

ReturnToWorkSA v Mitchell

Case Summary



GETTING IN CONTACT:

Ground Floor
157 Grenfell Street
Adelaide SA 5000

PO Box 3638
Rundle Mall SA 5000



+61 8 7324 7800



admin@kjlegal.com.au

kjlegal.com.au

INTRODUCTION

The Full Supreme Court has now handed down its decision on the issue of combination of injuries where the assessments of permanent impairment relate to conditions/symptoms that arise as a result of the ingestion of medication for a work injury or its aftereffects.

APPLICATION TO 1986 ACT – COMBINATION OF IMPAIRMENTS

It is important when considering the impact of *Mitchell* to remember that this is a case specifically decided under the *Workers Rehabilitation and Compensation Act 1986* (the **1986 Act**) and not the *Return To Work Act 2014* (the **2014 Act**). Therefore, it may well be that *Mitchell* has limited application to the issue of combination of impairments if the claim arises under the 2014 Act.

The difference of course between the two Acts (which is illustrated by the Full Court’s decision in *Preedy*) is that section 22 of the 2014 Act contains a different definition of “injury” to the 1986 Act where section 43 of the 1986 Act refers to “trauma” rather than “injury”.

DEFINITION OF TRAUMA/INJURY

In *Mitchell*, the Full Court noted that the definition of “trauma” referred to in section 43 of the 1986 Act refers to “an event or series of events” and that the previous Full Court decision in *Marrone* still applies to assessments of permanent impairment that are determined under section 43 of the 1986 Act.

In *Preedy*, the Full Court noted that section 22 is a new section in the 2014 Act and sets out the scheme for assessment of permanent impairment. The definition of “injury” is different to the definition of “trauma” in the 1986 Act.

FACTS

In *Mitchell*, the worker suffered a lower back injury and underwent lumbar spinal fusion surgery. His entitlement to lump sum compensation pursuant to section 43 of the 1986 Act for his lower back injury was assessed at 26%. He then submitted claims under section 43 of the 1986 Act for lump sum compensation for a series of conditions caused by ingestion of opioid medication taken following his back injury/surgery.



GETTING IN CONTACT:

Ground Floor
157 Grenfell Street
Adelaide SA 5000

PO Box 3638
Rundle Mall SA 5000



+61 8 7324 7800



admin@kjklegal.com.au

kjklegal.com.au

These assessments would all have put him into a seriously injured worker category under the 2014 Act if combined with the 26% assessment.

OUTCOME AT TRIAL/FULL BENCH OF SAET

At first instance, Judge Calligeros felt constrained by the decision of the Full Bench of the SAET to follow *Martin* which found that the negative impacts of medical treatment were part of the original injury, such that all of the assessments of permanent impairment for the conditions caused by the opioid medication were to be combined with the 26% assessment for the lower back. He found that he should not follow the previous Full Court authority of *Marrone*.

The Full Bench of the SAET upheld that decision and again followed the earlier decision of *Martin*.

APPEAL TO THE SUPREME COURT

On appeal, the Full Court of the Supreme Court (in essence Justice Stanley) found that as the worker's entitlements arose under the 1986 Act, the definition of "trauma" still applied and the findings in *Marrone* which distinguished between a primary injury and a so-called sequelae injury was still to be applied to this claim.

The Court also found that *"the impairments that arose as a complication of the respondent's ingestion of opioid medication to relieve the symptoms of his lumbar spine injury following surgery arose not from the injury to his lumbar spine, but from his ingestion of opioid medication."*

Whilst causally related to the worker's lower back injury, the crucial event for the development of those impairments was the ingestion of the opioid medication.

Therefore, the injuries did not arise from the same trauma as the lower back injury. The impairments did not meet the precondition for combination under section 43(6) of the 1986 Act.

The matter has been remitted back to the judge at first instance to make further factual findings.

A WORD OF CAUTION

There is clearly a difference between the basis for combination of impairments under the 2014 Act as opposed to combination of impairments under the 1986 Act.

The *Mitchell* decision may well only have limited effect due to the fact that most undetermined impairment assessments should now have transitioned to the 2014 Act. The case could still apply to those claims where assessments of impairment were carried out under section 43 of the 1986 Act but the worker is seeking to have those assessments combined for the purposes of a seriously injured worker assessment under section 21 of the 2014 Act.

It is not clear whether the Court's comments about the effects of the ingestion of medication being a different causal event to the work injury will still apply to those injuries which transition between the 1986 Act and the 2014 Act or injuries/claims that arise solely under the 2014 Act, noting the different scheme set up under section 22 of the 2014 Act which requires combination of impairments from the same "injury" rather than from the same "trauma".

As always, if you have any queries concerning any of the issues addressed in the case above, then please do not hesitate to contact us.