

‘Significant Contributing Factor’ no more *Shales and Commonwealth Bank of Australia* [2017] AATA 1369

Key Points

- Commonwealth Bank defeats permanent impairment and non-economic loss claim.
- The Tribunal was not satisfied that Ms Shales continued to suffer from an injury that was significantly contributed to by her employment.

Background

Ms Shales worked for the Commonwealth Bank of Australia (**CBA**). On 25 November 2014, Ms Shales made a claim for a psychological injury allegedly caused by workplace bullying.

The CBA had initially denied liability for Ms Shales’ claim but, following a review of own motion, accepted liability for “anxiety and depressed mood”.

On 15 September 2015, Ms Shales lodged a claim for permanent impairment and non-economic loss. The CBA denied the claim on the basis that Ms Shales’ had not met the 10% threshold required under subsection 24(7) of the *Safety Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**).

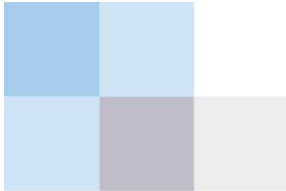
The Decision

The Tribunal found that Ms Shales’ current symptoms no longer related to a psychological condition that was significantly contributed to by her employment at the CBA, as required under section 5A(1)(a).

In arriving at this conclusion, the Tribunal accepted psychiatric evidence from Dr Gemma Edwards-Smith (Psychiatrist), who stated that Ms Shales’ work stress was only *one* contributing factor to her psychological condition. The factual and medical evidence indicated that there were a number of additional personal and psychosocial stressors unrelated to her employment, which contributed to her psychological condition, including relationship issues and fertility issues.

Ms Shales relied upon evidence from Dr Nick De Felice (Psychiatrist), that there were no pre-existing psychological issues and that the applicant continued to suffer from work-related adjustment disorder. Clinical notes provided by Ms Shales’ treating practitioners under summons contradicted this assumption, as they showed that Ms Shales had a long history of psychological issues which were unrelated to her employment.

The Tribunal found that there was no medical evidence which showed that Ms Shales’ condition continued to be contributed to, to a significant degree, by her employment at the CBA. Further, the Tribunal found that the only additional evidence available to support Ms Shales’ claim was her own self-



reporting of her symptoms. Given the contradictions between Ms Shales' testimony and the medical evidence before the Tribunal, the Tribunal placed no real reliance on her self-reported symptoms. The Tribunal preferred the evidence of Dr Edwards-Smith, that Ms Shales' condition was pre-existing and one of a number of contributing factors, as she had reviewed Ms Shales' medical history. Ms Shales was therefore not entitled to receive compensation for permanent impairment and non-economic loss.

Lessons Learnt

An employees' employment must be a significant contributing factor for the claimed illness to be considered a disease which is related to his or her employment. If employment is one of a myriad of other issues, which is not "significant" in its own right, the illness will not be considered to be employment related.

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