

## **House of Representatives**

### **Inquiry into aspects of Australian worker' compensation schemes**

**To whom it may concern.**

**10/8/02**

My submission concerns burnout or stress related injuries in the workplace. I believe that the current methods used by insurers and employers to deal with this type of case are driving the genuine claimant to the brink of suicide and in many cases to actual suicide.

The current Workers' Compensation Scheme does not promote recovery but actually puts further stresses upon an already injured person.

Stress is an invisible injury and deserves a different approach to say, a workplace accident. A person with a stress related injury needs more help and support in negotiating the Workers' Compensation process if they are not to exacerbate their injury. The biggest problem a worker with a stress claim encounters is that no one believes the claim is genuine.

With a different approach to the management of the scheme, many of these workers could have their concerns addressed, conflicts resolved and rehabilitation programs put in place at an early stage without having to go through the court system. I believe the court system as it now stands, significantly exacerbates the original stress injury.

#### **Background:**

I worked for 16 years in a high profile semi government industry in the ACT. The last ten years (to 1995) were in an establishment where alcoholism and incompetence was rife. I became progressively more and more frustrated and angry of having to work with my alcoholic and incompetent supervisor but the management refused to take any action even though they were fully aware of the situation. Management told me to "hang in a bit longer" and that I was doing a very good job. Problems were not addressed. Years of anger and frustration eventually led to a burnout situation with poor physical health and chronic anxiety.

My situation was not unusual as my co-workers had a much higher than normal incidence of suicide, heart attacks strokes and alcohol abuse. Shift work and working under pressure in noisy conditions also contributed to stress.

In 1998 I obtained a Workers Compensation Court decision for total disability. My employer admitted liability and in 2000 my case went before the Supreme Court for a quantum only hearing. However the insurer changed the goal posts during the hearing and the Supreme Court decided that I would make a full recovery within a year. I appealed to the full bench but my appeal was dismissed. This leaves me in the ridiculous situation where I am seen as totally disabled under the Workers Compensation Law and 100% OK under Common Law.

### **Structural factors which may encourage fraudulent conduct:**

The current Workers' Compensation Scheme in relation to stress related injury is open to fraudulent conduct by the employer and the insurer as it in both their interests not to acknowledge a genuine claim.

As it is not a visible injury, stress is not immediately apparent and in fact, may have been on going for some considerable time before it is reported. Stress does not fit in neatly to the reporting guidelines or time frames and it is not always easy to pinpoint when the injury actually occurred. As the stress is often caused by inadequate workplace procedures, the employer is unlikely to readily admit to this. The difficulty in proving a stress related injury is such that the insurer routinely denies the stress claim.

In this instance the employee has to seek legal advice in order to defend his claim and the structural methods used to assess the claim and the difficulty in finding legal representation only add to the original injury by causing more stress. In my own case it took 6 attempts to find a solicitor who was willing to represent me, by which time my mental health had deteriorated even more.

### **Recommendations:**

When a person becomes so desperate as to put in a workers' compensation claim for a stress related injury, in the first instance the procedure should be that they are given help and support and mediation by an independent team, to try to resolve the workplace problem instead of being referred onto the legal system. The current system is driving genuine claimants "over the edge" as they try to negotiate the legal system in a very vulnerable state.

As I understand it, the system in the UK is that 2 medical practitioners certify that the claimant is unfit to work and he is given immediate sick leave. An independent board then assesses him. Although there are flaws in this system, it is surely better to have medical practitioners rather than the legal practitioners, assess medical claims.

### **Methods used to investigate claims and costs incurred by workers compensation schemes.**

In the current system, the insurer in consultation with the employer routinely denies stress claims. In non-visible injuries such as stress, the insurer automatically assumes the claim is fraudulent. If the claimant is genuine, he then has no option but to seek legal representation if his health and finances will allow that.

The claimant then has to undergo several medicolegal examinations. In my case the insurers sent me to 3 psychiatrists who were unscrupulous, unprofessional and intimidating.

The psychiatrists' reports deliberately misinterpreted facts given to them in my history. In their efforts to please the insurer, they disregarded accepted medical facts, *eg one doctor denied the fact that prolonged stress affects the immune system*. The same doctor also commented that the high suicide rate in my workplace might be due to the fact that "*vulnerable individuals sought work of this kind rather than it being the conditions of the job driving them to their death*".

In one instance in my case, the medicolegal report, which the insurer requested, was in my favour and stated that I had a genuine complaint. The insurer in the Workers' Compensation Court did not submit this and even though I legally obtained a copy of the report after the workers' compensation case, I was not allowed to use it in the Supreme Court.

The insurer even went to such lengths as to withhold parts of the Magistrate's decision when briefing their medicolegal experts.

I was denied witnesses by my solicitor in the workers' compensation case and also was not allowed to be a witness in a colleague's case, which involved the same employer.

My employer failed to comply with the obligation to provide a safe workplace. An independent review of workplace practices at the time of my original injury would have shown this. In fact the government agency responsible for my workplace ignored all the signs of alcoholism for many decades.

The employer did provide a counsellor in the workplace in response to the growing number of stress cases and suicides. This person was inadequate and the advice I was given was to "*pick a point on the way home and forget about it*". My concerns were not taken seriously and no attempt was made to bring this up with the management.

### **Recommendations:**

If a stress claim is lodged there should be an independent mediation session arranged between those directly involved to try to resolve the conflict and enable the employee to return to a safe working environment. If a stress claim is genuine, the person needs immediate help and support and is not in a position to try to put these strategies in place himself. If the stress is recognised early, it might be rectified with professional help. In some cases, this commonsense approach will be all that is needed to resolve the problem.

If medico legal reports are required, every attempt should be made to ensure that the report is fair and independent of bias. It is obvious that there are a few unscrupulous medical "experts" who are prepared to supply unprofessional reports in order to stay in favour with insurers. This behaviour is well known in the medical profession but unfortunately, no one is willing to do anything about it. The individual medical professions have complaints procedures but do not appear to be concerned with disciplining their individual members and their self-regulation systems are inadequate.

**Adequacy, appropriateness and practicability of rehabilitation programs and their benefits:**

Rehabilitation has never been mentioned in my case. Even though I have had a decision in my favour in the Workers' Compensation Court and my employer has admitted liability there has never been any attempt or offer of rehabilitation. My own efforts at rehabilitation, eg gardening, were used as evidence against me in the courts.

Rehabilitation should be offered at various stages in the claim. If there is some recovery in the claimants' condition, rehabilitation should be offered. In a stress case this could take place years after the legal case is settled.

I have sought help with my complaints through WorkCover to no avail. I wrote to the Court pointing out that I was refused to give evidence in a similar case involving a work colleague. It seems that everyone knows the current system is flawed but no one is prepared to do anything to change it. Everyone is covering their own back and no one is willing to address blatant breaches of the law.

I hope that the Committee on Employment and Workplace Relations will consider my submission.

Regards

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