

Credibility issues and delay scupper claim

Eleftheriou and Australian Postal Corporation [2017] AATA 1158

Key Points

- The Tribunal was required to consider whether Mr Eleftheriou had suffered an ‘injury’ or ‘aggravation of an injury’, **and** whether his delay in providing notice of the alleged injury (two and a half years) was not ‘as soon as practicable’ and prejudicial to Australia Post.
- In a big win for the employer, the Tribunal found against the employee on both counts.

Background

Mr Eleftheriou, a part-time Postal Delivery Officer employed by Australia Post, alleged that he sustained a back injury on 30 June 2014, however he failed to lodge an incident report. He claimed that he sustained a further back injury on 19 September 2014. This time he lodged an incident report shortly afterwards stating that he had sustained a “*possible soft tissue/disc damage*” but despite the previous incident and the medical records indicating that he had undergone an x-ray of his lumbosacral spine and both hips on 13 September 2002, denied this was an aggravation of a previous injury.

On 3 October 2014, Mr Eleftheriou made a claim for the 19 September 2014 incident, liability for which was denied. Mr Eleftheriou waited until 21 December 2016 to request reconsideration of the 2014 decision. Again, liability was denied.

There were several credibility issues including an unwillingness to return to employment with Australia Post despite being certified fit for part-time work and compelling evidence from Mr Eleftheriou’s managers that he was motivated to obtain a redundancy package or payout.

The Law

Sections 5A and 5B of the SRC Act addresses what constitutes an ‘injury’ and a ‘disease’ for the purposes of the SRC Act.

Section 7(7) of the SRC Act provides that a disease, or aggravation of a disease, suffered by an employee who makes a wilful and false representation that they did not suffer, or had not previously suffered, from that disease is not taken to be a compensable condition under the SRC Act.

Section 53 of the SRC Act requires an employee to provide notice of an injury ‘as soon as practicable’ after they become aware of the injury, however where the relevant authority would not, by reason of the failure to provide notice, be prejudiced if the notice were treated as sufficient notice, the notice shall be taken to have been given.



Conclusion

Mr Eleftheriou relied on medical evidence from his treating GP and a number of independent medical experts who felt that he had sustained either a ligamentous injury to his lumbar spine or a temporary aggravation of pre-existing lumbar degeneration.

However, the Facility Manager, acting Operations Manager and acting Team Leader from Mr Eleftheriou's depot all gave adamant evidence that Mr Eleftheriou had not mentioned any incident or injury prior to making his claim for workers' compensation in September 2014.

Two experts called by Australia Post also concluded that the workplace incidents could not have occurred in the manner described by Mr Eleftheriou.

The Tribunal determined that Mr Eleftheriou's credibility was "*dubious*" at best, in particular that his explanation as to why he had not filled in incident reports in relation to the 30 June 2014 incident was unacceptable and the two and a half year delay in lodging the incident report failed to meet the requirements of section 53 of the SRC Act and was prejudicial to Australia Post as it made it much more difficult to investigate the alleged incidents. Further, the Tribunal determined that Mr Eleftheriou's lower back pain was a pre-existing ailment and that there was no evidence to support a finding that his employment had significantly contributed to an aggravation of this pre-existing ailment.

Lessons Learnt

This decision highlights the fact that where there are significant delays in reporting incidents, licensees can sustainably reject claims. This is particularly the case where the employee has credibility issues and there is good evidence that any incident was not contemporaneously reported.

Contact:

Andrew Gulyas
Solicitor
Direct: +61 (0) 2 9376 1122
andrew.gulyas@hbalegal.com

Nathan Hepple
Partner
Direct: +61 (0) 2 9376 1188
nathan.hepple@hbalegal.com

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