



HIGH COURT OF AUSTRALIA

Manager, Public Information

23 September 2009

ROBYN CHRISTINE FELLOWES

v

MILITARY REHABILITATION AND COMPENSATION COMMISSION

[2009] HCA 39

Under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (SRC Act) a person who suffers permanent impairment as a result of a work-related injury is entitled to receive compensation, the amount of which is determined under the *Guide to the Assessment of the Degree of Permanent Impairment* (the Guide). Where the person suffers a subsequent work-related injury which results in a similar kind and degree of permanent impairment, she is nonetheless entitled to compensation for the subsequent injury, the High Court held today.

Robyn Fellowes enlisted in the Australian Army in November 1986. In 1986 she suffered a work-related injury to her left knee, and in 1987 she suffered a work-related injury to her right knee. Ms Fellowes claimed compensation for her injuries under the SRC Act, which at that time was the legislation under which the Military Rehabilitation and Compensation Commission (the Commission) assessed claims for compensation. The Commission determined that Ms Fellowes suffered a degree of permanent impairment assessed at 10% as a result of the injury to her left knee and paid her compensation in respect of the permanent impairment. However, although Ms Fellowes suffered a degree of permanent impairment assessed at 10% resulting from the right knee injury, the Commission determined that under the SRC Act and the Guide it was not liable to pay compensation for that permanent impairment because it had already compensated Ms Fellowes for a degree of permanent impairment assessed at 10%. A Commission review officer affirmed the determination on review, as did the Administrative Appeals Tribunal. Ms Fellowes appealed to the Federal Court of Australia against the Tribunal's decision and a Full Court of the Federal Court dismissed her appeal. The High Court granted her special leave to appeal.

Under section 24 of the SRC Act, where a work-related injury results in a permanent impairment, the Commission was liable to pay compensation in respect of the injury. No compensation was payable if the degree of permanent impairment resulting from the injury was less than 10%. Section 24(5) provides that the degree of permanent impairment resulting from the injury should be determined under the provisions of the Guide approved under section 28 of the SRC Act. The Guide contains Tables which set out criteria against which the degree of permanent impairment is assessed.

Under Table 9.5 - "Limb Function – Lower Limb" - the criterion "[c]an rise to standing position and walk BUT has difficulty with grades and steps" described the impairment resulting from each of Ms Fellowes' injuries. According to the Guide, this criterion was equivalent to a 10% degree of impairment. The issue for the Court to determine was whether separate compensation was payable in respect of each injury; or whether, having already been assessed as having a 10% permanent impairment under Table 9.5 as a result of the left knee injury, Ms Fellowes should be assessed as having a 0% impairment resulting from the right knee injury because the degree of her impairment under Table 9.5 had not increased beyond the level at which she had previously been assessed under that Table.

A majority of the Court considered that permanent impairment resulting from an injury is to be identified by the effect of the injury on the functional capacity of a normal healthy person, and not by reference to the pre-existing capacities of the particular applicant for compensation. In the case of Ms Fellowes two separate injuries led to two separate losses of use of, or damage to, two separate parts of her body. The majority concluded that, as the impairment resulting from the injury to Ms Fellowes' right knee satisfied the criterion "[c]an rise to standing position and walk BUT has difficulty with grades and steps" then, irrespective of the impairment assessment made in relation to her left knee injury, the degree of permanent impairment resulting from the right knee injury should be assessed as 10%. The High Court set aside the decisions of the Federal Court and the Administrative Appeals Tribunal and directed the Commission to determine the lump sum compensation amount payable to Ms Fellowes in respect of the right knee injury on the basis of her having a 10% degree of permanent impairment.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*