

24th July 2012

Reflections on The Medical Assessment Tribunals

Preamble

The Tribunals provide, in my view, a very satisfactory way of resolving claims.

They usually bring claims to a conclusion where it has already been determined, by the Insurer, that a work injury has occurred and that the effects of the injury in question are now stable and stationary and that maximum medical improvement has been achieved.

In disputed claims, where it is uncertain if a work injury has occurred or not, the Tribunals provide a forum for the definitive decision in such situations.

The Tribunals are especially useful in making decisions in cases where there are conflicting medical opinions regarding the nature and extent of a workers' work related injuries.

The Tribunals, in a vast majority of situations, bring the statutory claim to a close.

The Tribunals represent a watershed in the "life" of the claim.

At the conclusion of the Tribunal process the claimant then has the opportunity to reflect on whether or not he or she sees the process at a satisfactory end and is prepared to move on with their life, or if they wish to continue the compensation process via the Common Law System.

Requirements

For the Tribunal process to operate in a maximally useful way certain requirements need to be in place – these include:-

1. *The Tribunal Doctors must be credible individuals and well respected by their peers.*

2. *The Tribunal Doctors must all be very experienced Doctors, well used to assessing the validity of medical histories and claimant's presentations.*
3. *The Tribunal Doctors must have expertise with respect to their up to date knowledge and performance in their particular speciality, and still be in active practice.*
4. *The Tribunal Doctors must be able to carry out physical examinations of claimants in a kindly and competent manner.*
5. *The Tribunal Doctors must be courteous and considerate in the way they interact with claimants and the claimant's legal advisors and support persons who may accompany claimants to the Tribunals.*
6. *The claimant must feel at the end of the Tribunal process that:-*
 - a. *They have had a good and thorough hearing.*
 - b. *They have had maximum opportunity to present all the information they feel is relevant to their claim.*
 - c. *The process has not been rushed.*
 - d. *They have been treated with courtesy and kindness and their sensitivity is respected.*

General Issues

The Tribunal process represents, for the claimant, the opportunity for the claimant to "state their case" and "have their day in court", without the potential trauma of actually being in a law court arena.

It is stressed to the claimants that attendance at a Tribunal is essentially a medical examination. The most important part of this process is the history that they give at the Tribunal, together with the physical signs they demonstrate at the time of the Tribunals' examination of them.

Whilst the reports of independent and treating practitioners who have assessed the claimant, at various times prior to the Tribunal are important, and are read and taken into consideration by Tribunal members, the most important part of the Tribunal process is "the here and the now" of how the claimant is at the time the Tribunal.

Despite the best efforts of Tribunal members, some claimants still find attendance at a Tribunal a stressful experience. The Tribunal members are aware of this and do their best to decrease the stress for the claimant.

The Tribunals Therapeutic Role

The Tribunals, when necessary, play a therapeutic role and by this involvement assist the claimants. eg. At times at the Tribunal, it becomes apparent that the claimant has not received sufficient appropriate treatment to optimise their condition.

In such situations, the Tribunal will not decide the claim at that time as the claimant is not stable and stationary and there is an expectation that the claimant's condition could improve with further treatment.

In these circumstances, the Tribunal, via the Q-COMP Medical Co-ordinator, arranges for the claimant to receive further appropriate treatment.

By this process the Tribunal contributes to the claimant's improved health and improves the claimant's prospects of a return to work and thus hopefully reduces their degree of permanent impairment.

The Tribunals, consisting as they do, of 3 senior Doctors with vast experience, and having the benefit of being able to review the claimants entire work injury history, and the management of the injury, are in a unique position to appraise the adequacy of the treatment the claimant has so far received and to make recommendations, where appropriate, of further measures which may help the claimants further recovery.

Peer Group Pressure and Peer Group Influences

The nature of the Tribunal process, with 3 Doctors sitting conjointly and observing each others' performance, provides useful peer group pressure on behaviour and adequacy of performance of each Tribunal member.

The Tribunal process thus has a built-in mechanism to encourage high standards of performance of Tribunal members.

Regular workshops for Tribunal members and periodic reviews of performance also help to maintain the standards of Tribunal members.

Bias Issues

The Tribunal members recognise the potential for bias on both sides of the Tribunal desk.

It is recognised that, to some degree, the process is skewed in favour of the claimant, ie:

- *Only the claimant is present at the Tribunal,*
- *The insurer and the employer are not present,*
- *The claimant can make any statement they wish to support their claim and make their statements in any way they wish.*
- *The Tribunal has no power to force claimants to always tell the truth.*
- *The claimants representative, if present, can make any submission he or she wishes.*
- *Whilst the Tribunal can call for additional reports, it hasn't the power to summon witnesses and oblige them to tell the truth.*

The Balance

The balance in this process comes from:

- *The Tribunal has available to it, the full file of the injured worker, which may contain statements by the employer, as well as reports from investigations regarding the claimant's injury.*
- *The file often also contains contemporaneous reports of the claimant's injury recorded at the time of or soon after the injury.*
- *Notes from the injured workers' general practitioner and/or treating specialists are also available as required.*
- *Reports by independent assessing medical officers also provide further information to the Tribunal and often provide helpful insights regarding the progress of the claimant's condition over time.*
- *More importantly, balance in the process comes from the experience of the Tribunal members – as a result of their age and experience they have developed a capacity to:*
 - a. *Assess the validity of what they are being told,*
 - b. *Recognise when symptoms are being exaggerated.*

- c. *Identify inconsistencies in the history provided.*
- d. *Detect inappropriate signs on the physical examination of the claimant.*

It would be idle to suggest the Tribunal gets it right every time. There is little doubt, that at times the Tribunal makes errors in both under valuing and over valuing claims.

However, my experience over the past 22 years on the Tribunals, is that Tribunals make relatively few errors of judgement and when they do, it is usually in favour of the claimant, in a process where the bias in the system, generally favours the claimant.

Conclusion

To maintain the integrity of the Tribunal process, the appointments of Tribunal members must continue to be fair and transparent as it is now. Tribunal members must continue to be senior, experienced practitioners.

The requirements for a fair and appropriate Tribunal process, as detailed above under the heading "Requirements", must continue to be observed.

The present Tribunal process is working well with the appropriate checks and balances in place.

Respectively submitted,



JON DOUGLAS.