

Aboutaleb and Comcare [2015] AATA 207 (2 April 2015)

Key Points

- Whether Multiple Chemical Sensitivity (MCS) is an ‘ailment’ pursuant to s14(1) of the SRC Act.
- Whether the applicant’s MCS, was contributed to, to a significant degree, by her employment.

Background

Ms Aboutaleb lodged a claim for compensation for “*aggravation of allergy unspecified, not classified elsewhere*” pursuant to s14 (1) of the SRC Act. Comcare refused the claim on the basis that her condition was not significantly contributed to by her employment. Ms Aboutaleb sought review of the decision and, at the time of hearing, claimed that she suffered from MCS which she described as... “*a diagnostic label for people who suffer multi-system illness as a result of contact with, or proximity to, a variety of airborne agents and other substances*”.

The Tribunal was required to consider whether MCS was an ailment compensable pursuant to s14(1) of the SRC Act and whether, having regard to Ms Aboutaleb’s circumstances, she suffered from a condition that was outside of the boundaries of normal mental functioning and behavior.

The Law

Section 14(1) of the SRC Act states Comcare is liable to pay compensation in respect of an injury suffered by an employee if the injury results in death, incapacity for work, or impairment.

Injury is relevantly defined in subsection 5A(1)(a) to mean, “*a disease suffered by an employee*”. Disease is defined in section 5B to mean an aggravation of an ailment suffered by an employee. In both of these circumstances, the condition must have been contributed to, to a significant degree, by the employee’s employment.

In subsection 4(1), ailment is defined as any physical or mental ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development.

Finally the Tribunal considered section 7, which relates to diseases. It states:

- 4) *For the purposes of this Act, an employee shall be taken to have sustained an injury, being a disease, or an aggravation of a disease, on the day when:*
 - a) *the employee first sought medical treatment for the disease, or aggravation; or*
 - b) *the disease or aggravation resulted in the death of the employee or first resulted in the incapacity for work, or impairment of the employee; whichever happens first.*



Conclusion

The Tribunal noted the decision in *Comcare v Mooi* (1996) 69 FCR 439 where Drummond J stated that the use of the word ailment showed a legislative intention “*to cover the whole range of physical and mental illnesses from major to minor ones*”. He said a claim should not be rejected simply because the employee's condition could not be identified as a recognised medical condition. However, Drummond J added that it is “*...essential for...a worker to be able to demonstrate that, having regard to his circumstances, he is in a condition that is outside the boundaries of normal mental functioning and behaviour*”.

The Tribunal accepted the evidence of the medical practitioners before it, who stated that the diagnosis of MCS was not well accepted within the medical community and that there was no diagnostic test available.

The Tribunal preferred the evidence of Dr Silver (Occupational Physician) who reached the conclusion that Ms Aboutaleb had no physical impairment or disability associated with her multitude of symptoms, and was not incapacitated other than by her own assertions.

The Tribunal concluded that, despite her past medical difficulties, Ms Aboutaleb was managing her situation relatively well and was not incapacitated for work. The Tribunal found that Ms Aboutaleb was not suffering from a condition outside the boundaries of normal mental functioning and behaviour. The Tribunal therefore found that Ms Aboutaleb did not suffer an ailment as defined in the SRC Act, and did not satisfy the requirements of an injury. Consequently she was unable to succeed in her Application and there was no need for the Tribunal to consider any contribution to her condition by her employment with the ATO.

Lessons Learnt

The decision is a reminder that a worker does not need to be suffering from a recognisable or diagnosable illness in order for compensation to be payable. Although compensation was not ultimately payable in this instance, it was not due to the fact that MCS was not a recognized condition, but instead, due to the worker's presentation and evidence.

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