Superannuation TPD Claims



For Lawyers

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LAWYERS

Introduction

1. Who am I?
2. Where do we work?
3. What do we do?
4. Why do we do it?



5. How did we end up here talking about TPD claims?

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The basics of what Super and TPD is

1. What is super?
2. What insurances are attached?
3. What is Income Protection (IP)?
4. What is Total & Permanent Disability (TPD)?
5. What is Death Cover?
6. What other insurances are there – Total & Temporary Disability (TTD), Terminal Illness?

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The stakeholders

1. Who are the stakeholders?
    - Members
    - Superannuation Trustees
    - Insurance Companies
    - AFCA – Australian Financial Complaints Authority
    - Ombudsman
    - Courts
    - Law Firms
    - Doctors
    - Financial / Insurance Advisors

The Process

1. Step-by-step
    - Annual Benefits Statement
    - Write to Super Fund and get deed, policy, statements, claim forms
    - Get all the medical, financial and employment records
    - Get treating Medical Attendant's Statement (x2) completed by GP and Specialist.
    - Lodge claim and make submissions
    - Insurer investigates
    - Chase a decision relentlessly
    - Decision is scrutinised by super fund
    - If accepted, money is paid by insurer into member's super account
    - TPD satisfies "permanent incapacity" definition under SIS Act, so member can withdraw insurance TPD sum and their super balance
    - If withdrawn, get financial advice
2. Reviews and Appeals
3. Litigation

The fundamentals of TPD

1. Overcoming assumptions and misconceptions and who is TPD?





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Generally, it is “cannot again by reason of injury or illness **work** in **any occupation** for which that person is reasonably suited by **education, training or experience**”.

What is “education, training and experience”?

- Leading case *Hannover Life Re of Australia v Jones* [2017] NSWCA 233
- There must be a “link or connection” between the 2 occupations (eg. plumber v what is being proposed)
- Is the “link or connection”, weak (we want) or strong (we don’t want)?

  Gomez v Board of Trustees of the State Public Superannuation Scheme [2017] QSC 98

  Birdsall v Motor Trades Association of Australia Superannuation Fund Pty Ltd [2015] NSWCA 104

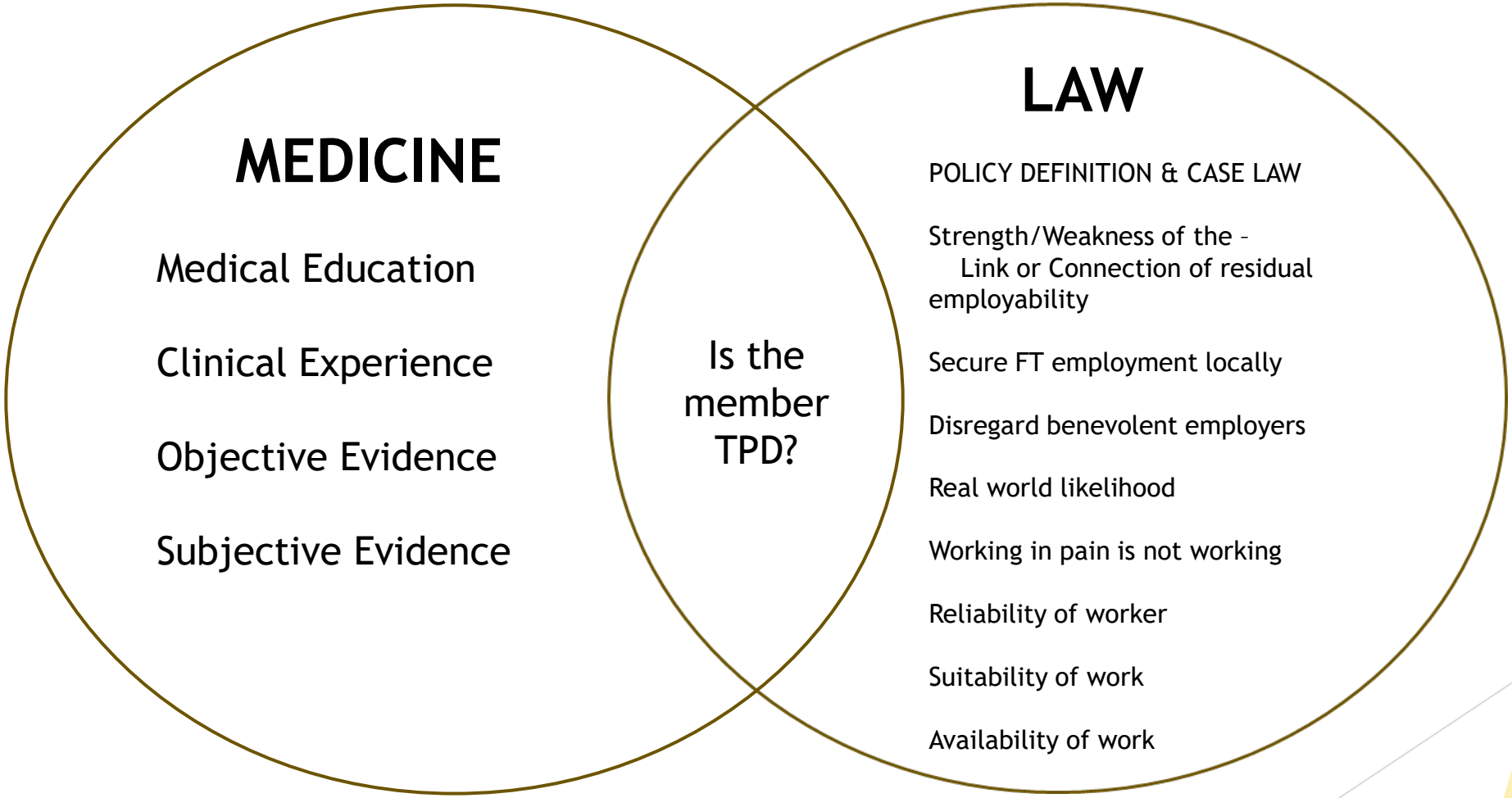
What is the meaning of “any occupation”?

- Default is that it is secure full time available work.
- Many cases have gone before Courts on whether part time, casual, intermittent work counts, and it has been decided it comes down to the specific policy definition.

What is the meaning of “to work”?

- Courts have disregarded benevolent employers – employers that are empathetic and keep employees on or create light duties: *Wylie v National Mutual Life Association of Australia Ltd* [1997] NSWSC 146
- Assessing work has to be done in the ‘real world’ and not based on theory alone – is an injured person going to be picked over 50 other able-bodied applicants – it is unlikely and not real world: *Finch v Telstra* [2010] HCA 36
- Working in excruciating pain is also not truly working: *Halloran v Harwood Nominees Pty Ltd* [2007] NSWSC 913
- Reliability: *Sayseng v Kellogg Superannuation Pty Ltd* [2007] NSWSC 583
- Suitability: *Sayseng v Kellogg Superannuation Pty Ltd* [2007] NSWSC 583
- Availability: *Chammas v Harwood Nominees Ltd* [1993] 7 ANZ

Medicine & TPD Law – The Cross Over



The war stories

1. Example 1 – Policeman with PTSD
2. Example 2 – Retail Store Manager with Crippling Hip Bursitis
3. Example 3 – FIFO Truck Driver with Shoulder Injury

Any questions?

Thank you.

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