

Can an email or an impromptu discussion be an informal counselling action?

Adam and Comcare [2017] AATA 1507

Key Points

- The Applicant worked for the Department of Defence and claimed to have suffered a psychological condition due to the imposition of a deadline.
- Comcare argued that the Applicant's disease was caused by an email from the Applicant's first level supervisor and a discussion with her second level supervisor, which constituted reasonable administrative action.

Background

On 21 July 2015, Ms Adam made a claim for workers' compensation in respect of anxiety. Comcare denied her claim on the basis that the disease had arisen as a result of reasonable administrative action. The determination was affirmed by reviewable decision. Ms Adam lodged an application for review with the Tribunal.

The law

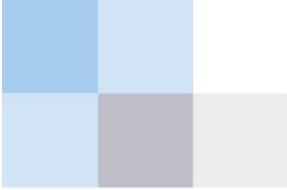
Section 5B(1) of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (**the SRC Act**), provides that a "disease" refers to an ailment that was contributed to, to a significant degree, by an employee's employment. Section 5A(1) indicates that where a disease is suffered as a result of reasonable administrative action taken in a reasonable manner in respect of an employee's employment, no liability exists for that condition.

The Applicant was involved in evaluating a tender for the Department of Defence. The Applicant's manager, Ms Nguyen, emailed the Applicant (the **email**) and confirmed that she wanted her to provide handover information by lunchtime on Wednesday, 4 February and a report by lunchtime on Thursday, 5 February. The email indicated that the applicant had been aware of this task since October 2014 and a preliminary report was requested on 21 January 2016, which the applicant had failed to provide. Ms Nguyen indicated in the email that if the applicant was having difficulty completing tasks, to let Ms Nguyen know and to seek guidance at any time if she had any questions or concerns.

On the morning of Wednesday, 4 February 2015, the Applicant approached Mr Plowman in his office. They had a discussion (the **discussion**) during which the Applicant told Mr Plowman that she did not like the tone of the email. Mr Plowman said that he did not have any concerns about the tone of the email.

Mr Plowman indicated:

- a. On recent occasions, the Applicant had not met deadlines. He said that he had a perception that she was not managing her time at work effectively.

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- b. On numerous occasions, he had observed the Applicant engaging in discussions with other staff that were not work-related.
 - c. He had concerns as to the Applicant's personal use of the internet during work hours.
 - d. Mr Plowman told the Applicant to stop performing tasks outside of her work duties such as for the social club.
 - e. He raised concerns about the Applicant's writing style which was too verbose and contained spelling errors. He told her to review her work more thoroughly.
 - f. He told the Applicant she should be more proactive in her work and seek interim feedback at an earlier stage.
 - g. That he and Ms Nguyen were concerned that the Applicant had not progressed the 5A task since mid-January.
 - h. Mr Plowman and Ms Nguyen both felt that she had been given sufficient time to complete the report.

In relation to the email, the Tribunal found that Ms Nguyen explained why the deadline was necessary and explained why she had certain expectations of the Applicant. Ms Nguyen also made it clear that she was not satisfied with the progress that the Applicant had made on the task. The Tribunal found that this was a corrective administrative action, though something less than a caution or reprimand.

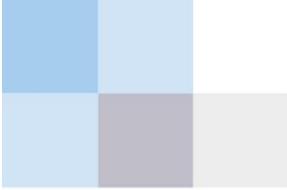
Like the email, the Tribunal found that during the discussion, Mr Plowman had provided informal feedback to the Applicant on a range of matters. The Tribunal concluded that the discussion was a corrective administrative action, though something less than a caution or reprimand.

The Tribunal found that the email and the discussion were each informal counselling action taken in respect of the Applicant's employment. The Tribunal considered the action taken to be reasonable in the circumstances. This was because it was reasonable for the two supervisors to raise concern about the Applicant's progress on the task. The Tribunal found that the tone of the email whilst direct, was professional and the timetable provided was reasonable.

Conclusion

The Tribunal concluded that the email and the discussion were each causes of the Applicant's disease. Each was reasonable administrative action taken in a reasonable manner in respect of her employment. The Applicant would not have suffered her disease if she had not received the email, and she would not have suffered her disease if she had not participated in the discussion. Accordingly, the Tribunal found that the disease was excluded from the definition of "injury" in section 5A of the SRC Act.





Lessons Learnt

This decision indicates that a counselling action can be seen as reasonable administrative action, even if it is undertaken on an informal basis such as in an email or in an impromptu discussion.

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