

Blurred lines: When does a medico-legal report serve as medical treatment, if ever?

Lockwood and Telstra Corporation Limited (Compensation) [2016]
AATA 1053

Key Points

- If there is an accepted claim for worker's compensation, can a medico-legal report have a dual purpose? That is, can it act not only as a medico legal opinion, but also medical treatment?
- The Tribunal considered this issue in circumstances where an injured worker sought to recoup the costs of such a report.

Background

Mr Lockwood lodged a claim for workers' compensation in 2014 in respect of "*bilateral industrial deafness*" which he claimed to have sustained in April 1997. Telstra accepted liability for Mr Lockwood's claim in 2015 and compensation was paid under the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (**the SRC Act**).

Relevantly, on 2 September 2014, Mr Lockwood's solicitor briefed Dr Tom Frayne (ENT Surgeon), and requested a permanent impairment assessment.

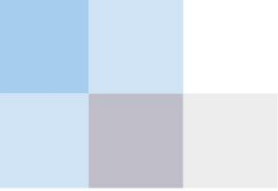
In response to the brief, Dr Frayne provided a medico-legal report in which he recorded that he had assessed Mr Lockwood on 30 September 2014 "... *for a permanent impairment assessment and report*". Dr Frayne noted in his report that Mr Lockwood's solicitor had "... *requested an assessment of permanent impairment for a hearing loss claim*". The invoice for Mr Frayne's report totalled \$1,097.80.

On 22 October 2014, Mr Lockwood claimed the cost of Dr Frayne's medical report from Telstra. This claim was rejected on the basis that the applicant had failed to establish that the services provided by Dr Frayne constituted reasonable medical treatment pursuant to section 16 of the SRC Act. This decision was affirmed by reviewable decision and Mr Lockwood sought further review at the AAT.

The Law

Section 16 of the SRC Act deals with the question of compensation in respect of medical expenses. Subsection 16(1) provides that:

"Where an employee suffers an injury, Comcare is liable to pay, in respect of the cost of medical treatment obtained in relation to the injury (being treatment that it was



reasonable for the employee to obtain in the circumstances), compensation of such amount as Comcare determines is appropriate to that medical treatment”.

Section 4 of the SRC Act defines medical treatment. Mr Lockwood relied on subsections 4(b) and (e) to define medical treatment, which provide that medical treatment means:

- b) *“therapeutic treatment obtained at the direction of a legally qualified medical practitioner; or*
- ...
- e) *an examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally qualified medical practitioner or dentist and the provision of a report in respect of such an examination, test or analysis...”*

(our emphasis)

Further, section 4 provides a definition of therapeutic treatment which “... *includes an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury*”.

Conclusion

Mr Lockwood submitted that the medico-legal assessment and report provided by Dr Frayne should be considered medical treatment as defined by subsections 4(b) or (e) of the SRC Act.


Telstra submitted that the medico-legal assessment and report of Dr Frayne were solely for the purpose of assisting Mr Lockwood’s solicitors in advising him as to his compensation entitlements and the pursuit of those entitlements.

The Tribunal affirmed the decision under review, finding that the sole purpose of engaging Dr Frayne was for the permanent impairment assessment and not to provide medical treatment, as required for compensation to be payable under section 16.

Lessons Learnt

Medico-legal reports are generally expensive reports to obtain and in many cases, numerous medico-legal reports are obtained in relation to a single claim.

Occasionally, injured workers will seek to claim the costs of a medico-legal report and it is important that these claims are carefully scrutinised by claims officers. Based on this case and others, employers have solid grounds upon which to deny liability to pay compensation for medico-legal reports pursuant to section 16.





Contact

For more information on this article, please contact:

Naomi Adams
Associate
Direct: +61 (0) 8 9265 6011
naomi.adams@hbalegal.com

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