



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 078692/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
	
<u>20/08/2026</u>	
DATE	MNGQIBISA-THUSI NP

In the matter between:

ESTELLE HARMSE

Applicant

and

**THE COMPENSATION COMMISSIONER
THE DIRECTOR GENERAL, DEPARTMENT
OF LABOUR**

First Respondent

Second Respondent

ORDER

The following order is granted:

- [1] The respondents are directed to make a recommendation in respect of the applicant's claim for compensation in terms of COIDA within 30 days of this order.
- [2] The respondents are liable for the costs of this application on a party and party scale B.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 20 August 2026.

MNGQIBISA-THUSI, J

- [1] The applicant seeks an order directing the first respondent, the Compensation Commissioner ("the Commissioner") and the second respondent, the Director General in the Department of Labour ("the DG"), to make a recommendation and effect payment in terms of the respondents' acceptance of her claim under the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (as amended) ("COIDA"). The COIDA came into effect from 01 March 1994.
- [2] COIDA is administered by the Compensation Fund which resides within the Department of Employment and Labour, and its headed by the first respondent. The purpose of COIDA is to provide compensation to employees for any disablement due to an occupational injury, disease or death.

[3] At the beginning of proceedings, the court engaged counsel for the applicant with regard to prayer 1 of the notice of motion as it appeared as though the applicant was seeking the court to direct the respondents to make a recommendation that compensation should be paid. In terms of COIDA, only the first respondent has the power to consider the claim and decide whether or not to recommend that the applicant be compensated. Counsel conceded this point and undertook to amend the suggested draft order in the event that the applicant is successful, so that the only order to be made is to direct the respondents to consider the matter and decide whether or not to make a recommendation for compensation to be paid. If a recommendation is made that the applicant qualified for compensation, the amount of such compensation would be determined as set out in section 47 of COIDA and the regulations thereto.

[4] The respondents are opposing the application and besides their opposition, have raised three points in limine in their answering affidavit and in a uniform rule 6(5)(d)(ii) notice which was served on the applicant's legal representatives. The points raised, in the alternative, are the following:

4.1 that the applicant's claim is based on an unliquidated claim for damages and that the applicant should, therefore, have pursued her claim by means of action proceedings as envisaged in uniform rule 17(2) read with uniform rule 18 (10).

4.2 that there is a dispute of fact which cannot be resolved on paper and that there was a need for the matter to be referred for oral evidence.

4.3 that there is a misjoinder in that the applicant failed to join the SAPS as it had a substantial interest in the matter. It is the respondents' contention that there is no proof that the applicant was a member of the SAPS and that had the applicant joined the SAPS, the SAPS would have provided evidence as to whether the applicant was a SAPS employee.

[5] The respondents, besides the points *in limine* raised, are opposing the relief claimed on the grounds that the applicant should have instituted action proceedings as there are disputes of fact which cannot be resolved on paper. Further, it is the respondents' contention that there is no record of the applicant's claim being lodged with the department.

[6] Besides the points in limine raised and as set out above, the respondents are opposing the relief claimed on the same grounds as the points raised.

[7] The respondents' answering affidavit was filed out of time and condonation was sought. In view of the fact that counsel for the applicant intimated the application for condonation would not be opposed, condonation was granted.

[8] The following allegations are made in the applicant's founding papers. She was employed as a captain in the South African Police Service (SAPS). In the course of her employment, she was exposed to several traumatic operations when deployed at the country's borders. As a result, in 1994 she was diagnosed with major depression and other conditions. In support of these allegations, attached to the applicant's founding affidavit are reports of the treating medical practitioners, Dr A Potgieter and Dr SD Stahmer, both psychiatrists and Dr R

Matthews, a (clinical psychologist). At the time of consulting with Dr Stahmer, the applicant was Dr Potgieter's patient who treated her with anti-depressants. Dr Stahmer who diagnosed the applicant of suffering from 'psychotic depression with melancholy and chronic burnout syndrome'. Dr Matthews has opined that the applicant suffers from psychotic depression and opined that the applicant was not suitable to do policing work.

[9] All three treating doctors recommended that the applicant be given extended sick leave and was eventually medically boarded.

[10] The applicant further reports that as a result of the effects on her mental state as a result of her border posting, from 1990 she was no longer able to perform her functions optimally.

[11] According to the applicant her claim for compensation was lodged with the first respondent by her employer, after a certain constable Duvenhage completed an Employer's Report of an Accident (W.C1.2) and a Final/Progress medical Report (W.C1304), including the medical reports of the doctors the applicant had consulted with. She got no response from the respondents.

[12] During 2021 her attorneys wrote several letters/emails to the respondents inquiring about progress in her claim but got no response. The reports of the treating doctors mentioned in paragraphs 6 and 7 above were attached to the correspondence the applicant's legal representatives sent to the respondents in 2021. The applicant alleges that it was only in 2022 that her legal representatives got a response on behalf of the respondents where there was an

acknowledgement of one of the enquiries made and informed that her claim has been escalated to the relevant section within the department. Since then there has been no response to her claim, which precipitated the launching of these proceedings. Attached to the applicant's papers are all the documents pertaining to her claim.

- [13] On behalf of the applicant it was submitted that the relief sought is only to get the respondents perform their statutory functions as provided for in COIDA. Counsel for the applicant argued that the respondents' contention that action proceedings should have been initiated has no basis as the applicant was not seeking damages which needed to be quantified. Counsel further submitted that the applicant was seeking compensation which is provided for in COIDA if she met the requirements of the Act. With regard to the point that there are disputes of fact, it was submitted on behalf of the applicant that the fact that the respondent disputed the facts alleged by the applicant does not necessarily raise a real dispute of fact which necessitates a referral to oral evidence. Counsel further argued that the respondents could not dispute that the applicant was in the employ of the SAPS for the following reasons: (i) all the documentation lodged with the first respondent reflected the applicant's persal number, which number could easily have been verified by the respondents; and (ii) that as proof that the applicant was employed by the SAPS, she was currently receiving a pension from the Government Pension Fund, which is indicative of the fact that she had been a State employee. With regard to the non-joiner of the SAPS, it was submitted on behalf of the applicant that the SAPS had no substantial interest in the matter as its role ended when constable Duvenhage completed the

Employer's Form and submitted the documents and annexures thereto to the first respondent and therefore, it was not necessary to join the SAPS.

[14] On behalf of the respondents, beside the points raised and the reasons given, it was submitted that since the applicant had used an incorrect process to claim damages, her application was frivolous, vexatious and amounted to an abuse of process, necessitating a punitive cost order against the applicant. Further it was submitted that the respondents have no record of the applicant's claim being lodged with the department.

[15] There is no basis for the points in limine raised by the respondents and the opposition to the application. Firstly, in their answering affidavit and in argument, no substance was given to the alleged dispute of fact which cannot be resolved on paper. In all the documentation submitted by the applicant's employer, her persal number is reflected and the respondents could easily have verified her claim of being employed by SAPS with SAPS. Further, in her founding papers, the applicant has asserted that she is getting a government pension. These two facts dispose of the respondents' argument that the applicant was not employed by SAPS. There is no countervailing evidence that the applicant was not employed by the SAPS, particularly as the employer had completed the necessary form relating to her medical issues. The dispute raised does not amount to a real dispute necessitating oral evidence at a trial.

[16] Secondly, with regard to the non-joinder of the SAPS, as correctly pointed out by Counsel for the applicant, the SAPS do not have a substantial interest in the matter as they play no role in the assessment and determination of the

applicant's claim. That function falls squarely within the purview of the first respondent.

[17] Further, the applicant's claim is not for damages as alleged by the respondents. What the applicant seeks is for the respondents to be directed to perform their statutory duties. Whether or not they recommend that the applicant qualifies for compensation, taking into account the documentation submitted and the requirements of the COIDA, is another matter. Should the respondents recommend that the applicant qualifies to be compensated, it is not up to the applicant to quantify the quantum due. It is the duty of the respondents to calculate what is due to the applicant as set out in section 47 of COIDA and its regulations.

[18] I am satisfied that the applicant has shown that the respondents failed in performing their statutory functions and that she is entitled to the relief sought.

[19] In the result the following order is made:

1. The respondents are directed to make a recommendation in respect of the applicant's claim for compensation in terms of COIDA within 30 days of this order.
2. The respondents are liable for the costs of this application on a party and party scale B.



NP MNGQIBISA-THUSI

Judge of the High Court

Date of hearing: 13 October 2025

Date of judgment: 20 August 2026

Appearances

For Applicant: Adv L Louw (instructed by Cilliers & Associates)

For Respondents: Adv NM Seleso (instructed by the State Attorney, Pretoria)