

**Submission
No 286**

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

Name: Mr Robert K Bell

Date received: 18/05/2012

R.K.Bell

17th May 2012

Dear Sirs

I operate a small stand alone Nursing Home . We have had a number of very expensive workers compensation claims almost all of which could arguably be considered to be unrelated to a definable accident at work – or where the employees chose the workers compensation scheme to pay for their medical expenses and /or retire from the work force.

I apologise for the brevity and lack of detail in this submission but I was unaware of the closing date for submissions until today so this was prepared at the 11th hour.

I detail below in brief some of the (horror stories) cases we have had to deal with over a number of years. As case 1 ,2 and 3 are current with case 1 in its 3rd year my premium will increase form \$70,000 to \$110,000 to a renewal in June of \$160,000 – \$170,000

Case 1

Female part time nurse – working 16 hrs per week on the week-end . Had a long history of back problems (anecdotaly) due to a chronic disease. GP apparently would

not certify for Workers compensation. When she needed an operation the Specialist certified her for Workers Compensation , based on nature and conditions. After the operation (being off work for approx 6 mths) she returned to work over a four mth period. After 6 weeks of full hours the doctor certified her fit for suitable duties but unable to drive a car for more then 30 mins and not able to use public transport. As she lived at Penrith and the facility was at Hurstville , that meant she couldn't come to work.

The rehab provider suggested they "get her off my books" and suggested I terminate her – which I was unwilling to do given the immediate 6 year wages penalty that would be costed into the premium. She was put on a retraining programme , where in the rehab provider has been paid for 12 months of supervision, and the worker fills out a job sheet listing all the jobs she might apply for but is unqualified for . All the time receiving full (base rate) pay, and the doctor continuing to certify her fit for suitable duties – but unable to drive for longer then 30 Mins.

As the employer I have no rights to get access to the employees medical records according the the WC Agent (CGU) and numerous requests by CGU for the records have yielded nothing .

Case 2

Male handyman – aged 65 serverely over weight and a heavy smoker – slips down a set of three stairs in the back garden – (anecdotally fainted) Injured his shoulder. The GP certifies him Totally Unfit for work pending an operation – but he can't have that because of his general bad health and blood pressure (which we believe caused the collapse) – So he stays off work – on full base rate pay for 4 mths, certified totally

unfit for work – even though he continued to drive his car through the whole period and picked up his lawn mower from the facility presumably to mow his own lawns. He returned to suitable duties for 6 Hrs per week when he became aware that he could be terminated with minimal effect on the premium – due to his proximity to the retirement age. Has been on suitable duties – 6 hrs per week for 3 mths.

Case 3

Worker arrives to work with a WCMC 3 days totally unfit for work, then returns to full duties. 3 Months later arrives with another certificate from a different doctor for another 3 days – and requests a months holiday pay to return to China to care for her dying mother in law. On return presents a certificate for suitable duties and was on those for 11 months

Case 4

Worker employed as a cleaner – after 12 months presents a WCMC for RSI in the wrist based on nature and conditions. While off work gets certified for RSI in the other wrist, Turns out she had spent some 20 plus year working on a processing line welding wires, very repetitive work – but the current employer had to bear the entire cost of the claim, even though there is no relationship between the work performed and the injury to the wrist.

Case 5

Young girl suffering from Huntingtons Disease – walks with a limped gate and often appears drunk due to the disease. Claims to fall walking across the car park to work –

only witnessed by her mother. Claims an injured knee – spends the next 3 years on workers compensation before being terminated and placed on a disability pension. Doctors certify her for workers compensation for the whole period.

Case 6

Domestic staff member claimed injured ankle based on nature and conditions (no specific accident) could have happened at any time – received payout of \$15,000 some years ago – had another claim – but after dispute with the doctor the claim ceased . Came to work yesterday with a hairline fracture of the heel – but is out of sick leave – so asked the manager if she could claim Workers compensation – “because at least she’ll be paid for the time she is off.” If she claims WC without doubt the Agent will accept the claim.

Case 7 (A different employer)

An employee claims an injured back while working casually in a nursing home . The employer discovers that the same employee has worked and continues to work in another facility on full duties. The employer tell the insurance agent (a self insurer) who refuses the claim. Work cover advises that there is no fraud involved because the agent refused the claim so technically the employee was not working while on workers Compensation. After 3 years and a legal case the insurer settled for approx \$50, 000 however the employers increase in premium (under workcover guidelines) over the 3 years well exceeded that some.

Concern re the workers Compensation Scheme

- 1) Nature and conditions claims are basically indisputable. The onus appears to be on the employer to prove that the work place did not in any way contribute to the condition or even in some way didn't contribute to an aggravation of a non work related condition. Basically impossible.
- 2) Doctors have total control of the scheme – as long as they certify the worker as unfit nobody – particularly the insurance agents - will question their opinions. How can a doctor certify someone fit for suitable duties but unable to drive for more then 30 Min and not able to use public transport. How can a doctor certify a worker Totally Unfit for 4 months when has is clearly able to drive a car – an do many other things
- 3) Everybody makes money from the scheme – The Doctors ,The Insurance Agents , The rehab providers, the legal Profession , the employees. All those interests control and manipulate the scheme and the only person who loses financially is the employer and (possibly the NSW tax payer) who has little or no rights what so ever. There is no incentive from any of these stakeholders to refute or dispute or in any way question a workers compensation claim.
- 4) Workers compensation claims are far too easy and in my experience the vast majority are very questionable – the genuine employees return to work very quickly.
- 5) There is a very big disincentive to employ anyone over 50 years old because they bring with them any muscular / skeletal deterioration that is then open for a N&C claim – or aggravation of an old injury

- 6) I have no concerns in assisting genuinely injured workers and compensating them properly but I believe those less genuine cases are bleeding the system because of the lack of proper accountability.

Thank you for the opportunity of venting my spleen – and again I apologies for the lack of detail and explanation

Yours Faithfully

R.K.Bell