

Alarcon and Australian Postal Corporation (Compensation)

[2015] AATA 475 (2 July 2015)

Key Points

- Whether Ms Alarcon was able to rely on her perception of events.
- The Tribunal found that the incident or state of affairs must actually occur in order for any perception created in the mind of the employee to be relied upon as a significant contributing factor to an injury or aggravation.

Background

Ms Alarcon was employed by Australian Postal Corporation (**Australia Post**) as a Postal Delivery Officer since 2000. Ms Alarcon contended that she developed an aggravation of a psychological condition due to specific incidents involving a co-worker who allegedly acted in an aggressive manner towards her. The proceedings concerned the following reviewable decisions denying compensation for such claimed incidents:

- A decision dated 18 March 2013, in respect of a claim for “*anxiety/depression*” as a result of an incident on 28 February 2012;
- A decision dated 5 August 2013, in respect for a “*mental breakdown*” as a result of an incident on 15 December 2012; and
- A decision dated 6 August 2013, in respect of a claim for “*depression, anxiety and stress*” as a result of an incident on 9 April 2013.

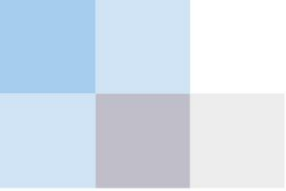
Ms Alarcon sought review of the above-mentioned decisions. The Tribunal was required to consider whether Ms Alarcon was able to rely on her perception of events as a significant contributing factor to the aggravation of her pre-existing condition.

From the evidence presented, it was clear that Ms Alarcon’s perception of the events was significantly different to the evidence shown on the CCTV footage, the evidence provided by witnesses and the evidence of other witnesses of the incidents.

The Law

Section 5B(1) defines “*disease*” to mean an ailment or aggravation of such ailment which was contributed to, to a significant degree, by the employee’s employment. Section 5B(3) defines “*significant degree*” as substantially more than material.

In *Wiegand v Comcare* [2002] FCA 1464; (2002) 72 ALD 795, Von Doussa J said that, in determining whether an incident or state of affairs contributed to an ailment:



“...if the incident or state of affairs actually occurred, and created a perception in the mind of the employee (whether reasonable or unreasonable in the thinking of others) and the perception contributed in a material degree to an aggravation of the employees ailment, the requirements of disease are fulfilled.”

Conclusion

The Tribunal preferred the medical evidence provided by Mr Thomas O’Neill (Clinical Psychologist) and Dr John Champion (Psychiatrist) who found that the Ms Alarcon had a personality disorder with paranoid ideations. Mr O’Neill considered that Ms Alarcon had a long-standing, pre-existing personality disorder that had become amplified by her perception of persecution in the workplace. Mr O’Neill found no evidence of any aggravation of her psychological disorder that could be attributable to events within her employment and opined that the evidence available pointed to significant psychiatric and personality disturbances.

The Tribunal found that it was not enough to argue that Ms Alarcon’s perception of an event could have caused the psychological condition alleged. Consideration needed to be given to whether the incident, or state of affairs, occurred, and whether the perception of events from Ms Alarcon’s point of view could have caused or contributed to the condition.

Taking into account all of the evidence, the Tribunal was not satisfied that any of the incidents of which Ms Alarcon complained of actually occurred as she claimed. The Tribunal noted that the Ms Alarcon’s evidence was difficult to follow, inconsistent and contradictory. There was very little evidence available to support Ms Alarcon’s claims and her evidence could not be relied upon. The Tribunal was not satisfied that Ms Alarcon’s perception of what occurred contributed to a significant degree to an aggravation of her pre-existing condition. Accordingly, the decisions under review were affirmed.

Lessons Learnt

The decision confirms that it is not enough to contend that the employee’s perception of an event or state of affairs could not have caused the aggravation of the psychological condition claimed. What needs to be established is whether or not the event occurred and whether the employee’s perception of the event, from their point of view, could have caused or contributed to a significant degree to the aggravation of the condition.

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