

Tribunal sorts out SRC Act aggravation principles *Almeida and Australian Postal Corporation* [2017] AATA 1001

Key Points

- Ms Almeida, a Delivery Officer, complained of straining her lower back, right elbow and left knee while sorting some large mail in the course of her employment.
- The Tribunal found there was only a temporal, and not causal, connection between incident on 9 October 2014 and Ms Almeida's symptoms. As such, there was no aggravation or exacerbation of her conditions.

Background

Ms Almeida worked for Australia Post as a Delivery Officer sorting mail. On 9 October 2014, she was sorting some large mail when she felt pain in her lower back, right elbow and left knee. She attended a GP, who diagnosed '*lumbar back strain, right elbow strain, left knee strain*'. Ms Almeida lodged a claim for compensation on 24 November 2014 for this condition, alleging it was sustained on that date.

On 7 January 2015 Australia Post issued a determination denying liability on the basis that Ms Almeida's condition did not arise out of, or in the course of, her employment. The determination was affirmed by reviewable decision. Ms Almeida then lodged an application for review with the Tribunal.

The law

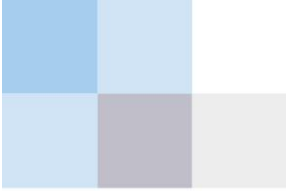
Pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act (SRC Act)*, an employer is liable to pay compensation for any injury suffered by an employee if the injury results in death, incapacity for work, or impairment. An injury, for the purposes of the Act, includes a disease as defined in section 5B.

Section 5B relevantly defines a disease as any ailment, or aggravation of such an ailment, that was contributed to, to a significant degree, by the employee's employment.

In *Re Cooper and Comcare* [2010] AATA 625, the Tribunal concluded that for an aggravation of an ailment to occur for the purposes of the SRC Act, there must be a causal, and not merely a temporal, connection between an employee's symptoms and an act occurring in the course of employment.

The Full Federal Court judgment of *Commonwealth v Beattie* [1981] FCA 88 held that where an employee who has a pre-existing condition carries out work and as a result suffers pain, that will not necessarily always amount to an aggravation. Conversely, pain brought on by work activity may constitute an aggravation of a pre-existing injury even though no pathological change takes place.

The Tribunal also referenced *Re Balacki and Comcare* [2013] AATA 768 to illustrate the fact that an employee may experience symptoms at work and associate those symptoms with



their duties, but may also experience symptoms away from work when performing non-work related tasks. That employee's symptoms may be said, at work, to be a consequence and not an aggravation of the employee's condition.

Conclusion

The Tribunal first considered the appropriate diagnosis for Ms Almeida's condition(s). On reviewing Ms Almeida's medical history, it accepted evidence from her GP, treating orthopaedic surgeons and radiological scans which indicated she suffered from a mild degenerative change in the lumbar spine. The Tribunal preferred evidence of treating Rheumatologists suggesting Ms Almeida initially suffered tenderness or a minor strain in the right elbow, which had had largely resolved. In relation to her left knee condition, the Tribunal found that Ms Almeida suffered from a degenerative lateral meniscus of the left knee.

Ms Almeida's evidence contained a number of inconsistencies, particularly in relation to the timing of her symptoms and the reports of treating practitioners. She denied that she had made allegations of harassment and being unhappy at work in the period leading up to 9 October 2014, yet under cross-examination in the face of documentary evidence agreed that she had complained of harassment and an alleged assault and that her manager had resolved the issue. In her request for review of the determination, Ms Almeida stated that the onset of her pain was gradual and not caused by a one-off incident. This contradicted her evidence given at hearing.


Most importantly, Ms Almeida stated that she had no recollection of experiencing problems with her lower back, right elbow and left knee prior to 9 October 2014, yet the clinical notes of her general practitioners clearly demonstrated she had previously been referred for x-rays of both knees and had complained of severe back pain in the past.

The Tribunal found that Ms Almeida had pre-existing issues with her lower back and her left knee. Because of the inconsistencies in her evidence, little weight was placed on her account of the circumstances under which she claimed she first experienced symptoms.

Evidence from treating Orthopaedic Surgeons, that simultaneous injuries to the lower back, right elbow and left knee would occur only as a result of an accident or a fall (which Ms Almeida did not have), was preferred. It was reasoned that if Ms Almeida's symptoms persisted or became worse after ceasing work, the pain would be expected to resolve or at least be reduced if there had been a causal connection with her work.

The Tribunal also found that it was more than likely Ms Almeida's conditions had been '*medicalised*' by her frequent desire for unnecessary investigations and largely subjective symptoms rather than measurable symptoms.

Applying the temporal-causal rationale in *Cooper*, the Tribunal found that while there may have been a temporal connection between the pain reported by Ms Almeida and the work incident on 9 October 2014, there was not a causal connection. As such, there was no aggravation or exacerbation of her conditions.





Lessons Learnt

This Tribunal matter serves as a reminder that, where an employee suffers from a pre-existing condition and experiences symptoms of that condition while undertaking tasks in the course of their employment, that does not mean each and every work task or incident will amount to an aggravation of that condition. An aggravation requires a causal, and not merely consequential, connection between employment and onset of symptoms for an aggravation to arise.

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