncontroversial finding that she suffered an exacerbation of osteoarthritis in the right knee. Similarly, they noted their observations as to her limited flexion.
- [10] The relevant part of the AMA4 is as follows:
- "Causalgia is a term that describes the constant and intense burning pain usually seen with reflex sympathetic dystrophy (RSD) when the causative lesion involves injury to a nerve.

The term 'major causalgia' designates an extremely serious form of RSD produced by an injury to a major mixed nerve, usually in the proximal portion of the extremity. The term 'minor causalgia' designates a more common form of RSD produced by an injury to the distal part of the extremity involving a purely sensory branch of a nerve.

...

The four cardinal signs and symptoms of RSD are pain, swelling, stiffness and discoloration. ..."

[11] Therefore, in respect of the “four cardinal signs and symptoms” of CRPS, pain and stiffness were accepted by the Tribunal but swelling and discolouration were not apparent on the occasion of the Tribunal’s examination.

[12] The Tribunal then reasoned as follows:

“With reference to the Chronic Regional Pain Syndrome/Chronic Pain, the Tribunal notes a history of chronic pain, but cannot confirm the diagnosis of Chronic Regional Pain Syndrome based on the objective evidence seen in the right leg today, especially in relation to skin colour, texture, moisture, state of hair, nails and the hyperaesthesia noted in the skin.

Ms Stagg does not fulfil the criteria to make an objective diagnosis of Chronic Regional Pain Syndrome based on this data.

The Tribunal therefore has confirmed that from the point of view of Chronic Regional Pain, Ms Stagg has not sustained a work related injury.”

### **Dr Walden’s report**

[13] In his report, Dr Walden examined the applicant on 13 August 2013 and his report was written about two weeks later. He noted that the applicant’s complaints about her right knee included intermittent swelling, occasional discolouration and excess sweat. But he noted no swelling or discolouration from his examination.

[14] Dr Walden diagnosed CRPS of the right lower limb, which he said was based upon, amongst other things, the sixth edition of the American Medical Association Guidelines. He added that the applicant would not meet the diagnostic criteria for CRPS under the fifth edition. He made no reference to AMA4.

[15] There is a factual question as to whether the Tribunal did have regard to Dr Walden’s report. There is no direct reference to it within the Tribunal’s decision. However, in the passage which I have set out above at [12], the Tribunal said that it was unable to “confirm the diagnosis of [CRPS]”, which is an apparent reference to the diagnosis of Dr Walden. Counsel for the appellant was unable to suggest any other diagnosis to which the Tribunal was then referring.

[16] Further, there is the addendum signed by the Tribunal members on 10 October 2013. It was submitted for the applicant that this should be given little weight in the absence of some testimony by the Tribunal members to the same effect. However, it cannot be lightly disregarded. Coupled with that reference to a diagnosis of CRPS, it precludes an inference which may have been open from the absence of a reference to Dr Walden’s report in the Tribunal’s decision.

[17] Further, it is of some relevance that the appearance of the applicant’s right leg upon the Tribunal’s examination was not materially different from that noted by Dr Walden. Had Dr Walden noted, for example, extensive swelling, an absence of a reference to that observation in the Tribunal’s decision might have suggested that the Tribunal had not considered Dr Walden’s report. But there was no material difference of that kind.

- [18] In his affidavit, Dr Walden said that “the cardinal signs referred to in the [Tribunal’s] decision which I could see were pain, stiffness (in flexion deformity) and slight discolouration and swelling”. Yet there was no reference in his report to discolouration and swelling as being observed by him during his examination. I am not persuaded that the Tribunal failed to consider Dr Walden’s report. More probably than not, it was considered.
- [19] In his affidavit, Dr Walden explained some differences between the fourth, fifth and sixth editions of the American Medical Association Guidelines. That evidence confirms that for his report, Dr Walden had not used the AMA4 “cardinal signs”. He also said in this affidavit that the applicant “would have qualified for a diagnosis of CRPS based on AMA4”. He explained that, in his view, AMA4 requires in this context a doctor to have regard to signs and symptoms not only apparent on the occasion of a particular examination, but also those which the patient says she has experienced intermittently. This opinion of Dr Walden, of course, was not before the Tribunal. It differs from the Tribunal’s reasoning, which was based upon what was apparent, and importantly not apparent, upon their examination of the applicant.
- [20] If Dr Walden is correct in his interpretation of the application of AMA4, then the Tribunal may have been mistaken in concluding as it did that there was no CRPS injury. But that would not demonstrate a ground for a statutory order to review its decision. Rather, it would demonstrate only an error which, absent a legal entitlement to a merits review of the Tribunal’s decision, could not be the basis for any relief.
- [21] Similarly, the submission that the Tribunal failed to take into consideration relevant parts of AMA4 is, in substance, a submission that the Tribunal wrongly applied AMA4 and again the applicant is effectively seeking a merits review of the decision.
- [22] Then there is the argument that the Tribunal’s decision was such that it could not have been reached by any reasonable person. I am not persuaded that the Tribunal erred in its diagnosis, let alone that it was one which no reasonable Tribunal could have made. Those parts of AMA4 which have been tendered in the applicant’s case do not demonstrate that the Tribunal erred in placing weight relying upon what was and was not apparent upon its own examination. The Tribunal noted that the applicant complained of swelling in the right knee. But in its view, a diagnosis of CRPS could not be made upon what was seen in its examination of the applicant. In this context, a Tribunal under the Act makes a decision not only upon the basis of the material which is presented to it, but by the application of the collective experience and expertise of the members.<sup>2</sup>
- [23] Lastly, it was submitted that there was no evidence or other material to justify the decision.<sup>3</sup> However, again there was the Tribunal’s own examination, upon which it was able to conclude as it did.

## Conclusion

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<sup>2</sup> See *Thompson v WorkCover Queensland* [2002] QSC 119 at [12]; *York v The General Medical Assessment Tribunal* [2003] 2 Qd R 104 at 110-111; *Ergon Energy Corporation Limited v Rice-McDonald* [2010] 1 Qd R 516 at [13].

<sup>3</sup> s 23 (2)(h) of the JRA.

[24] No ground for relief under the JRA has been established. The application must be dismissed.