

Breast reduction surgery: Cosmetic or necessary?

Howes and Comcare [2015] AATA 921

Key Points

- The Tribunal considered whether breast reduction surgery constituted reasonable medical treatment obtained in relation to the compensable injuries.
- The Tribunal found that in the circumstances, breast reduction surgery was not obtained in relation to the compensable injuries.

Background

Ms Howes commenced work at the Australian Taxation Office in August 2003. As a result of her consistent use of the computer, in April 2005, Ms Howes began suffering from intermittent neck pain. In July 2005, she had constant neck and shoulder pain. Ms Howe submitted a workers' compensation claim in September 2005. Comcare accepted liability for "*intervertebral disc disorder – cervical region, sprain of the shoulder and right arm, subacromial bursitis (right arm) and erosion of her teeth (caused by grinding her teeth at night in response to the pain).*"

Ms Howes claimed that the weight of her breasts increased the pain in her neck and right shoulder, and that she had also put on weight because of the medication she was taking. She sought opinions from various specialist and claimed that each doctor advised her that having a breast reduction would assist in minimising pain associated with her accepted injuries.

On 2 November 2009, Ms Howes underwent a breast reduction, the total cost of which was \$19,956.80. In 2012, Ms Howe claimed reimbursement for the cost of the breast reduction surgery under s 16 of the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). The claim was denied by Comcare on 22 August 2012.

The issue before the Tribunal was whether Comcare was liable under s 16 of the SRC Act to pay Ms Howes compensation for the costs associated with the surgery.

The Law

Section 16(1) of the SRC Act provides that where an employee suffers an injury, Comcare is liable to pay for medical treatment obtained in relation to the injury, provided that the treatment is reasonable in the circumstances.

In order for costs of medical treatment to be reimbursed, it must therefore be determined whether the surgery constituted medical treatment under the SRC Act; was obtained in relation to the compensable injuries; and was reasonable treatment in the circumstances.



Conclusion

Prior to surgery Ms Howes sought the advice of Dr William Coyle (Orthopaedic Surgeon). She claimed that prior to the surgery, he advised that breast reduction surgery might reduce her pain. The Tribunal found that there was no evidence other than Ms Howes' assertions that Dr Coyle gave her that advice.

Dr David Maxwell (Orthopaedic Surgeon) gave evidence at the hearing. Dr Maxwell's evidence was based upon Ms Howes' symptoms and the results of various x-rays and scans, taken of her cervical spine between 2005 and 2010. His view was that the breast reduction surgery would not have affected Ms Howes' neck and radicular pain.

Ms Howes reported that about a month after the surgery, she had continued to experience the symptoms, albeit to a lesser degree. Dr Maxwell provided evidence that the symptoms "*could resolve spontaneously and ...improve, or get worse for no particular reason*". The Tribunal therefore concluded that the surgery was not medical treatment obtained in relation to Ms Howes' compensable injuries. The surgery was not reasonable treatment in the circumstances and Comcare was not required to compensate Ms Howe for the surgery.

Lessons Learnt

Where an applicant requests compensation for medical treatment, particularly non-standard medical treatment, it pays to revisit the basic requirements at section 16. In this matter, the medical evidence was particularly persuasive.

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