

## No pain, no gain: Does pain triggered at work give rise to a compensable aggravation of a pre-existing condition?

*Higgins v Linfox Australia Pty Ltd* [2015] AATA 843;

### Key Points

- A mere increase in pain does not constitute compensable aggravation under the SRC Act.

### Background

Mr Higgins suffered an injury as a result of a non-work related car accident in 2010. The accident resulted in Mr Higgins suffering a bulging disc in his neck and a partial thickness tear of the supraspinatus tendon in his left shoulder.

On 31 March 2013, while at work, Mr Higgins was using a soft bristled broom in his left hand to wash the back of some trucks. In his right hand he was holding a high pressure hose. To be able to reach all areas of the trucks, Mr Higgins had to extend his left arm as far as he could reach while at the same time scrubbing. To extend his reach, he also jumped as he did this, while still holding the high pressure hose in his right arm and scrubbing with his left. During this action Mr Higgins said that he felt a sharp pain in his left shoulder, and stopped what he was doing immediately.

An MRI scan was performed, which identified that Mr Higgins had a full thickness tear of the rotator cuff of his left shoulder. Mr Higgins completed a claim for workers' compensation on 17 April 2013, for a rotator cuff tear of the left shoulder.

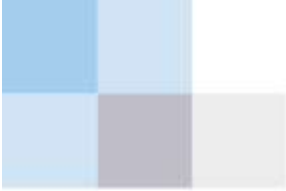
In a reviewable decision dated 13 August 2013, Linfox affirmed an earlier determination finding that it was not liable to pay compensation pursuant to section 14 of the SRC Act to Mr Higgins in respect of his claim of 17 April 2013. Mr Higgins sought further review at the Tribunal.

The Tribunal was required to consider two things. The first was whether or not Mr Higgins suffered a distinct injury on 31 March 2013, arising out of, or in the course of, his employment with Linfox. The second consideration was that if he did not suffer a distinct injury on this date, whether he suffered an aggravation of a pre-existing condition, arising out of, or in the course of, his employment with Linfox on that date.

### The Law

Section 14 of the SRC Act provides that an employer will be liable to pay compensation to an employee if an injury suffered at work results in death, incapacity for work or impairment.

Section 5A(1) of the SRC Act relevantly defines injury to mean either a physical or mental injury that arises out of, or in the course of, employment.



This includes an aggravation of a pre-existing condition, where the aggravation arises out of, or in the course of employment, whether or not the pre-existing condition arose out of, in in the course of employment.

## Conclusion

The Tribunal heard medical evidence from several expert medical practitioners, but preferred the evidence of Associate Professor Neil McGill (Consultant Rheumatologist). Associate Professor McGill examined Mr Higgins in December of 2014, finding it unlikely the activities of 31 March 2013 would have caused the extension of Mr Higgins long standing rotator cuff tear or significantly aggravated it. He considered that the activities on this date would have caused pain in the affected shoulder, but would not have caused the extension of the tear. The Tribunal agreed.

The Tribunal commented that when considering whether or not an aggravation had occurred it is important to note that it is not necessary for a pathological change to be present in a pre-existing injury to show that an aggravation had occurred. The question that needs to be asked is whether an aggravation has occurred if debilitating pain is brought on by an activity arising out of, or in the course of, employment? The question then arises as to whether mere pain constitutes an aggravation.

The Federal Court in *Commonwealth of Australia v Beattie* (1981) 35 ALR 369 considered just this. The Court gave an analogy of an employee with a broken leg in a cast. While at work, said employee would not be able to set his leg down without causing some sort of pain. That pain would indeed be considered to have arisen out of, or in the course of, his employment. However the pain is not a case of aggravation, instead it is just that: pain.

In Mr Higgins' case, the Tribunal relied on Associate Professor McGill's evidence, agreeing that an aggravation did not occur as it would not be expected that the sort of activity Mr Higgins was undertaking would cause or significantly aggravate the pre-existing tear.

## Lessons Learnt

This case highlights the importance of taking each case on face value. Although pain may in some situations be evidence of an aggravation, it is an important lesson to note that an increase in pain does not automatically give rise to an aggravation of a pre-existing condition.

## Contact

Claire Tota  
Associate  
Direct: +61 (0) 8 9265 6011  
claire.tota@hbalegal.com

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