CITATION: *Kerry Ahearn AND Q-COMP (WC/2011/309) - Decision* <*http://www.qirc.qld.gov.au*>

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Workers' Compensation and Rehabilitation Act 2003 - s. 550 - appeal to commission

Kerry Ahearn AND Q-COMP (WC/2011/309)

DEPUTY PRESIDENT SWAN 4 March 2013

DECISION

[1] This application relates to an appeal filed by Ms Kerry Ahearn (the Appellant) against the decision of Q-Comp (the Respondent).

[2] The Respondent, in its decision of 24 June 2011, reaffirmed the decision of the insurer to reject the application made by the Appellant pursuant to s.32 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

[3] It is not contested that the Appellant was a "worker" for the purposes of s.11 of the Act.

Legislation

[4] The Act relevantly provides:-

> "**32 Meaning of *injury***
>
> (1) An ***injury*** is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.".

Onus of Proof

[5] The Appellant carries the burden of proof on the balance of probabilities.

Respondent's Primary Claim

[6] The Respondent stated that the Appellant has failed to establish that she sustained an "injury" within the meaning of s.32(1) of the Act.

Extension of Time

[7] On 20 February 2012, the Commission, (as presently constituted) granted an extension of time for the Appellant to have her appeal heard. There was no opposition from Q-Comp to the granting of the application.

Outline of the Appellant's claim

[8] The Appellant made an application for compensation for an injury suffered by her on 2 September 2010 while working as a teacher aide at the Special Education Unit (SEU) of the Sunset Primary School, Mt Isa (the School).

[9] The Appellant says that the "single issue" in dispute in this matter is whether the Appellant sustained an injury as diagnosed by Dr D Nicholls, Rheumatologist, on 14 December 2010 and operated on by Dr John Avramovic, General Surgeon, on 3 May 2011, during the course of her employment on 2 September 2010.

[10] On 2 September 2010, the Appellant stated that whilst at work at the school, she had forcefully restrained an 'autistic' child (the child). The Appellant had experienced pain later in that day and she had not linked that pain with the event of the restraint on that day until she consulted with Dr Nicholls on 14 December 2010.

[11] On 2 September 2010, the Appellant's evidence was that she had started work at the SEU at the School at around 8.30am and finished work on that day at 2.40pm.

[12] The Appellant's duties included working one-on-one with the child who had first attended the SEU a couple of weeks earlier.

[13] The Appellant says that on that day, she was required to physically restrain the child on a number of occasions but was unsure of exactly how many times this had occurred suggesting that it could have been five or six times [T1-17/23 - 24; T1-18/1 - 4].

[14] The Appellant described how she restrained the child "by putting her chest against the child's back, wrapping her arms around the front of the child so that the child's hands were tucked in and holding onto the child to lower the child down to a chair or to the floor." [Appellant's submissions – point 18 and T1/17/30 - 48].

[15] At this time, the Appellant said that the child was not making loud noises, but rather her "normal moans and groans". [T1-31 1/25 - 37 and T1-32/40 - 48].

[16] The Appellant could not recall the exact locations where restraints on the child had occurred on that day but believed that these events usually occurred around the classroom.

[17] The Appellant stated that on 2 September 2010 she had sat on the floor with the child while the child was trying to push herself up and out of the restraint [T1-32-32 - 36].

[18] Initially, the Appellant felt some pain which she attributed to 'heartburn'. However, that pain increased to being 'really bad' later on the day. The Appellant returned home and, after taking some pain relief tablets, went to her chemist and purchased Zantac for what she thought was heartburn.

[19] Later that day, the Appellant was in her car and while picking up some take away food (in a drive-through) she had a "really bad attack in (her) chest" of such severity that she thought she was having a heart attack [T1-10/46 - 50]. The Appellant drove home and contacted her husband who returned from work and took her to the Mount Isa Base Hospital (MIBH).

[20] The medical records of MIBH show that the Appellant was attended to by the triage nurse at 8.33pm on 2 September 2010. Reported by the nurse was the following:

> "LUQ (left upper quadrant) pain since about 1600. Some niggly pains all day. Took Zantac and Buscopan at 18.30 with nil relief. Nil Hx (history) of same. Nauseated but nil vomiting." [Exhibit 6].

[21] It was further noted in the nursing assessment that the Appellant had "walked into ED, clutching abdo. Obvious pain.".

[22] The Appellant returned again to the MIBH on 3 September 2010.

[23] The Appellant was discharged on that day after the diagnosis of "suspect … Gastritis" had been made. [Exhibit 6]

[24] Further attendances were recorded at the MIBH on 4 and 6 September 2010. The 6 September 2010 records show that the Appellant experienced an acute onset of pain in the epigastrium four days prior, diarrhoea for three days, fevers for 24 hours and a vomiting illness three weeks earlier. A social history taken at the time confirmed that the Appellant had advised that she was a teacher's aide dealing with the child.

[25] The Appellant attended MIBH again on 8 September 2010 in pain. There was a note on the MIBH records suggesting surgical review [Exhibit 6 p. 28 and 30].

[26] A referral letter was sent to Dr Warren, who was the Appellant's long term general medical practitioner and this referred to the Appellant suffering severe pain in the gallbladder area and that the surgical registrar thought that gastritis may be the cause [Exhibit 6 p. 22].

[27] Dr Warren's evidence was that after the Appellant had been reviewed by him, he referred her to Professor Croese and Dr Bharathan,

[28] Between 13 and 17 September 2010, various tests were undertaken while the Appellant was in a surgical ward at MIBH. Initially, surgery for the removal of the gall bladder was considered, but that matter went no further.

[29] Dr Warren eventually referred the Appellant to Dr Nicholls (Rheumatologist) on 3 November 2010. An MRI of the Appellant's abdomen was taken and after those results were considered, Dr Nicholls identified the injury, the Appellant says, for the first time.

[30] In May 2012, Dr Avramovic (general surgeon), in the course of surgery on the Appellant, identified muscle tear and also that the cartilage near the muscle (described as the xiphisternum) was fractured.

[31] In opening submissions, the Appellant says that Dr Avramovic would say that there are two general categories of causes for this type of injury – one is that there is stretching and separation of the muscle wall over the course of a pregnancy – i.e. the stomach becomes distended and separates the muscles – and the other category of general cause for this type of injury is a traumatic event as a result of a forceful contraction of the core abdominal muscles.

[32] The Appellant says that in Dr Avramovic's opinion, the restraint of a child, as described by the Appellant on 2 September 2010, is consistent with an injury of the type he identified during surgery on the Appellant [T1 – 7].

Outline of Respondent's claim

[33] When the alleged incident occurred between the Appellant and the child on 2 September 2010, the Appellant had not spoken to anyone about the matter.

[34] The Appellant did not complete an incident report on 2 September 2010. The Respondent states that the Appellant's evidence had changed as to what type of pain she was experiencing at the time and whether she believed there was any connection between her pain and the restraint of the child. In effect, what is alleged is that there is inconsistency in the Appellant's evidence as to what the Appellant believed had occurred on that day.

[35] The Respondent says that when the Appellant's evidence is compared with that of other teachers in the classroom on 2 September 2010, there are stark differences in what is recalled by all on that day.

[36] The Respondent also believes that when the medical history relative to the Appellant's injury is considered, it is evident that a number of factors could have contributed to the injury other than what is alleged by the Appellant.

Summary of the Evidence around 2 September 2010

[37] The Appellant commenced working at the SEU in early July 2010. At that time, Ms J Sexton was in charge of the Unit and the Appellant's supervisor was Ms Rebecca Keating who was a teacher in the Unit.

[38] Ms Sexton had showed the Appellant how to restrain a child.

[39] It is not contested between the parties that the Appellant worked one-to-one with the child; that the child had been in the Unit for several weeks and that the child was 7 years old and weighed approximately 22 kilograms.

[40] It was agreed that the child was a high needs child who was known to run away when she could ("a runner"). The child was also vocal and boisterous and could be disruptive in class on occasions. Sometimes it took two people to bring the child back after she had run away.

[41] The Appellant's evidence is that she had restrained the child on five or six occasions on 2 September 2010.

[42] Ms Keating did not recall the Appellant ever having the need to restrain the child on 2 September 2010. Ms Keating's evidence was that she was always in the classroom other than for meal breaks.

[43] Ms Keating said that if restraints had occurred as described, then she would have been aware of them as she could view the entire classroom.

[44] Ms Walden (teacher aide in the SEU) undertook the role of assisting Ms Keating primarily during group activities. Her evidence was that the child did require extra attention in the form of one-to-one interaction with the Appellant.

[45] Ms Walden initially stated that she had no recollection of the Appellant restraining the child on 2 September 2010 or actually seeing the Appellant carrying out any restraints on the child prior to that time. Given the open plan nature of the classroom, Ms Walden said she would have seen any restraints on the child had they occurred.

[46] Ms Walden did state however that on occasions the Appellant had worked with the child in the alcove area. When this occurred, Ms Walden said it would not be possible to observe the Appellant and the child. Ms Walden accepted that restraints could have occurred, but she had not observed any occurring on that day.

[47] The Appellant said that when she was dealing with the child, other employees in the room continued on with their work and this was because they were fully aware of the type of behaviour expected from the child.

[48] In terms of being observed by other employees within the room if restraints were occurring, the Appellant said that the child was running in all directions – i.e. she could go into other's offices, she could be near the desks, she

could go outside of the classroom and on some of these occasions there were no other employees present [T 1-30].

[49] The Appellant's evidence was that it could take 30 seconds or up to a couple of minutes to restrain the child.

[50] The Appellant described a restraint on the child as follows;

> "she was trying more or less to push herself up out of my restraint. Push herself up, like a back flip sort of, more or less. It's very hard to, you know, to describe but that's – she tried to push herself out of it, so she could get out of it. She wanted to get out in any case." [T1-32].

[51] The Appellant also stated that no-one came to assist her during those restraints because they all had their own duties to perform.

[52] Ms Sexton (who gave evidence, but who was not present at the SEU on 2 September 2010 as she was on leave) had stated that if a child had to be restrained, the normal course would be for the employee to advise her of this. The Appellant said that she had not been told that she had to report restraints to Ms Sexton. All that Ms Sexton had told her was how to restrain the child because it was the only way to calm the child.

[53] The Appellant said that when she was at the MIBH she was asked many questions by medical staff. She claimed, however, that she was not asked for the history of what had actually happened to her during that day. At that time the Appellant was primarily concentrating on her high level of pain [T1-37].

[54] The Appellant said that she had not reported any incident which she believed had caused her pain on 2 September 2010 because she wasn't sure at that stage what had caused the pain – initially she believed it had been caused by indigestion.

[55] The Appellant, under cross-examination from Counsel for the Respondent, said that she could not recall when she first noticed any pain – i.e. on any of the 5 or 6 occasions when she claimed to have restrained the child.

Consideration of medical evidence

[56] The initial history of the Appellant's medical history has been addressed.

[57] More specifically, Dr Avramovic gave the following evidence:

- He received correspondence from Dr Warren referring to a review of the Appellant conducted by Dr Nicholls where Dr Nicholls had found that "a small hernia in her linea alba is the cause of her pain and this will disappear after surgical repair".

- Dr Avramovic said that "My recollection of it was that Kerry had been investigated very thoroughly for intra-abdominal causes of pain by Professor Croese and he had by and large excluded all the common causes of that sort of pain of which she was complaining. And – and then a very astute rheumatologist from Brisbane had decided, in fact, the pain was probably coming from the abdominal wall as opposed to an intra-abdominal cause, and he felt that it was the obvious divarication he found on examination that was the source of the pain. And so my job was really half done… ." [T. 1-51].

- On the day of surgery, Dr Avramovic said "I recall that just prior to going into theatre I re-examined Kerry, as I usually do examine my patients before they get put under anaesthetic, and I remember being – the main tenderness was at the top of the abdominal cavity. And then at operation I recall – I have a actual visual recall because it was such a Eureka moment when I saw the fractured xiphisternum." [T – 1-54].

- Dr Avramovic said he viewed a fracture of that part of the cartilage as indicative of "a fair amount of force been applied either directly or indirectly to the area to cause that fracture". [T1 -55].

- "There was also the possibility of indirect injury from muscle strain basically just as you might get a muscle tearing off bone somewhere else." [T 1-55].

- Dr Avramovic said that he had enquired from the patient as to what had caused her pain and she advised that she had been struggling with a child at work.

- Dr Avramovic had expressed reservations, prior to the surgery, as to whether the divarication was the cause of the pain. However, when he discovered the fractured xiphisternum, he believed that he had an adequate explanation for the pain. This is because the divarication could have been a chronic condition and perhaps exacerbated by the struggle with the child. However, when he discovered the fractured xiphisternum, he

agreed with Counsel for the Appellant that it was representative of having been caused by an 'acute injury' occurring to the xiphisternum on that day. [T1-57-58].

- Dr Avramovic was of the view that, after reviewing the medical records taken before the Appellant was seen by him, the symptoms complained of by the Appellant from 2 September 2010 would be consistent with the acute injury found by him.

[58] Under cross-examination by the Respondent, Dr Avramovic explained that, notwithstanding that the Appellant said that she had experienced 'niggly' pain early on 2 September 2010, "it depends on the circumstances because it can be distract-what we know as distracters where a patient for various psychological or other injury reason doesn't even - doesn't then acknowledge the presence of that injury" [T1-66].

[59] Dr Avaramovic, after taking the medical history of the Appellant into account, stated that "I formed the view that on probability she injured herself that day and experienced the severe pain you would experience with that in a delayed fashion" [T].

[60] The Respondent further challenged the medical evidence as presented by the Appellant.

[61] On the Appellant's visits to MIBH on 2,3,4,6 and 8 September 2010, the MIBH records refer to pain in epigastrium region. There was no record of the cause of the presenting problem [Exhibit 6].

[62] Further, there was no history of the Appellant's view as to the cause of her pain when she visited her general practitioner, Dr Warren, on 9 and 11 September and 1 and 5 October 2010. While the Appellant had complained of pain in the epigastric/xiphoid area, Dr Warren believed that he would have asked the Appellant the history relating to what she viewed as the cause of the pain.

[63] The Respondent says that it was not until 19 January 2011, that Dr Nicholls agreed with a diagnosis that the Appellant had developed an acute divarication of the rectus [T24]. This occurred after Dr Nicholls had considered the Appellant's history of events. However, in Dr Warren's report (11 April 2010), he had stated that the history given to Dr Nicholls was not a history given to him, the MIHB, Dr Bharathan and Professor Croese [Exhibit 6 – p 71].

[64] What Dr Nicholls had before him by way of the Appellant's history was that when working as a teacher's aide, the Appellant had felt a searing pain in her epigastrium with associated fatigue and lower sternal pain whilst restraining the child [Exhibit 5, p 35].

[65] The Respondent then states that it was not until Dr Avramovic performed surgery on the Appellant on 3 May 2011, that a fractured xiphisternum was diagnosed.

[66] Amongst many questions put to Dr Avramovic by the Respondent, he says that the following two require particular consideration:

"Question 3

(a) Is it possible that divarcation of rectus abdominis diagnosed in 2010 could have been pre-existing?

Yes, it is possible.

(b) In your opinion is it possible the fractured xiphisternum diagnosed in 2010 could have been pre-existing?

Yes, it is possible

Question 4

(a) Do you consider the mechanism of injury of restraining a child consistent with an acute divarication of the rectus muscle?

Yes, it is consistent.

(b) And a fractured xiphisternum?

Yes, it is also consistent."

[67] In the Respondent's opinion, the above responses show that there could be various explanations in respect of the Appellant's condition.

[68] Under further cross-examination by the Respondent, Dr Avramovic stated that if one fractured one's xiphisternum, in most instances one would experience sharp instant pain [T1-63].

[69] However, Dr Avramovic also agreed that pain could be masked for some time by "distracters" and this would occur where there were multiple injuries [T1-63]. In this case, however, there were no multiple injuries.

[70] In the Respondent's view, if there had been a connection made by the Appellant to a specific incident on the day which caused her pain, then it should have been fresh in her mind when she first visited the MIBH.

[71] The Respondent claimed that the absence of any contemporaneous reporting of her condition which could be attributable to the restraint/s on 2 September 2010, more than suggested that the Appellant's evidence around that point could not be accepted.

[72] In its view, the Respondent said that the history of the event was later created by the Appellant, and this then became the "cause" of the injury.

[73] The Respondent claims that the Appellant gave inconsistent evidence, and the fact that she could not recall where the restraints she had undertaken on the child had occurred in the classroom, led one to question the veracity of her evidence.

[74] In response to those assertions, the Appellant says that the Respondent has relied upon two propositions which were clearly unsupported by the evidence given.

[75] Firstly, the Respondent states that the Appellant had connected the development of the pain with the restraint (the "connection"). Secondly, the Respondent submitted that if the restraint had occurred, then it must have been seen by the Appellant's co-workers.

[76] Considering the first proposition, the Appellant points to the transcript of evidence where the following interchange occurred between Counsel for the Respondent and the Appellant:

"Right. So you felt some severe pain in the afternoon ----? – Yeah.

---- but you didn't in your mind think it was attributable to the struggle----? -- I didn't think ----

---- you had with her that morning? ----- it was connected." [T1-36/8 to 15].

[77] The Respondent mistakenly misread the Appellant's evidence as it related to her description of the development and onset of pain. The Respondent claimed that the Appellant had said "the only time that I did <u>not</u> feel a lot of pain was when I left work." The transcript shows that the word "not" did not appear in the transcript [T 1-27 to 28].

[78] On the second proposition – i.e. that other employees at the time had not observed the Appellant's restraint/s of the child on 2 September 2010 – the Appellant says that the Respondent had access to photographs and a mud map of the SEU which had not been provided to the Appellant or produced in evidence. That being so, the Appellant says that the Respondent is bound by the concessions made by Ms Walden and Ms Keating in cross examination.

[79] These examples were that Ms Keating agreed that in the course of her having direct supervisory duties of eight special needs children in her own class at their u-shaped desks, she "wasn't focussed on (Ms Ahearn and the child) the entire time, no." [T.2-17/49 to 55].

[80] The other example was that Ms Walden, during the course of her duties, stated that in the SEU there was an alcove of at least four metres square which was inset into the right hand side of the room. This was situated behind where Ms Keating sat [T2-48 8]. This alcove area was one of the primary places where Ms Ahearn worked one to one with the child. The evidence given by Ms Walden, in response to a question from Counsel for the Appellant is as follows:

> "And your recollection in terms of where Kerry worked with Acacia was two places, generally. One was out near the staff table?--Yeah. [T2-43/44]
>
> And the other was in the alcove or near the alcove? -- Which is only from here… to that…table away from the alcove away from the staff table. [T2-44]

> …Okay. So from what you describe, the teacher, if they were sitting in the middle of the students in a U-shaped desks, wouldn't be able to immediately see what was going on?--Probably not, no.[T2-47]
>
> Okay. And so when you are working with those students, are there occasions when you have your back to the U-shaped tables--Yeah, for sure
>
> And obviously your back is to the alcove area?--Yeah.
>
> And your back to the teacher's table where Kerry might have worked as well?--Yeah.
>
> You also indicated that you from time to time did photocopying?--Yeah.
> ---As part of your --the help provided?--
>
> Is that in the classroom area, or is that---? No, it was in Ms Sexton's room ."T2-48].

[81] Ms Walden said if she was photocopying in Ms Sexton's room she would have no knowledge of what was happening in the classroom because Ms Sexton's room was a 'totally separate room' [T2-48]. Ms Walden stated that she "wouldn't have a clue" on the number of days the appellant had worked.

[82] While Ms Walden's evidence is that she didn't remember anything about 2 September 2010, she said that if something of some moment had occurred (i.e. the restraints of a child) on that day she would have been aware of it. In saying this, Ms Walden accepted that the child could have been loud, vocal and boisterous on that day and, if that had happened, she wouldn't necessarily have looked in the direction of the noise because the child was not her responsibility [T2-50].

[83] The Appellant, according to Ms Walden, worked with the child "in the room with us, near the staff table or in that alcove."[T2-42].

[84] All Respondent witnesses who worked in the SEU had given their evidence around June or July 2012-some considerable time after September 2010.

Consideration of evidence and conclusion

[85] The primary opposition to this claim centres upon the Appellant's credibility around the following points:

- inconsistency of the Appellant's evidence around an event at the workplace on 2 September 2010 and her injury together with inconsistent statements made by the Appellant,
- the medical evidence, and
- the evidence of other employees stating that they had not observed the alleged restraints on the child by the Appellant on 2 September 2010.

[86] The Appellant was working on a one-to-one basis with the child. It is accepted by witnesses that the child was difficult to control. There is no challenge to the Appellant's evidence that she was advised as to how to restrain the child if required.

[87] There is also no challenge to the claim that the child could be loud, vocal and boisterous during the course of a day. Together with that, there is evidence that other employees were primarily concentrating upon their own work with special needs children during the course of a day, so much so that they were not always watching what was happening to others around them. There was also evidence, which I have accepted, that one teacher (Ms Walden) could not recall the day in question at all.

[88] I have accepted that the Appellant's evidence around events occurring on 2 September 2010 is the more reliable, because she experienced significant pain during the course of that day which resulted in her attendance at the MIBH on the evening of 2 September 2010.

[89] That finding that her recollection of that day would be clearer than others is made simply by considering the factual events that occurred on that day. Putting to one side the alleged "injury" which is claimed to have occurred on 2 September 2010, it is unchallenged that the Appellant attended at the MIBH on that evening where the triage nurse noted that the Appellant appeared to be in "obvious pain".

[90] It is also unchallenged that the Appellant attended the MIBH on the following day and again on 4 and 6 September 2010. By 8 September 2010, at the MIBH a note was taken that surgical review of the Appellant may be required.

[91] From my perspective, it is reasonable to consider that the date of 2 September 2010 may be firmly entrenched in the mind of the Appellant.

[92] I have accepted that, on the day of 2 September 2010, the Appellant was unaware of what might have caused her significant pain. Initially, she believed it may have been "heartburn", but I have accepted that the level of pain she experienced at that time was sufficient for her to go to the MIBH when tablets taken for 'heartburn' did not ease her pain.

[93] It is not surprising, in my view, that the Appellant did not mention any perceived cause for the pain she was experiencing. I have accepted her evidence that she was in so much pain, she had not turned her mind as to what might have caused the pain. I have also accepted that the Appellant was not asked as to her views on the cause of the pain while at MIBH. Certainly, this is credible when the observations being made by medical staff at MIBH focussed on "gastritis", possibly gall bladder problems and possibly Hepatitis A.

[94] Around that time, i.e. towards mid-September 2010, the Appellant undertook various tests whilst in a surgical ward at the MIBH.

[95] I have not found it unusual that it may have taken the Appellant a period of time to understand the nature and/or cause of her injury. If she had the prospect of heartburn, gall bladder problems, gastritis or Hepatitus A being at the core of her medical problem, then when those diagnoses were eliminated, the events of the day of 2 September 2010 may have taken on more significance.

[96] It was only on 14 October 2010, when seeing Dr Nicholls, that the Appellant says she was first asked about her day at work on 2 September 2010. The Appellant advised Dr Nicholls of her restraint on the child and that she had felt a "hard force" on her chest and how that had hurt her at the time [T1 – 15].

[97] Considering the question of whether other employees could see her restraining the child on 2 September 2010, I have accepted the evidence of Ms Walden that she did not recall that date at all. After all, it was a memorable date for the Appellant, but could hardly have been so for other employees. In saying that, I am conscious of the evidence of co-workers to the effect that if a number of restraints had occurred on the day they would have recalled the date.

[98] Bearing all of those factors in mind, I have accepted the Appellant's evidence to the extent that she did restrain the child on 2 September 2010 and that this happened on more than one occasion. I have also accepted that she later recalled being hurt during a restraint.

[99] I have made this finding firstly because I found the Appellant to be a credible witness. Secondly, I have accepted Ms Walden's evidence as being the most credible of all the Respondent witnesses. I accept that she did not recall the day of 2 September 2010. I have not accepted evidence of Ms Keating to the extent that she recalled the day of 2 September 2010. This evidence was not given until almost two years after that date and it would stretch the bounds of credulity to believe that one could recall that day after such a time lapse.

[100] In terms of the Respondent witnesses stating that they would have known if there had been a number of restraints on the child by the Appellant on 2 September 2010, I have not accepted that evidence. In my view, Ms Keating gave evidence of what should happen in the SEU. I am sure employees adhere to the highest standards in the classroom – that is not in question. However, the more credible evidence is that given by the Appellant, Ms Walden and also Ms Keating to the extent that other employees within the SEU usually concentrated on their own work and were well attuned to the sounds made by the child and would not necessarily observe what was occurring on each occasion.

[101] With regard to the medical evidence given, I have accepted Dr Avramovic's evidence. In forming this view, the following responses from Dr Avramovic, relating to the first presentation of the Appellant at the MIBH, should also be noted in the response of Dr Avramovic to a question posed by Counsel for the Appellant;

> "In terms of your opinion about the cause of the injury does a review of those records confirm what you found in the course of surgery, that being an acute injury to the xiphisternum occurring on the 2 September 2010? Yeah, I think you can distil from this history that the main issue was abdominal pain from that day.".

[102] When all of Dr Avramovic's evidence is considered, together with that of all witnesses, I have accepted that an 'injury' was suffered by the Appellant at work on 2 September 2010 within the **meaning of injury** in s.32(1) of the Act.

[103] For the foregoing reasons I allow the Appeal. I set aside the decision of Q-COMP dated 24 June 2011 and find that Ms Ahearn's application for Workers' Compensation is one for acceptance.

[104] I order accordingly.

D.A. SWAN, Deputy President.

Hearing Details:
2012 12 and 13 November

Released: 4 March 2013

Appearances:
Mr J. Greggory (Counsel) instructed by Connolly Suthers Lawyers for the Appellant.
Mr S. McLeod (Counsel) directly instructed by the Respondent.