Bell's impairment rating would lie between 10% and 15% pursuant to Table 6. Dr Kolb had assessed Bell's impairment. In his position as a Commonwealth Medical Officer, Dr Kolb had assessed Bell's impairment at 15% under Tables 5.2 and 6. In evidence Dr Kolb stated that the X-Rays provided by Bell were not of great significance. He also stated that he had not felt it was necessary to contact all of Bell's treating doctors.

Evidence was given by Dr Dragt who was also a Commonwealth Medical Officer who had examined Bell in relation to his claim. Dr Dragt stated that in his assessment he had used Table 6 and had given Bell an impairment rating of 10%. In Dr Dragt's opinion, Bell could work 30 hours a week in certain jobs. Dr Dragt agreed with Dr Rolls' that back pain should be assessed on the basis that it is chronic and permanent, and not intermittent. Dr Dragt gave evidence that he, like Dr Kolb, also had not contacted any of Bell's listed doctors or chiropractors. He did not think that it was necessary to refer to Bell to an Orthopaedic surgeon for a report to assess his claim for the pension.

Written medical reports of Dr Mogensen and Dr Colquhoun were tendered in support of Bell's claim. Dr Mogensen's report stated that she had seen Bell on several occasions, and that Bell would not be able to do physical work at all without experiencing pain. This included sitting at a desk or in a car seat. Dr Mogensen referred to X-rays of Bell's spine taken in 1993 which showed degeneration of the lumbar spine. This evidence was in conflict with earlier X-rays from 1987 from which Dr Park had deduced that there was no gross narrowing of lumbar disc spaces. The X-rays from 1987 were also tendered in evidence.

Dr Colquhoun's opinion was that Bell was suffering from back instability associated with severe degenerative changes affecting his lumbar and lumbar-sacral spine. The doctor assessed Bell as having an impairment rating of 30% under Table 26 of Schedule 1B. He expressed the opinion that Bell was no longer capable of doing his normal work or other peer employment and thus should be eligible to disability support pension.

Review of the medical evidence

The AAT considered whether the SSAT was correct in assessing Bell's claim under Table 26 when the DSS contention was that the disability was permanent and not intermittent. The AAT found that the SSAT was in error applying Table 26. The AAT then turned to Tables 5 and 6 in order to determine Bell's actual impairment level in light of several conflicting medical opinions. The AAT noted that Bell's infrequent visits to hospitals for treatment showed that he had sought little medical attention over the years. The AAT agreed with the assessments of Dr Rolls and Dr Dragt and decided that Bell's impairment rating would not exceed 15%.

Formal decision

The AAT set aside the decision under review and substituted a decision that Bell's impairment was 15% and thus he was not qualified to receive DSP.

[B.M.]

Disability support pension: impairment

GICEVSKI and SECRETARY TO DSS
(No. 9445)
Decided: 2 May 1994 by B.G. Gibbs, L.S. Rodopoulos and I.L.G. Campbell.

The SSAT affirmed the DSS decision to reject Gicevski's claim for disability support pension (DSP). Gicevski requested review of this decision by the AAT.

The issue

The issue to be determined by the AAT was whether or not Gicevski was eligible to receive DSP under s.94 of the *Social Security Act 1991*.

The facts

Gicevski was born in Yugoslavia (Macedonia) and arrived in Australia on the 10th of June 1972. He has two children. In 1983, whilst employed as a machine operator, Gicevski was involved in a work related accident which injured his back. This accident also lead to tendonitis and depression. He returned to the workforce, but in 1989 further injured himself while doing heavy labouring work. This second accident caused injuries to his neck and shoulders. Despite worksite assistance from a physiotherapist, Gicevski was unable to return to work. He applied for disability support pension in January 1993.

Impairment rating

The DSS conceded that Gicevski had an impairment under s.94(1)(a) of the Act but disputed that the impairment was rated at 20% or more. The DSS contended that because no medical report assigned an impairment rating of 20% or more, Gicevski failed to satisfy s.94(1)(b). Gicevski's local doctor, Dr Gorgioski gave evidence to the hearing by telephone. He stated that he had known Gicevski since 1984, and had treated him for a severe back injury. The second accident had caused Gicevski to jar his neck and shoulders and had aggravated his pre-existing lumbar spine injuries.

In his written report, Dr Gorgioski had assigned a 30% impairment to Gicevski's condition and further commented that:

> 'In practical terms he is unemployable because he will never pass the pre-employment examination. I have read the reports from Mr Stoney and Mr T. Jones and believe that they concur with my assessment of his future employment possibilities. One factor in favour of his claim for an invalid pension is the fact that his condition has not improved. Needless to say that he has no skills and education.'

(Reasons, para. 16)

Dr Gorgioski stated in evidence that Gicevski suffered from insomnia and nervous depression which may require psychiatric treatment in the future. Evidence was also given that Gicevski suffers from sciatica.

The AAT found that under Table 6 of Schedule 1B, Gicevski should be assigned a rating of 10%. Turning to Table 7 (Psychiatric Impairment), the AAT heard from the DSS that the appropriate rating would be 5%, whilst Dr Gorgioski expressed the view that a rating of higher than 10% was appropriate. The DSS contended that Gicevski's psychiatric condition was not permanent at the time of his claim. Reference was made to para. 4 of the introduction to the Impairment Tables which requires that the condition be permanent. The AAT stated that no reliance could be placed upon an impairment rating given in a medical report unless it stated which impairment table was used.

Two Commonwealth Medical Officers who examined Gicevski assessed his impairment rating at 10% under Table 6. Neither addressed Gicevski's impairment under Table 7. A report was also tendered from Dr Fish, a consultant occupational physician. He commented that Gicevski's symptoms had never been severe enough to require specialist

treatment from a psychologist or a psychiatrist, and that the symptoms were a reaction to perceived ill health. The impairment rating under Table 7 should be either nil or 5%.

The AAT considered all the evidence before them and decided that an impairment rating of 10% should be assigned for Gicevski's psychiatric condition. When this rating was combined with the rating from Table 6, Gicevski satisfied s.94(1)(b) of the Act.

Continuing inability to work

The AAT heard that Gicevski had no education or command of the English language, and had no other skills with which he could find employment. A 'Capacity to work' report was tendered in evidence. This report was written by the Disability Support Officer who had determined Gicevski's claim, and stated that Gicevski could undertake light sedentary work. The AAT did not accept this conclusion, as Gicevski had no real prospect of returning to work, however sedentary or light that work may be. The AAT further decided that although his impairment would not prevent him from undertaking training, that training would not equip him to do work for which he is presently unskilled within 2 years.

Formal decision

The AAT set aside the decision under review and remitted the matter back to the DSS with the direction that Gicevski was qualified to receive DSP from the date of claim.

[B.M.]

PHENGSAVANH and SECRETARY TO DSS (No. 9387)

Decided: 19 May 1994 by D.J. Grimes, M.E.C. Thorpe and H.D. Browne.

On 17 September 1992, Phengsavanh applied for a disability support pension (DSP). The DSS refused his application and this decision was affirmed by the SSAT.

Phengsavanh appealed to the AAT.

The legislation

Section 94(1) of the *Social Security Act 1991* specifies the qualifications for a DSP. As well as other requirements, the person must have :

(i) a physical, intellectual or psychiatric impairment of 20% or more under the Impairment Tables (in Schedule 1B of the Act): s.94(1)(a) and (b): and

(ii) a continuing inability to work; s.94(1)(c).

The facts

Phengsavanh was born in Laos in 1959 and migrated to Australia in 1976. He completed 5 years of primary education in Laos did labouring work in Australia as a spray painter, a steel cutter and a tool setter. Phengsavanh told the AA that his work as a tool setter was more skilled than labouring work.

In August 1990, he sustained a back injury at work whilst lifting a heavy cylinder. He ceased work 2 or 3 days after sustaining injury and has not since returned to work. In 1991, Phengsavanh was diagnosed as suffering from a peptic ulcer.

On 1 August 1992, Phengsavanh was injured in a motor vehicle accident, injuring his neck, right shoulder and right upper arm.

Phengsavanh's treating doctor, Dr Quadri diagnosed chronic back strain and considered him unfit for work because of his inability to lift heavy weights or sit or stand for prolonged periods. Dr Irani, Phengsavanh's treating orthopaedic surgeon described his condition as 'a chronic low back pain disability' and assessed his impairment rating as 20% for the back and 10% for the neck. The AAT noted that Dr Irani did not indicate which impairment tables of Schedule 1B he applied and how he calculated the percentage figures.

Dr K Hogan, a Commonwealth Medical Officer examined Phengsavanh and diagnosed chronic neck and back pain and a peptic ulcer. He assessed an impairment rating of 10% under Table 6 of Schedule 1B of the Act. Dr Hogan found Phengsavanh to be fit for light skilled, semi-skilled and unskilled work.

Dr Marnie, Orthopaedic Surgeon examined Phengsavanh and concluded that he had a combined impairment of 38% under the AMA Guides to Permanent Evaluation. Phengsavanh was also examined by Dr B. T. Hammond at the request of the DSS. He found him to be fit for work that did not involve continual heavy lifting and bending and suggested that there was 'a definite functional factor with exaggerated responses'.

Dr Dowda a specialist in occupational medicine used Table 6 of Schedule 1B and concluded that Phengsavanh had a 10% impairment due to chronic lumbar pain and a 5% impairment for the peptic ulcer. He concluded that this impairment did not prevent Phengsavanh from undertaking educational or vocational training.

The AAT found that Phengsavanh suffered from back pain, neck and right shoulder pain and a peptic ulcer. He was found to have an impairment rating of 5% for his peptic ulcer under Table 13, Schedule 1B of the Act. The AAT concluded that the weight of medical opinion suggested that Phengsavanh did not have sufficient loss of back movement to warrant a finding of impairment under Table 5 of Schedule 1B. It was accepted that Phengsavanh suffered from mild degenerative changes which caused chronic back pain and found that he had an impairment rating of 10% under Table 6 of Schedule 1B of the Act.

Having found that Phengsavanh had a total impairment rating of 15%, the AAT decided that he did not qualify for a DSP under section 94(1)(b) of the *Social Security Act*. The AAT also considered whether Phengsavanh had a continuing inability to work as required by section 94(1)(c) and section 94(2). It was noted that he had not been provided with educational or vocational training or rehabilitation. The AAT indicated that his medical condition did not preclude him from being a suitable candidate for rehabilitation and training.

Formal decision

The AAT affirmed the SSAT decision that Phengsavanh did not qualify for a DSP.

[H.B.]