

Post-Traumatic ‘Significant Contribution’: Tribunal revisits psychological injuries caused by multiple events

Sheehan and Comcare
[2017] AATA 2777

Key Points

- While working for the Department of Immigration in Zimbabwe, the applicant heard news that her partner had been accused of wanting to bomb the Australian consulate in Dubai
- Nine days later, while working, the applicant was pulled over by Zimbabwean police and held at a police station until she paid a fine for an apparent traffic offence
- The Tribunal held that, on the balance of probabilities, the incident with police significantly contributed to the onset the applicant’s mental injury
- It was irrelevant whether the accusation made against her partner had contributed to the development of the condition

Background

Fiona Sheehan was an employee of the Department of Immigration and Border Protection (**Department**). Her partner, Mark Anstee, was a fellow employee of the Department. In 2014, Ms Sheehan was sent to Zimbabwe in the course of her employment. At the same time, Mr Anstee was working at the Australian consulate in Dubai. On 9 March 2014 Mr Anstee told Ms Sheehan that he had been accused by colleagues of planning to bomb the consulate and had been sent home from work. A few days later, he fled Dubai for Germany.

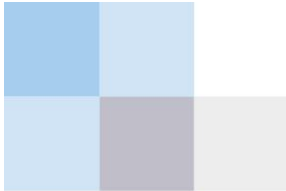
On 18 March 2014, Ms Sheehan was driving through Harare, Zimbabwe when she was flagged down by police who took her to a police station where she was held until she paid a fine for a supposed traffic offence. Several days later, she was informed that the apartment she shared with her partner in Dubai had been entered by a staff member at the consulate.

On 27 March 2014 Ms Sheehan returned to Australia and attended a meeting at the Department’s offices in Canberra. She made a public interest disclosure regarding the events in Dubai involving her partner. She left the meeting distressed. It was subsequently revealed that the terrorism allegation directed at Mr Anstee was also directed at her. After a two year endeavour, both Ms Sheehan and Mr Anstee cleared their names and were issued with an apology from the Department.

Ms Sheehan lodged a claim for workers compensation, claiming that she suffered an Adjustment Disorder on 9 March 2014, the date she first heard of the accusation against Mr Anstee. Comcare denied liability and Ms Sheehan sought administrative review of this decision by the Tribunal.

The law

The Tribunal was presented with clear evidence that Ms Sheehan suffered a mental illness. Following a review of the evidence, the Tribunal accepted the diagnosis of Post-Traumatic Stress Disorder (**PTSD**).



The issue for the Tribunal was whether Ms Sheehan's condition satisfied the terms of section 5B of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the Act**); namely whether the condition was contributed to, to a significant degree, by her employment by the Department.

The parties agreed on several factors which may have contributed to Ms Sheehan's condition, some related to her employment with the Department, others not. The two major factors were the accusations of terrorism against Mr Anstee (on 9 March 2014), and the incident with the Harare police (on 18 March 2014).

The Tribunal did not consider the accusation against Mr Anstee to be employment-related. It did accept that the Harare police incident was employment-related, as Ms Sheehan was travelling between two buildings belonging to the Department. It was accepted by the parties that these two incidents both contributed *to some degree* to the development of her illness.

Tracing Ms Sheehan's PTSD in reverse chronological order, the Tribunal endorsed the following comment from the decision of *Costantine and Comcare* [2015] AATA 645:

The Tribunal is entitled to consider the course of a claimed condition after the date on which it appears to have occurred, noting the insights that course might offer to the origins of the condition.

Having examined a mass of medical evidence, the Tribunal found that Ms Sheehan's learning of the accusations against Mr Anstee on 9 March 2014 had 'stressed' her, but that it was the incident involving the Zimbabwean police on 18 March 2014 that had caused the onset of her PTSD.

Applying *Smith v Comcare* [2013] FCAFC 65, the Tribunal reasoned that it was immaterial for whether the accusations against Mr Anstee contributed significantly to Ms Sheehan's illness because, even if it did, Ms Sheehan would be entitled to compensation if the Harare police incident *also* contributed significantly to the onset of her PTSD.


Conclusion

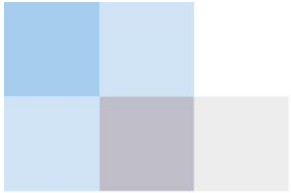
The Tribunal held that, on the balance of probabilities, the Harare police incident did contribute significantly to the development of Ms Sheehan's PTSD. Having established the date of this incident as being the date of the injury, the Tribunal found that later, subsequent events (such as the searching of her apartment in Dubai and the meeting held when she returned to Australia) could not have contributed to that injury.

Lessons Learnt

At first blush, this decision would appear generous to the applicant. However, one must remember that the requirements of causation in federal workers' compensation are deliberately generous.

If an applicant experiences a number of traumatic events culminating in the onset or development of a condition, it is necessary only for one of those events, occurring in the course of employment, to have significantly contributed to the development of the condition for the respondent employer to be found liable.





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