

But the Doctor told me so!

Where an employee is suffering from an injury or illness, it is not uncommon for an employer to send them off for a medical examination to determine whether or not they are fit to return to work - an employer should be able to rely upon this medical opinion... right?

A recent decision of the Full Bench of the Fair Work Commission, *CSL Limited T/A CSL Behring v Chris Papaioannou*,^[1] has confirmed that where an employer receives conflicting medical opinions in relation to an employee's working capacity, great caution must be exercised.

Mr Papaioannou was a plasma receipt operator who had been suffering from a gastrointestinal condition and an anxiety disorder. As a result of these health issues, Mr Papaioannou took 10 months off from his employment with CSL Behring.

Subsequently, Mr Papaioannou was dismissed as a result of a medical report which had been commissioned at the request of his employer. This report provided that Mr Papaioannou's conditions would have a recovery period of between 12 to 24 months.

CSL Behring argued that the medical report suggested that Mr Papaioannou did not have the capacity to perform the previous duties associated with his employment and that he would not have the capacity to return to these duties in the foreseeable future.

However, Mr Papaioannou's treating practitioner also prepared a report which suggested that a recovery period of 6 months was more likely.

The Full Bench of the Fair Work Commission determined that where conflicting medical evidence is present, it:

1. is not for an employer to decide which evidence is correct; and
2. should be a matter for the Fair Work Commission to evaluate and determine such a conflict within medical evidence.

This case highlights the requirement to involve and call upon the Fair Work Commission to determine an employee's capacity **before** dismissal in circumstances where conflicting medical opinions have been provided.

If you would like assistance in navigating the management of an ill or injured employee, please do not hesitate to contact our [Workplace team](#).

[1] [2018] FWCFB 1005.

For more information contact our [Workplace Team](#).

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