

Is answering a question falsely enough to constitute a willful and false representation, under section 7(7) of the SRC Act?

McQueen-Thomson and K&S Freighters Pty Ltd [2016] AATA 510

Key Points

- Although Mr McQueen-Thomson did make an incorrect representation in his claim form, the Tribunal did not consider his representation to be willful and false.

Background

On 17 December 2012, Mr McQueen-Thomson suffered an injury to his right shoulder while delivering dry ice in Tullamarine. He was standing on the side of his truck when he lost his footing, due to the wet and slippery conditions, falling on the concrete. As a result of the incident, Mr McQueen-Thomson lodged a claim for workers' compensation, which K&S accepted.

Mr McQueen-Thomson subsequently returned to work performing his full time driving duties. However, whenever performing lifting tasks, he suffered pain in his right shoulder and would therefore rely on his left shoulder to bear the brunt of the weight.

In May 2014, Mr McQueen-Thomson developed left shoulder pain whilst pulling himself into the cabin of his truck. He reported the pain to be a "*sharp tooth-ache like pain*" and said that he would get the pain whenever he would do left shoulder lifting or get into the cabin of his truck.

On 5 June 2014, Mr McQueen-Thomson lodged a second claim for workers' compensation in respect of his left shoulder condition. At question 13, when asked "*have you ever had a similar symptom, injury or illness before, work related or otherwise*", Mr McQueen-Thomson answered no. Question 13 then directed Mr McQueen-Thomson to go to question 16, but he instead completed questions 14 and 15. Mr McQueen-Thomson's claim was denied by determination dated 30 July 2014, and affirmed by reviewable decision thereafter. He sought further review at the Tribunal.

The Law

If an employee makes a claim for compensation under the SRC Act, but has made a willful and false representation that he or she did not suffer, or had not previously suffered, from a condition that is the same as the claimed condition, then the condition will not be taken to be an injury pursuant to section 7(7) of the SRC Act.



Conclusion

K&S submitted to the Tribunal that the reviewable decision of 9 September 2014 should be affirmed on the basis that Mr McQueen-Thomson made a wilful and false representation on his claim form and was therefore precluded from receiving compensation pursuant to section 7(7) of the SRC Act.

Mr McQueen-Thomson conceded that answering no to question 13 on his claim for workers' compensation was incorrect, stating that it was as a result of confusion. Dr Damien Cremean, Senior Member, accepted Mr McQueen-Thomson's explanation, rejecting K&S's submission that the incorrect answer to question 13 was wilfully false.

The Tribunal revoked the reviewable decision of 9 September 2014, and found instead that liability should be accepted for the left shoulder injury.

Lesson Learnt

The expression of section 7(7) of the SRC Act clearly states that a representation must be both wilful and false. The burden is on the employer to show that an employee's representation satisfies the criteria and is not merely incorrect, as was the case here.

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