

## Trick or treatment: Section 16 “in relation to” test goes under the knife

*Gharakhan and Comcare* [2017] AATA 351

### Key Points

- The meaning of “medical treatment obtained in relation to the injury” within section 16 of the SRC Act was considered in this Administrative Appeals Tribunal matter, which involved two separate incidents nine years apart.
- Comcare was found liable to pay compensation for surgery necessitated by an incident in 2013, by virtue of the fact that incident was caused by instability resulting from an accepted condition in 2004.
- This case illustrates a situation in which the AAT may consider medical treatment relates to a compensable injury, even where the incident which caused the compensable injury was not the same as the incident which gave rise to the need for treatment.

### Background

Ms Gharakhan was employed at the Refugee Review Tribunal and the Administrative Appeals Tribunal. On 23 March 2004, while pushing a heavy document trolley which had a defective wheel, Ms Gharakhan suffered an injury to her lower back and left leg. On 17 June 2004, Comcare accepted liability to pay compensation for ‘sciatica’ pursuant to s 14 of the SRC Act.

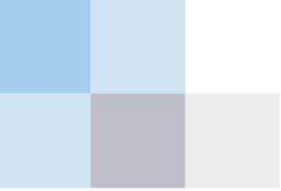
The initial imaging revealed pathology at the L4/5 level. Various surgeries on Ms Gharakhan’s L4/5 disc were performed between 2006 and 2011. Further imaging in 2011 showed new pathology at L2/3, specifically minor disc bulging.

In 2013, while travelling in Iran, Ms Gharakhan’s leg gave way and she fell on her right buttock and hip. Imaging revealed a fracture at L2/3. Ms Gharakhan continued to experience low back and leg pain, and on 2 March 2015, Comcare accepted liability to pay for bilateral L2/3 facet joint block injections pursuant to section 16. Surgery was performed on Ms Gharakhan’s L2/3 spine on 5 June 2015.

By way of determination dated 17 June 2015, Comcare denied liability to pay compensation pursuant to section 16 of the SRC Act for the L2/3 surgery, because the surgery was unrelated to Ms Gharakhan’s accepted condition of “sciatica” sustained in 2004. This was affirmed by reviewable decision, and Ms Gharakhan sought further review at the Tribunal.

### The law

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



The issue to be determined, therefore, was whether the L2/3 surgery on 5 June 2015 was obtained in relation to the 2004 injury, and if so, whether the medical treatment was reasonable for Ms Gharakhan to obtain in the circumstances.

Medical causation was the primary issue in this matter. Ms Gharakhan's treating Orthopaedic Surgeon attributed her L2/3 disc issue to the 2004 injury 'more than' the 2013 fall. Comcare's expert disagreed. Both experts agreed that but for the 2013 fall, there would have been no need for the L2/3 surgery in 2015, and that this surgery was reasonably necessary to treat Ms Gharakhan's symptoms.

The Tribunal found that whether or not the L2/3 surgery in 2015 was obtained in relation to the 2004 or 2013 injury was not a question of any direct causal link, but rather required an analysis of the chain of medical causation during that period. The crucial determination made by the Tribunal was that the 2004 injury caused instability in Ms Gharakhan's lumbar spine. This instability then resulted in the fall in 2013, and that fall necessitated the surgery at L2/3.

## Conclusion

The Tribunal accepted that the only condition for which Comcare was liable was the 2004 sciatica injury.

It found Comcare liable to pay the costs of the 2015 L2/3 surgery pursuant to section 16 of the SRC Act.

## Lessons Learnt

On face value, it would be easy to assume that treatment arising from a particular incident may not be causally related to an injury arising out of a separate earlier incident. This case serves to prove that assumptions of that kind may be mistaken. The important consideration when determining entitlements pursuant to section 16 is whether the treatment is in some way causally related to the compensable condition.

## Contact:

James Makowiak  
Solicitor  
Direct: +61 (2) 9376 1150  
[james.makowiak@hbalegal.com](mailto:james.makowiak@hbalegal.com)

Nathan Hepple  
Partner  
Direct: +61 (2) 9376 1188  
[nathan.hepple@hbalegal.com](mailto:nathan.hepple@hbalegal.com)

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