

A shift in theory on what causes hernias *Portors and Comcare [2017] AATA 2166 13 November 2017*

Key Points

- The Tribunal was required to consider whether Mr Portors was entitled to compensation for medical treatment and incapacity to work in relation to an accepted hernia condition.
- The Tribunal found in favour of the employer that there was no liability to pay such compensation.
- The Tribunal went even further to question whether liability should ever have been accepted in the first instance.

Background

Mr Ivan Portors was employed as a storeman/labourer with The Department of Health. In July 2002, Mr Portors was carrying a heavy conference table up three flights of stairs when he felt pain. Mr Portors commenced sick leave and submitted a claim for worker's compensation.

On 8 October 2002, liability was accepted in respect of an inguinal hernia (groin area). Mr Portors accepted a voluntary redundancy in April 2003. On 9 September 2010, liability was extended to include an umbilical hernia as a secondary condition to his accepted groin hernia.

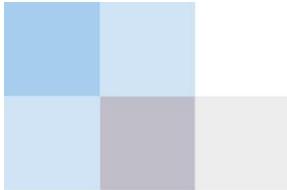
In On 8 May 2015, liability to pay compensation was denied under section 16 and 19 for any ongoing amounts of compensation. Mr Portors appealed this decision.

Evidence was presented to the Tribunal that Mr Portors had a history of abdominal pain which preceded the table lifting incident. This included presenting to his General Practitioner and the Hospital Emergency Department on a number of occasions, due to stomach pain.

Comcare submitted to the Tribunal that Mr Portors no longer suffered the effects of his accepted compensable condition and argued that he had never suffered such a compensable condition because the evidence suggested that lifting the table on 10 July 2002 neither caused a hernia nor aggravated a hernia.

Conclusion

Professor O'Rourke gave evidence to the Tribunal that there had been a shift in the medical consensus in recent years in relation to the causation of hernia injuries.



The Tribunal concluded that the most likely diagnosis of Mr Portors current medical condition was neuropathic post-surgical pain syndrome caused by the surgeries carried out between October 2002 and May 2006. The Tribunal noted that the weight of the medical evidence leaned strongly towards the conclusion that lifting heavy weights is not likely to cause a hernia, nor is it likely to aggravate a pre-existing hernia.

The Tribunal found that the factual basis on which the acceptance of liability was made should now be set aside in favour of a different factual finding. The Tribunal was satisfied that Mr Portors did not suffer a work place injury in July 2002. His employment did not cause him to suffer the hernia, nor did it aggravate a hernia condition.

The Tribunal found that without a work place derived hernia condition, the other links in the causation chain were useless in establishing any entitlement compensation.

The effect of the conclusion of the Tribunal did not disturb Comcare's liability under section 14 for the accepted hernia condition. However, the conclusion drawn by the Tribunal facilitated a determination that Comcare had no further liability to pay compensation under sections 16 and 19.

Lessons Learnt

This case indicates that the current medical position that lifting can cause hernias may be outdated. This should be approached with some caution however, as this is but one decision based on the particular expert evidence and medical history presented.

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