

AUTUMN 2018

Injury Review: Biceps tendon



Message from the

Editor

In the Autumn edition of the Legal Check-up, we took a look at the latest statistics from WorkSafe and found that muscular injuries were over-represented in workplace injury claims. So, we asked our Epping team to investigate a muscular injury and provide some general advice about potential patient entitlements based on the advice from a treating practitioner.

Our local teams are pleased to continue to offer a free 'Legal In-Service' at treating practitioner clinics. From these sessions we identified some key questions about the WorkCover and TAC compensation systems, and provide the answers in a special feature by Senior Associate and Accredited Specialist, Genna Angelowitsch.

Associate lawyer Linda Hanley has returned to Adviceline from maternity leave and has expanded on the services offered in her Chinese practice. For this edition she provided an article to us on public liability and discusses what happens when a visitor to Victoria is injured in a public place. Read more on the back page of this edition.

If you require further information about any of the topics discussed in this edition of the Legal Check-up, contact us on (03) 9321 9988.

Bree Knoester, Partner

A significant amount of workers with bicep tendon injuries are seeking advice about their WorkCover entitlements.

Common causes of these injuries are: a fall on an outstretched hand; repetitive overhead shoulder work; or frequent and intense heavy lifting.

The WorkCover entitlements for patients suffering from a work-related bicep tendon injury will depend on the severity of the injury.

In this article we outline common scenarios and present our advice about entitlements in those circumstances:

The medical advice is that the shoulder will heal with some time off work and medical treatment

If the shoulder is likely to heal with rest and a period of treatment, a WorkCover claim should still be lodged as soon as possible. If the claim is accepted, the injured worker will be entitled to:

- Weekly payments for the period of time they are incapacitated for work, recovering from their injury; and
- The reasonable and necessary costs of their medical treatment

The medical advice is that the damage to the shoulder will cause permanent restriction

In addition to the payment of medical expenses and loss of wages, if the injury has left the patient with a permanent impairment of the shoulder, they may also be entitled to a lump sum payment by lodging an impairment benefit claim.

The lump sum benefit for physical injuries currently starts at around \$10,000, but this sum depends upon the type of injury and when it occurred.

A claim for permanent impairment benefits cannot be made within 12 months of the injury, unless it can be proven that the injury has stabilised sooner.

"Stabilised" in this context means that the injury is unlikely to substantially improve or deteriorate over a further 12 month period.

An impairment benefit claim must be accompanied by medical records and reports from treating practitioners. Medical reports are requested to confirm the diagnosis of the injury, the permanency of the problem and whether the injury has stabilised.

The claim is then lodged on the WorkCover insurer who will arrange an independent medical assessment under the AMA Guides to the Evaluation of Permanent Impairment (4th Edition). For a shoulder injury, the degree of whole person impairment caused by the work-related injury must be 5% or more to attract a lump sum benefit.

The injury is serious and occurred in negligent circumstances

Often bicep tendon injuries have occurred due to a breach of the employer's owed duty of care. For example, in factory work, an employer may have failed to rotate duties frequently enough to give a worker's shoulders rest from repetitive overhead duties or heavy lifting.

In these circumstances, your patient may be entitled to common law damages if they can establish that their employer's negligence was a direct cause of a serious injury to the shoulder.

As with any work-related injury, early legal advice can greatly assist a worker with a shoulder injury to obtain adequate compensation to assist them while they recover.

Lauren Freeman, Special Counsel
Deidre Petrakis, Associate

WorkCover & TAC

WorkCover

TAC

Who is eligible to make a claim?

A person who is injured as a result of or over the course of their employment. This can include:

- Injuries arising from discrete, specific incidents at work;
- Injuries that arise over a period of time as a result of work duties;
- Diseases or illnesses where the worker's employment was 'a significant contributing factor' to the development of the disease or illness

There is no requirement to prove fault on behalf of the employer or another third party in order to access medical expenses.

A person who is injury in a transport accident involving a Victorian registered vehicle. The injured person can be the driver, passenger, or even a pedestrian struck by a motor vehicle.

Other circumstances where a person will be covered by the TAC system include:

- Where the injury arises from the driving of a car, tram, train or bus;
- Where a cyclist collides with an open car door;
- Cyclists injured on their way to or from work;
- Where a person is injured as a result of an out of control vehicle.

There is no requirement to prove fault on behalf of the another party in order to access medical expenses.

How long does a patient have to lodge a claim?

A patient has thirty days to lodge a WorkCover claim, or 'as soon as reasonably practicable' after the injury arises.

This is not a strict time frame, and claims for compensation made outside of this period of time are commonly accepted.

A patient should lodge their claim with the TAC within the first 12 months after the transport accident.

If the claim is lodged outside of the first 12 months but within 3 years of the transport accident, the TAC will ask the patient to provide reasons as to why the claim was not lodged earlier. Acceptance of the claim is at the TAC's discretion.

If the claim is lodged outside of the three year period, the TAC has no discretion and cannot accept a patient's claim for compensation.

Do patients have to pay a medical excess?

No.
Employers have to pay a medical excess as part of their premium arrangement, but this obligation does not fall on the employee.

If the patient was injured in a transport accident prior to 14 February 2018, they will have to pay a medical excess of up to \$651 before the TAC will start funding their treatment. This excess is waived if the person was admitted to hospital overnight as a result of the transport accident.

The payment of medical expenses does not need to come directly from the patient's own pocket. Payments made by Medicare or private health insurers can also be included towards the medical excess, provided the patient can provide receipts to prove the amount spent.

If the patient was injured in a transport accident on or after 14 February 2018, there is no requirement to pay a medical excess, regardless of whether they were admitted to hospital overnight.

What types of treatment will the insurer pay for the patient?

The insurer will pay for the reasonable costs of road accident rescue services, medical, hospital, nursing, personal and household, occupational rehabilitation and ambulance services received because of the workplace injury. They will also pay for the cost of travel to and from medical appointments, provided the cost is reasonable.

The patient may be required to establish that:

- The expense is directly related to the workplace injury; and
- The amount requested for the expense is reasonable in consideration of all of the circumstances

TAC will pay for road accident rescue services, medical services, hospital services, nursing services, disability services, rehabilitation services, transportation costs, vocational rehabilitation services, ambulance services, childcare services, home services and home modifications. They will also pay for the cost of travel to and from medical appointments, provided the cost sought is reasonable.

The patient may be required to establish that:

- The expense is directly related to the transport accident injury; and
- The amount requested for the expense is reasonable in consideration of all of the circumstances

How much will the insurer pay for my medical reports?

The current rates for medical reports in workers' compensation matters range from \$68.71 for short reports, and up to \$333.70 for comprehensive reports. The schedule of fees is updated by WorkSafe Victoria every year on 1 July.

The current rates for medical reports in transport accident compensation matters range from \$75.58 for short reports, and up to \$377.78 for comprehensive reports. The schedule of fees is updated by the Transport Accident Commission every year on 1 July.



Author:

**Genna
Angelowitsch**

Genna Angelowitsch is a Senior Associate at Adviceline Injury Lawyers and is an expert in work-related injuries and traffic accidents. She also has significant experience in hearing loss and public liability claims.

Genna has worked in personal injury law since 2006, having worked for both solicitors and barristers while studying at university. Her experience working with both types of legal representation lent unique insights into the skills required to operate as an efficient and diligent practitioner.

In 2017 Genna became a specialist in Personal Injury Law, accredited by the Law Institute of Victoria.

Understanding that suffering an injury can be a traumatic time for both the victim and their loved ones, Genna aims to tell an injured person's story with clarity and compassion.

Although her ambition is always to settle matters without resorting to litigation, she has a strong understanding of the legal processes required to pursue an action through the Courts.

Injured visitors



The home to countless wonderful destinations, Victoria attracted 2.9 million international visitors over 2017. Although it's uncommon, some of these visitors suffered an injury during their visit.

Like Victorian residents, international visitors who are injured in Victoria may be entitled to compensation.

A patient seeking compensation for an injury that occurred in unsafe premises will need to lodge a public liability claim.

For your patient's claim to be successful, we will need to prove:

1. The premises they visited are unsafe due to the negligence of the owner of the premises/ occupier of the premises;
2. The unsafe premises caused them to suffer an injury; and
3. The injury they suffered is considered a 'significant injury'

What is a 'significant injury'?

This is a legal test.

It is not whether the patient or our lawyers thinks the injury is considered significant.

Their injury will need to be assessed by an independent medical examiner who is a specialist in their injured area. This doctor will assess the injury to determine whether it meets the required level of permanent impairment to have a 'significant injury'.

A 'significant injury' is either:

1. A rating of 5% or more of permanent impairment for a spinal injury;
2. A rating of more than 5% of permanent impairment for a physical injury or non-spinal injury or;
3. A rating of 10% or more of permanent impairment for a psychological injury

What compensation is awarded for a 'significant injury'?

If it can be established that your patient has suffered a 'significant injury' and it was caused by the negligence of the owner of the premises/ occupier of the premises, then we can seek the following types of compensation:

1. Cost of any reasonable medical expenses they have incurred, and/ or will incur to treat the injury;
2. Loss of earnings and superannuation because they are unable to work, and/or are unable to work into the future; and
3. Pain and suffering they have endured and will continue to suffer as a result of the injury

Is there a time limit to lodge a claim?

Yes. Public liability claims must be lodged 3 years from the date of injury.

If your patient fails to lodge a claim within this time, they may later be legally barred from lodging a claim.

International visitors who have suffered an injury during their visit of Victoria, and believe their injury is a 'significant injury', will need advice from a public liability lawyer.

If possible, injured visitors should seek help while still in Victoria to find out whether they have a claim and how to proceed with the potential claim going forward.

If you would like more information from a Chinese speaking lawyer, please call Linda Hanley directly on (03) 9321 9894.



Linda Hanley Associate

CONTACT US

T (03) 9321 9988 | **E advice@alil.com.au**

LOCATIONS

Epping

Shop 110B,
Epping Plaza
Cnr of Cooper/
High Street
Epping VIC 3076

Melbourne

Level 8,
555 Bourke Street
Melbourne VIC 3000

Melton

43 Wallace Square
Melton VIC 3337

Moe

Level 1,
18-20 Kirk Street
Moe VIC 3825

Springvale

369C Springvale Road
Springvale VIC 3171