

## Lump sum compensation payment: one or more injuries arising from the same event

SECRETARY TO THE DSS and THOMAS  
(No. 13391)

Decided: 14 October 1998 by  
W. J. F. Purcell.

### Background

Thomas injured his left knee in the workplace on several occasions (1984, 1989 and 1991) and then his right knee in a workplace injury in 1995. The medical evidence in relation to the claim for the right knee injury suggested the right knee was a secondary disability, aggravated by excessive weight and a tendency to favour the left knee after its repeated injuries. Orthopaedic evidence stated that the right knee injury resolved itself over time but the left knee injury continued to be a limiting factor for Thomas' future work capacity.

After receiving periodical payments of compensation for a time, Thomas sought redemption of a lump sum under the relevant State *Compensation Act*. The lump sum settled upon was comprised of sums representing 10% loss of function for the right leg and 40% loss of function for the left leg. The ultimate determination of the DSS was that an 87 week preclusion period should be applied.

The SSAT decided that Thomas' loss of earning capacity was attributable solely to his left knee injury and that the compensation payment to be taken into account should not include the sum for the right knee injury. Disregarding the sum attributable in the lump sum to the right knee injury reduced the preclusion period to 77 weeks.

The SSAT found, however, that there were no special circumstances to warrant disregarding all or part of the payment under s.1184 of the *Social Security Act 1991* (the Act). It appears from the AAT's reasons that the SSAT simply excised the sum for the right knee on the basis that it did not fit within the statutory definition of 'compensation' lacking the connection between the payment and lost earning capacity.

The Secretary sought review of the SSAT's decision.

### The law

Section 1165(1A) of the Act provides that where a person claims a 'compensation affected payment' and receives a lump sum compensation payment, pension will not be payable for the 'lump sum preclusion period,' a period worked out under the statutory formula found at s.1165(8) of the Act.

The term 'compensation' is defined in s.17(2) of the Act and includes:

- (b) a payment under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme;

...

- (e) made wholly or partly in respect of lost earnings or lost capacity to earn.'

Section 17(2B) provides where there is more than one lump sum payment:

17.(2B) For the purposes of this Act, if:

- (a) a person receives more than one lump sum payment, whether simultaneously or at different times, in relation to one or more injuries arising from the same event (see s.(5A)); and
- (b) at least one of the payments is made wholly or partly in respect of lost earnings or lost capacity to earn;

the person is taken to receive one lump sum compensation payment, made wholly or partly in respect of lost earnings or lost capacity to earn, of an amount equal to the sum of those lump sum payments.'

### The payment of compensation

Evidence was given by the compensation consultant for the employer that Thomas' right leg claim had the same claim number as the left leg claim and it was considered in determining the claim that the injury was a sequelae to the left leg injury. This was the basis upon which liability was accepted. The AAT readily reached the conclusion that the payment under the State compensation legislation for the right knee was a payment in respect of loss of earning capacity and hence fell within s.17(2B) of the Act. The Tribunal said that it was satisfied that 'the respondent received more than one lump sum payment simultaneously in relation to one or more injuries arising from the same event': Reasons, para. 13. Thomas was, therefore, to be taken under the Act to have received a lump sum of compensation wholly or partly in respect of lost earnings or earning capacity equal to the sum of the lump sum payments.

### Special circumstances

The AAT then turned its mind to the question of special circumstances. Whilst there was evidence of incomplete legal advice, and insufficient financial advice at the time the compensation was paid, coupled with evidence of financial difficulties and a marked deterioration in

Thomas' health, it was not considered that these circumstances were so unusual as to warrant the exercise of the discretion available under s.1184 of the Act to disregard the whole or a part of the compensation payment.

### Formal decision

The AAT set aside the SSAT's decision and reinstated the original decision to impose an 87-week preclusion period.

[M.C.]

## Wife pension: residency requirements

DIMITRIADIS and SECRETARY TO THE DFaCS  
(No. 13426)

Decided: 4 November 1998 by  
L. S. Rodopoulos.

On 2 July 1991, the DSS cancelled Dimitriadis' wife pension on the grounds that she had been absent from Australia for 12 months. This decision was affirmed by the SSAT on 7 February 1991. Dimitriadis returned to Australia on 11 December 1996 and, in a letter dated 18 July 1997 sought an explanation as to why her wife pension was cancelled.

### The issue

The AAT had to determine whether Dimitriadis satisfied the residential requirements of the *Social Security Act 1991*. Had she been a resident of Australia for more than 10 years? If so, it was immaterial that she had been continuously absent from Australia for 12 months.

### The legislation

Sections 1216B (1) and (2) provide that a woman's qualification for wife pension is not affected by her absence from Australia if she has been an Australian resident for at least 10 years. However, s.1216 provides that, otherwise, an Australian resident who has been outside Australia for a continuous period of 12 months is disqualified for wife pension.

Sections 7(2) and (3) list the factors to be considered in determining whether a person is an Australian resident. Regard must be had to the nature of accommodation in Australia, the nature and extent of family relationships in Australia, the nature and extent of employment, business or financial ties in Australia, the degree