



## NSW worker's compensation claims due to aggravation of a previous injury

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It's a common question: Can I claim worker's compensation if my injury is an aggravation of a previous injury? The short answer is yes!

In order to make any [claim for worker's compensation in NSW](#), your injury needs to have arisen out of or in the course of your employment. If this can be proven, you then move on to the next test, which is whether the employment was the main contributing factor to your injury or aggravation, acceleration, exacerbation, or deterioration of the disease injury.

At this point, a distinction needs to be made in relation to whether an injury should be classified as a recurrence injury or an aggravation injury. A recurrence injury is when the symptom of a previous injury occurs again without any external cause. An aggravation is when symptoms of a pre-existing injury are increased by a new event.

### Proving your worker's compensation claim is for an aggravation injury?

If your worker's compensation claim is due to an aggravation injury, you will need to demonstrate that the pre-existing condition was stable at the time of re-injury.

Consider this example of a physical injury:

- Let's say that a construction worker suffered a right shoulder injury approximately 2 years ago;
- The injured worker required surgery to their shoulder, which occurred 1 year ago;
- After appropriate rehabilitation training for 6 months, the injured worker returned to working their pre-injury role with no issues;
- Then whilst at work sometime later, the construction worker injures the same shoulder due to lifting a heavy object.

This is a common example of an aggravation of a physical injury. The worker is eligible to claim worker's compensation benefits due to aggravation of a prior injury.

It is similar for psychological injuries.

Consider this example of a psychological injury:

- Let's say a worker had a psychological injury due to an external event occurring 10 years ago;
- At the time of this incident, the injured worker was seeing a psychologist, and the injury/illness was being managed with medication;
- The injured worker returned to work after time off and continued to manage the injury/illness with psychologist visits and medication;
- Over the last few years, the injured worker began experiencing significant bullying and harassment at work, which led to their psychological symptoms deteriorating;
- This led to seeing a psychologist more frequently and an increase in medication.

In this example, the injured worker has suffered an aggravation of a pre-existing psychological condition due to the workplace bullying and harassment. They are eligible to claim worker's compensation benefits due to aggravation of a prior injury/illness.

## The difference between “a substantial contributing factor” and “the main contributing factor”

The standard of proof for a regular injury (that is, not an aggravation or exacerbation etc.) is that the injured worker's employment needs to be a “substantial contributing factor”.

However, when a worker's compensation claim is made for an aggravation, the standard of proof changes to employment needing to be the “main contributing factor”.

Whilst this may seem like a fairly minor difference, the test to prove an aggravation involves a more stringent connection with the injured worker's employment.

When looking at whether an injury is a substantial contributing factor, it leaves open the possibility of other, and possibly non-employment-related, substantial contributing factors to the injured worker's injury. On the other hand, the requirement that the employment needs to be the main contributing factor only allows for one factor (being the employment) to be the cause of the injury

or aggravation of the injury.

## Why has my aggravation of injury claim been declined?

A common reason provided by insurance companies when declining your claim for an aggravation injury is that the incident that occurred at work was not the cause of your injury. Rather your injury was caused due to a previous injury you had sustained.

A more recent and common reason worker's compensation claims of this nature are declined is that the insurer may accept that you suffered an aggravation injury, however, they now believe that any ongoing symptoms you have are caused by the pre-existing condition. That is, they are of the view that the aggravation injury has ceased.

## What to do if your worker's compensation claim has been declined?

If a worker's compensation claim is declined in NSW, the insurer is obliged to issue a 'Section 78 notice' together with all supporting evidence for denying the claim. These notices can be reviewed and/or disputed in the Personal Injury Commission. To review or dispute a worker's compensation decision, you must have legal representation.

You can read more detail about rejected claims in our earlier blog, ["Help! My NSW worker's compensation claim has been denied"](#).

## Get help from worker's compensation lawyer in NSW

As you can see, there are significant nuances to be considered when making a worker's compensation claim due to an aggravation of a previous injury. Terms used and reasons provided by insurers to deny claims can be complicated.

If your worker's compensation claim has been declined for whatever reason, it is always important to seek legal advice in order to determine whether you can dispute the insurer's decision.

At Hall Payne Lawyers, our worker's compensation lawyers are IRO-approved lawyers. This means that your legal fees and any associated costs to dispute the insurer's decision is free. This includes fees to obtain an independent medical opinion which is crucial when disputing the insurer's decision.

## Contacting Hall Payne Lawyers

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

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