

Notice of a claim must be given – no exceptions for detective Leach and Comcare [2018] AATA 1632

Key Points

- The Tribunal was required to consider whether a claim for a psychological injury could be denied because the employee had not given notice of his injury as soon as practicable after he had become aware of it.
- The Tribunal found in favour of the employer.

Background

Mr Leach was a detective employed by the Australian Federal Police (AFP). The majority of the applicant's work was in organised crime and drug related areas.

On 23 May 1997, the applicant's employment was suspended based on suspicions that he had committed a disciplinary offence, being threats of physical violence against colleagues, during a security interview on 8 April 1997. On 21 November 1997, the applicant's position was made redundant.

The applicant did not submit a claim for workers' compensation until 8 March 2016. The claim was denied on the basis that the applicant had not given notice of the injury as soon as practicable after he had become aware of it.

Consideration

The applicant submitted that in around October 1996 when attending a training course in Canberra, he began to feel the first signs of a psychological injury. He thought that this would ruin his career and he remained in denial. At that time, the applicant sought treatment from an AFP psychologist but asked that the treatment remain private as he was concerned about such treatment negatively affecting his career prospects.

The applicant argued that he was ignorant of his right to make a claim for compensation because he did not think that a psychological condition was considered a valid injury. He also argued that the AFP had been notified of the injury at the time and failed to inform Comcare.

The respondent submitted there was no evidence to establish that the applicant gave notice of his condition prior to lodging a claim. The respondent contended that giving notice of his psychological condition to the AFP psychologist cannot constitute notice within the meaning of the SRC Act. The respondent argued that it had been prejudiced by the applicant's failure to give notice as the delay resulted in the loss of opportunity to obtain contemporaneous factual and medical evidence.



The Law

Section 53 of the SRC Act states that notice of an injury must be given to the relevant authority as soon as practicable after the employee becomes aware of the injury.

There are a number of exceptions set out in section 53 including ignorance, mistake or any other reasonable cause.

The Decision

The Tribunal found that:

- No notice of the injury had been given
- The Respondent was prejudiced
- No exceptions applied

The Tribunal found that it was not plausible that the applicant was unaware by ignorance or mistake of his rights to claim compensation until he gave notice in 2016. This is because the applicant had a colleague who had made a claim and the applicant was aware that he was receiving compensation payments. The applicant's medical records made numerous mentions of "Comcare" which indicated to the Tribunal that the applicant was aware of the workers' compensation system. The Tribunal found that that applicant's failure to comply with Section 53 was not from any other reasonable cause.

Lessons Learnt

The Tribunal can be indulgent in accepting late claims for psychological injuries. However, applicants rarely have much luck with lengthy delays such as this one.

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