

Reasonable Administrative Action – Unreasonable? *Green and Comcare* [2018] AATA 1266

Key Points

- The Tribunal was required to consider whether a claim from a Safety Officer employed by the Department of Defence could be denied using the reasonable administrative action defence.
- The employer relied on two incidents that it alleged fell within the reasonable administrative action exclusion.
- The Tribunal found that one incident was reasonable but the other was not and denied the claim.

Background

On 5 February 2016, Mr Green submitted a claim for workers' compensation in respect of "anxiety", which he alleged was caused by his employment. Liability to pay compensation was denied on the basis that the condition was contributed to, by "reasonable administrative action" and thus excluded by section 5A(1) of the Act.

Mr Green appealed that decision to the Administrative Appeals Tribunal.

Mr Green claimed that he suffered significant workplace stress following the arrival of a Commander Doble and a Captain Chandler in February 2014. Mr Green alleged that following a difficult meeting with Captain Chandler in March 2015 he began feeling worse and developed psychological symptoms which caused him to attend his general practitioner, Dr Bransgrove who gave him a referral to his psychiatrist, Dr Murray.

The Tribunal examined Mr Green's medical history and found that Mr Green had avoided providing information on personal matters such as other health problems and domestic issues that could have contributed to his psychological symptoms. Notwithstanding the difficulties in his presentation of events, the Tribunal found that Mr Green had suffered a psychological condition for the purpose of the SRC Act, with an onset of approximately February 2016.

The employer submitted that the condition was caused by the following incidents which constituted reasonable administrative action:

1. Discussions on 16 December 2015 with Commander Doble and Mr Green; and
2. The employer contacting Mr Green in February 2016 in an attempt to arrange a meeting with Captain Chandler and Mr Green.



Performance Exchange 16 December 2015

On 16 December 2015, a meeting with Commander Doble and Mr Green was held with the primary objective to identify the appropriate Key Expected Results (KERs) in order to finalise Mr Green's performance agreement for the following year. Mr Green indicated that following the meeting he felt depressed and suffered shortness of breath and panic attacks.

The Tribunal found that this meeting was necessary in the context of Mr Green's continuing employment and was satisfied that it constituted reasonable administrative action.

Evidence was presented to the Tribunal that the meeting did not progress in a manner as intended by either party, due to their strained relationship. The Tribunal found that the primary purpose of the meeting was not achieved and as such the Tribunal was not satisfied that the meeting could be considered to have been conducted in a reasonable manner and hence that the exclusion was not engaged for this incident.

February 2016

In February 2016, the Department of Defence attempted to arrange a meeting between Captain Chandler and Mr Green to address Mr Green's performance issues in the workplace. The Respondent contended that the correspondence which took place to attempt to arrange the meeting was reasonable administrative action.

Mr Green submitted that the proposed meeting never took place so there could be no administrative action.


The Tribunal was satisfied that the request for a meeting with Captain Chandler and the associated correspondence was an administrative action, and was not only reasonable, but in fact necessary in respect of Mr Green's continuing employment. The request for a meeting and the associated email correspondence was considered by the Tribunal to be reasonable administrative action, taken in a reasonable manner in respect of Mr Green's employment.

The Tribunal found that the administrative action caused a sudden deterioration in Mr Green's psychological symptoms and therefore, the Tribunal was satisfied that Mr Green's ailment was contributed to, to a significant degree by the reasonable administrative action taken in a reasonable manner.

The Tribunal considered the authority in *Comcare v Martin* [2016] HCA43:339, and found that there was a clear temporal relationship between the administrative action and Mr Green's ailment with no other reasonable explanation to account for the change in his psychological symptoms and behaviour. The precise reason as to why the administrative action should have had such significant impact on Mr Green's mental health was, in the Tribunal's view, unclear and open to speculation. However, the Tribunal concluded that Mr Green would not have suffered a disease if the administrative action had not been taken.

The Decision

The Tribunal found that Mr Green's disease was suffered as a result of reasonable administrative action taken in a reasonable manner and therefore was not an injury for the purposes of section 5A(1) of the Act. The decision to deny liability for the psychological condition was affirmed.





Lessons Learnt

A worker may point to numerous stresses at work that caused a decline in mental health. Before the administrative action defence can be applied to deny liability, the decision maker needs to assess the evidence to identify the precise date when the condition worsened and the exact events that lead to that deterioration.

The element of reasonableness is essential for the administrative action defence to apply. The Tribunal's failure to characterise the performance appraisal meeting as reasonable, demonstrates that it will take a relatively stringent approach to the conduct required of employers.

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