

## Bureau of Meteorology and Comcare and Anor [2015] AATA 267 (28 April 2015)

### Key Points

- Whether an applicant can be entitled to compensation in the absence of a formal claim form.

### Background

Ms Boulton was an employee of the Bureau of Meteorology from 10 August 2009 to 27 June 2012. On 17 June 2013, Ms Boulton lodged a claim with Comcare under the SRC Act for compensation in respect of “*Depression, Anxiety and Post Traumatic Stress Disorder*” which occurred in February 2010. Ms Boulton claimed her condition was a result of doing two jobs at once, being reassigned from an executive role to an administrative role, bullying and victimisation and further bullying in regards to submitting a complaint.

On 24 January 2014, Comcare denied liability in respect of “*Unspecified Personality Disorder*” and “*Major Depressive Disorder*”. Ms Boulton requested a review of this determination. On 23 July 2014, Comcare revoked its decision and substituted a determination that Ms Boulton was entitled to compensation for an “*aggravation of Major Depressive Disorder*” sustained on 15 November 2011, a condition to which no formal claim had been made.

The Bureau of Meteorology lodged an Application for Review in respect of Comcare’s decision. The question was raised as to whether Comcare had the power to make its decision dated 23 July 2014 as it appeared that Ms Boulton had not lodged a formal claim in accordance with section 54 of the SRC Act in respect of any condition sustained on 15 November 2011.

The Tribunal was required to consider:

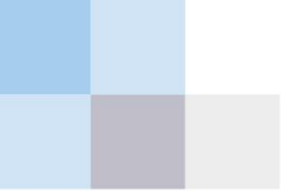
- 1) whether Ms Boulton had made a claim in the approved form in respect of an injury arising in November 2011; and
- 2) whether Ms Boulton’s claim for an aggravation of Major Depression Disorder could be considered to have been encompassed in her other claims for psychological conditions with a date of injury in September 2009.

### The Law

Section 54(2) of the SRC Act provides that a claim is made by giving a written notification in accordance with the approved form together with a medical certificate also in the approved form.

Section 53(1) states that notice needs to be given in writing of the injury to the relevant authority.

Section 54(5) provides that strict compliance with the approved form is not required and substantial compliance is sufficient.



The Tribunal considered the case of *Buhr v Comcare* [2007] FCA 575 for clarification of what would constitute an informal claim. This case highlighted that a claim can be deemed to have been made without a formal claim if the requirements of section 54 had been substantially complied with.

The Tribunal also considered the case of *Pradabsuk v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCAFC 189 which found that substantial compliance with the completion of a formal form is one thing but not lodging a form at all may be another.

## Conclusion

In considering whether the aggravation of Ms Boulton's Major Depressive Disorder could be considered as part of her original formal claim, the Tribunal relied upon Ms Boulton's timeline attached to her Supplementary Statement. It considered that the date and circumstances in which the 2009 injury was claimed to have been suffered could not be read to incorporate events occurring more than two years later. Further, there was nothing to suggest that Comcare reviewed the determination relating to the 2009 claim on its own motion. The available evidence suggested that the aggravation of Ms Boulton's Major Depressive Disorder was treated as a new claim and given a new claim reference by Comcare.

In considering whether Ms Boulton had submitted a claim informally in respect of the 2011 injury, the Tribunal was required to determine whether there had been substantial compliance under s54(5). The Tribunal followed the decisions in *Buhr* and *Pradabsuk* and stated that a written claim need not be made on the form approved by Comcare provided that it is in conformity with, or consistent with, the approved form, in the sense that it provides all of the relevant information.

The Tribunal placed weight on an email from Ms Boulton sent to Comcare on 30 July 2013. The Tribunal was satisfied that the email gave context to Ms Boulton's formal claim and was not as a basis for another claim under the SRC Act. Finally, the Tribunal found that even if any documents provided in the factual evidence could be considered an informal claim form, none were accompanied by a medical certificate and thus could not constitute a claim by reason of s54(2) (b).

The Tribunal set aside the reviewable decision and substituted a decision that compensation was not payable to Ms Boulton. The Tribunal found that Comcare could not determine liability until it received a claim, and no such claim was found to have been lodged.

## Lessons Learnt

The decision confirms that for an applicant to have lodged a claim under the SRC Act, the claim is not required to be formal but must be written, substantially comply with the SRC Act requirements and be accompanied by a medical certificate.

For more information on this article, please contact:

Brett Ablong  
Partner  
T: +61 (0) 8 9265 6001  
M: 0400 263 807  
brett.ablong@hbalegal.com

*Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.*