

FOLEY'S | LIST

Aldridge v VWA [2016] VCC 678

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CASE NOTE

***Aldridge v VWA* [2016] VCC 678**

In my previous life as Plaintiff's solicitor one of my pet hates was referrals to the Medical Panel for the purposes of a Serious Injury Application. Many of these occurred well after the matter was listed for Hearing and often lead to at least some delay for the Plaintiff.

More recently it seems the Courts are less willing to refer to the Medical Panel.

In the decision of *Albridge v VWA* handed down on 27 May 2016, the Defendant made a request to refer questions to medical panel in relation to a Serious Injury Application.

The Serious Injury Application was set down for hearing on 8 June 2016. On 3 March 2016 the Defendant notified the Plaintiff of its intention to refer medical questions to the Panel and on 15 March 2016 the Plaintiff informed the Defendant that it would be objecting. On 6 April 2016 the Defendant advised the Plaintiff that they will be seeking a directions hearing. On 12 April 2016 the Plaintiff served a report from the GP stating that any delay to the Court proceeding would have detrimental effects on the Plaintiff's health. The draft referral was served on the Plaintiff on 9 May 2016. An objections hearing was held on 20 May 2016

Although the Defendant gave timely notice of intention to refer to the Medical Panel as required by s274 of the WIRC Act, His Honour Judge Bowman found that the referral to the Panel and consequential loss of the hearing date on 8 June 2016 constituted an abuse of process and refused the application.

His Honour concluded that a referral to the medical panel would mean a delay of at least three months and would be unfair to the Plaintiff. His Honour found that to be so especially in light of a Plaintiff who was vulnerable and susceptible to stress as evinced in the GP report.

His Honour held that although the Defendant complied with the statutory notice requirements there was still a delay of nine months between the date the matter was fixed for Hearing and the subsequent service of referral material on the Plaintiff.

In coming to his conclusion His Honour considered the overarching purpose found in the Civil Procedure Act and the ruling of His Honour Judge O'Neil in *Briggs v VWA* [2016] VCC 204.

His Honour also formed the view that some of the questions in the referral required a factual analysis that needed to be undertaken by a Court. More specifically the Defendant asked the Panel to consider the three generic job options found in a Nabenet report. The Defendant asked whether the job options constituted suitable employment and how many days and hours per week the Plaintiff could perform such work. His Honour held that although work capacity and suitable employment could be considered medical questions; the question was too broad. A question in relation to suitable employment involved a substantial amount of fact-based findings by the Court. Generic occupations were held to be not enough. Specific duties, hours, facilities and the like needed to be considered.

M. Yerusolimky