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Thank you for the opportunity to provide comments on the Review of Comcare's Permanent Impairment Guide Options Paper. I have no objection, unlike the "Employers" that provided comment on the Issues Paper, to having details of my claim made available to the PIP or other interested parties (Claim number 1014837/1).

I will attempt to describe from my experience the problems with Permanent Impairment recommendations for employees that have suffered a psychiatric injury.

There are a number of factors within Comcare's sphere of influence that can minimise the impact of psychiatric injuries, therefore reducing the number and severity of Permanent Impairment claims.

Background.

I am writing my comments from the perspective of an employee, injured during the course of my employment, and developing a physiological condition (Adjustment Disorder with Anxiety and Depression). My claim failed both Comcare assessments, based on exemptions that were not properly verified by Comcare, but these decisions were overturned in the Administrative Appeals Tribunal by an 11th Hour Calderbank Offer made by solicitors for Comcare. Even though this determination was made in February, Comcare have yet to finalise the settlement.

My Doctors and I have yet to determine the extent, if any, of any Permanent Impairment.

It has been accepted that my condition arose from the continued and sustained (for many months) deletion of my work by my managers. My job at the time was a Computer Application Tester and all test data was deleted at every application build. Concerns I raised to higher level managers were not acted upon and it became

impossible to perform my duties. I subsequently suffered a nervous breakdown from an accepted date of 1 July 2006.

In my circumstance, whether deliberate, negligence or not, management played a major role in establishing the "bullying" environment (especially the deletion of Test Data). My complaints, initially ignored by my then managers were documented both by me and the Agency and were considered by Comcare as a "failure to obtain a benefit". The AAT, however, correctly found this as a "failure to maintain the status-quo". Comcare accepted verbatim the accounts of the bullies rather than the bullied.

Although I am still symptomatic, I am on a Gradual Return to Work placement and hope to remain in this placement.

General Comments.

Firstly, it is important to remember that Comcare is responsible for the Safety, Rehabilitation and Compensation Act. The order of these words is important. A safe working environment leads to less injury. Where there is an injury, rehabilitation of the injured employee and return to the workplace as soon as the employee is fit for (any) duties is the next priority and lastly the administration of the Workers Compensation Scheme that is supposed to reduce Common Law action against Agencies.

It is also important to point out, that in this last role, Comcare is little more than Insurance Company. The comments published by the anonymous "Employer 1" and "Employer 2" are what you would expect from clients (or even shareholders) of an insurance company that want to minimise costs – which will be at the expense of injured employees. These are short term solutions with a short-sighted emphasis on costs such as premiums.

Unlike physical injuries, psychiatric injuries are difficult to quantify. In my experience, the Agency's Psychiatrist, Comcare's Psychiatrist, and my own all came to similar diagnosis, but with differing prognosis.

Apart from my own doctor, whom I have been seeing regularly, the doctors representing the commonwealth only had written material and about 90 minutes of discussion time with which to make their evaluations. It strikes me that this is insufficient for an accurate diagnosis and prognosis of what are generally very

complicated medical issues.

For any injured employee, but particularly those with a psychiatric injury, the management of their rehabilitation is critical in reducing the exposure to permanent impairment. Time away from the workplace lowers the confidence and self esteem of the employee. Meaningful work in a “safe” workplace – preferably away from the causative factors, should be a priority. The greater the time an injured employee has to dwell on their problems the higher the likelihood of an increase in the abnormal behaviours.

Permanent Impairment guidelines for psychiatric conditions have been hijacked by the legal profession. Both Comcare and solicitors acting on behalf of an injured party have lists of doctors that will evaluate and provide reports more favourable for their client. Comcare should give more credence to treating psychiatrists rather than Doctors who have had limited contact with the injured employee.

Agency Comments

It has been my experience that the Agency for which I worked had little or no understanding of how best to deal with my condition.

The manner in which the Agency dealt with my injury should be demonstrated as an example of how NOT to manage an injury.

- On the basis of one medical report I was escorted from the workplace and stood-down. No instrument of suspension was ever issued or received. It was suggested to me that I talk to Centrelink for income support. No help in obtaining medical assistance was offered.
- A Gradual Return to Work Trial was conducted a few months later in the same area that caused my illness. This was a catastrophic failure and collapsed only after a few weeks.
- Another was conducted where I was placed in the Agency’s Mail Room. This was terminated after the agreed three months, and despite my protests, I was once again sent home.
- Two more RTWT’s were conducted in different Agencies. One was

For me, each trial got harder. The start-stop pattern certainly lowered my confidence and self-esteem, inturn increasing the risk that I would just give up to my condition and just not try.

I believe that the Agency did not take my rehabilitation seriously until I obtained a favourable outcome on my claim in the Administrative Appeals Tribunal, only providing the bare minimum of support – probably less than required under the SRC Act (see also Comcare Investigation 3531 – Oct 2007). The claim process took almost two years. One year for Comcare to conduct both assessments, and one year before the AAT while solicitors for Comcare took every opportunity to delay and drag the matter out. Only after a favourable decision did the Agency find suitable work, and I have just discovered that the trial will be extended past the initial three months.

Preferred Option 6.3 – Discounting of Pre-Existing Conditions

According to the Beyondblue initiative, 1 in 5 people will suffer from some form of Depression in their lifetime, and 1 in 10 will suffer from some type of Anxiety disorder. These conditions change not only brain chemistry, but the physical anatomy of the brain. Beyondblue (http://www.beyondblue.org.au/index.aspx?link_id=89.585) also recognises that people with certain personality characteristics are more prone to Depression:

- A lifelong worrier
- A perfectionist
- Sensitive to personal criticism
- Unassertive
- Self-critical and negative
- Shy, socially anxious and having low self-esteem.

The more of these traits that a person has, the more likely that they will suffer multiple bouts of Depression. There are also many types of Depression and Anxiety disorders. If a person suffers Post-Natal Depression, is cured and subsequently develops a Major Depression from work related events, the onus must lie with Comcare to prove medically, and not just opin that they are the same condition (which clearly they are not).

Predisposition to a condition should not be considered as a factor in reducing the degree of Permanent Impairment. All employees are predisposed to death, but we do our utmost to avoid an untimely occurrence of this medical condition. Similarly, physical structures such as bones, organs and tissues will be damaged if enough force is applied. Humans are imperfect creatures and predisposed to a wide range of both physical and psychiatric impairments.

Likewise, an employee that has suffered a previous psychiatric condition should not be disadvantaged because it has been treated, reported and resolved. There is no guarantee that another employee suffering a psychiatric condition has not previously suffered that condition which went undetected, undiagnosed and untreated.

Preferred Option 11.3 Psychiatric Conditions

It is very clear that the current measure of impairment for employees with psychiatric injuries is inadequate. It is based on subjective measures which will vary from individual to individual and doctor to doctor. A change is definitely required, whether it be the PIR option or working with Psychiatrist and allied health professionals to provide a more accurate measure.

Increasing the WPI index from 10% to 15% is unwarranted and discriminates against psychiatric conditions, further adding to negative social stigma and attitudes. Conditions such as Depression and Anxiety are very real and very debilitating.

It is relatively clear that this is a reaction to an increase in claims for psychiatric injuries over recent years. It is false economy to raise the threshold in order to save payments in this 5% bracket.

There are only a small number of reasons why there would be an increase in psychiatric injuries:

- Less non-psychiatric injuries;
- Greater stressors on employees
- Increased awareness of these conditions
- Higher rates of detection and diagnosis.

Comcare should explore these possible reason and adopt a preventative approach

rather than penalising and ostracising victims by increasing the threshold for these conditions.

Recommendations

The longer it takes to treat a psychiatric injury, the more difficult the healing process and the more likely the injured employee will have sustained a permanent and lasting impairment.

- Comcare should be wary of the advice given by the two anonymous Agencies. The aim of the SRC Act was to reduce Common Law litigation. Knowing what I know now, I would advise a person who found themselves in the situation I did to obtain a solicitor and pursue the whole compensation matter through Common Law.
- Making Permanent Impairment thresholds under the SRC Act higher would encourage this Common Law legal action against agencies.
- Comcare should process compensation claims for psychiatric injuries as a priority. The assessing officer should maintain contact with the injured party and discuss matters that they don't understand. It should not take 6 months to process a claim, and a further 6 months to process a request for review.
- Comcare should establish an Office of Employee Advocate to challenge adverse decisions before Comcare subjects the injured employee to the stress and anxiety associated with appealing through the AAT. The Employee advocate should also recommend, on a case-by-case basis, referral of alleged workplace bullying/harassment for further investigation.
- The “no-blame” clause should not apply to psychiatric injuries where bullying or harassment or breaches of the Code of Conduct are involved. This would assist in the injured employee gaining closure of what is a traumatic experience.
- Comcare should adopt a “name and shame” approach and prominently display on their Web Site statistics from individual agencies on psychiatric and other injuries.

- Agencies should be encouraged to be more pro-active in providing earlier rehabilitation and not limit Return to Work Programmes to three months.
- The working life of an Australian is approximately 45 years (20-65). The duration of the a psychiatric injury as a proportion of working life, the adverse social stigma, the loss of promotion prospects, and other social factors should be taken into account when determining Permanent Impairment for these conditions.

Conclusion.

The long term impact of psychiatric injuries can be reduced by a speedy and accurate resolution to compensation claims of this nature. Agencies must act more appropriately in assisting the injured employee through arranging assistance in obtaining medical and/or counselling treatment, and providing suitable and meaningful work placement.

There is also room for Comcare to provide a higher level of service. Merely posting forms on the Internet encourages a bewildered and confused person to seek professional or legal advice adding to unnecessary costs to a system that was designed to keep compensation matters away from the courts.

Amendments that make the process even more difficult and unfriendly to injured employees will ultimately only lead to these employees taking a Common Law route.

Yours Sincerely,

Ian Batchelor.

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