

Tribunal lacks jurisdiction to deal with evolving diagnosis *Solman and Comcare* [2018] AATA 6

Key Points

- Ms Solman sustained a neck sprain injury, for which she had an accepted claim for workers' compensation.
- Ms Solman's diagnosis changed over time to a degenerative condition and the Tribunal was required to consider whether it had jurisdiction to hear her claim.

Background

In 2004, Ms Solman injured her neck when she slipped over while trying to enter her car in the rain and hit her head. Ms Solman submitted a claim for workers' compensation. Comcare accepted a claim for "neck sprain".

In early 2013, Ms Solman underwent fusion surgery on her neck. Comcare accepted liability to pay compensation for the cost of surgery. In December 2015, Ms Solman lodged a claim for permanent impairment and non-economic loss. In early 2016, Comcare denied liability for this claim.

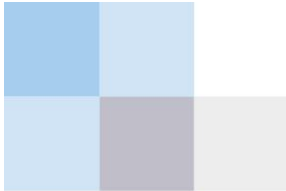
On 19 April 2016, Comcare issued a determination ceasing liability to pay compensation for Ms Solman's neck sprain condition.

The Decision

Ms Solman alleged that following the 2004 accident, she suffered intermittent pain in her neck and sometimes through her shoulders. Ms Solman contended that she continued to experience pain, which intensified in 2012, for which she was prescribed cortisone injections, and subsequently underwent surgery. Ms Solman also advanced the argument that her present entitlement to compensation arose as a result of the spinal fusion surgery or an aggravation of cervical spondylosis.

Comcare relied upon Ms Solman's medical records, which showed that in the 50 or so doctors visits made by Ms Solman, between July 2005 and the beginning of September 2012, no reference was made to her neck condition. In September 2012, Ms Solman began to complain of left shoulder pain. In a report dated 23 October 2012, Dr Ow-Yang (Neurosurgeon) diagnosed Ms Solman as suffering "*quite severe left brachalgia*" and reported that the applicant had begun to experience symptoms six weeks prior.

Comcare relied upon the medical report provided by Dr Gautram Kurana (Neurosurgeon), who reported that the applicant had advised that she had been "*overall okay between 2004 and 2012*". Dr Kurana



diagnosed the applicant as suffering from “*symptomatic cervical radiculopathy, progressive, refractory medical and conservative management and C5/6 and C6/7 predominant spondylosis*”, which was found to be largely degenerative in nature. Dr Mohamad Mourad (Orthopaedic Surgeon) opined that the incident only resulted in a temporary aggravation and Ms Solman’s employment did not continue to contribute to her condition.

Comcare contended that the neck sprain condition was only temporary, and its effects ceased about a year following the incident. Pursuant to the authority of *Telstra Corporation Ltd v Hannaford* (2006) 151 FCR 253, had made a new finding that Ms Solman ceased suffering the effects of her 2004 injury on or around 13 July 2005.

The Tribunal found that if the condition from which Ms Solman was suffering was different to the accepted injury, it did not have jurisdiction to deal with any claims made in relation to that condition, as it had not passed through the three-tier reconsideration process.

The Tribunal found that Ms Solman was asymptomatic between 2005 and 2012, and the medical evidence was unanimous in that she now suffered either from cervical spondylosis or from an arthritic condition which was degenerative in nature. Accordingly, that the ailment was different to the accepted injury. The Tribunal therefore affirmed Comcare’s decision. Further, the Tribunal found that Ms Solman had not suffered permanent impairment as a result of her accepted injury, and therefore affirmed Comcare’s decision.

Lessons Learnt

Solman is a good reminder that the Tribunal does not have jurisdiction to determine claims in respect of injuries that are significantly different to the accepted injury. However, more practically the case shows that caution should be shown in accepting liability for major treatment where the accepted claim was for a minor injury.

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