Summerfield Decision

The Supreme Court of South Australia recently handed down its decision in *Summerfield*.

The *Summerfield* decision relates to permanent impairment assessments and, in particular, the circumstances in which two or more impairments can be combined.

This is an important issue for self-insurers because if impairments are combined then:

1. There is a greater chance that a worker will meet the 30% threshold to be assessed as a seriously injured worker under the *Return to Work Act 2014* (the Act).

2. In most cases, more lump sum compensation is payable for permanent impairment if impairments are combined than if the impairments are separate.

Even if a worker is not assessed as a seriously injured worker, the decision will have the effect of inflating lump sum entitlements in many cases and, therefore, increasing liabilities of self-insured employers.

There are many cases involving multiple impairments all of which are under the 5% threshold. However, if combined the assessments could significantly exceed 5%. For example, if a full-time worker has 3 separate impairments as a result of injuries in 2019 which are rated at 4%, 3% and 4% respectively, there will not be any entitlement if those impairments are separate. If they are combined however, the impairment will be 11% and the lump sum entitlement goes from $0 to $74,426 (based on a worker who is 30 years old at the time of injury).

The decision of *Summerfield* establishes that two or more impairments can be combined if:

1. The worker suffers 2 or more injuries arising from the '*same trauma*'. An example of two injuries arising from the same trauma is if a worker has a fall and, as a result of the fall, the worker injures both her shoulder and also her knee. The injuries from the fall arise from the same incident or 'same trauma' and therefore those impairments are combined. This part of the legislation is not under challenge.

2. The impairments arise from the '*same injury or cause*'. This phrase comes from section 22(8)(c) of the Act. This is the phrase considered in *Summerfield* and is the controversial part of the legislation.

The worker in *Summerfield's* case sustained a work injury to his left femur/hip requiring hip replacement surgery. He then subsequently suffered an injury to his lumbar spine as a result of an altered gait. The altered gait was due to the hip injury. The injury to the hip and the injury to the lumbar spine did not arise from the same incident and so did not injury from the 'same trauma'. The issue was whether they arose from the 'same cause'. The Supreme Court agreed with the Full Bench of the Tribunal that the impairments did arise from the 'same cause'.

The Supreme Court has previously provided the following example of impairments arising from the 'same cause':

> *'...a worker suffers an injury to her right knee at work which causes her to favour that leg with the result that the added pressure on the left knee causes injury to that knee. The worker suffers two separate impairments: one to each leg. Those impairments can be said to be from the same injury or cause, namely, the injury to the right knee. But even if the impairment to the left leg is not from the injury to the right knee, the impairment of the left leg can be said to have been caused by the injury to the right knee."*

Essentially, the decision of the Supreme Court means that impairments will be combined if:

1. The worker suffers 2 or more injuries arising from the same incident; or
2. The impairments arise from an injury and a consequential injury. For example, an impairment from a right knee injury sustained in a fall would be combined with an impairment from a left knee injury caused by 'overuse' due to the right knee injury.

Return to Work SA has sought permission to appeal to the High Court of Australia.

April 2021

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