

You don't have to be 'perfect' when it comes to Reasonable Administrative Action Nguyen and Comcare [2018] AATA 1623

Key Points

- The Tribunal was required to consider whether a claim from a Senior Design Engineer employed by the Department of Defence could be denied using the reasonable administrative action defence.
- The employer argued that the psychiatric condition arose in response to a mid-cycle review and was further aggravated by an investigation that was conducted in December 2015, both of which amounted to reasonable administrative action
- The Tribunal found in favour of the employer.

Background

Ms Nguyen was an electrical engineer who commenced employment with the Department of Defence in 2003. Ms Nguyen complained of unsatisfactory treatment from her employer which resulted in a deterioration in her mental health.

On 7 March 2015 Ms Nguyen attended her General Practitioner for stress as a result of her work and, subsequently made a claim for workers' compensation.

Comcare conceded that Ms Nguyen's work had made a significant contribution to her condition but liability was denied on the basis that her condition was caused by conduct that amounted to reasonable administrative action. Ms Nguyen appealed this decision to the Administrative Appeals Tribunal.

Comcare submitted that the relevant administrative actions to be considered were:

1. A mid cycle review conducted in March 2015
2. A formal enquiry undertaken in December 2015

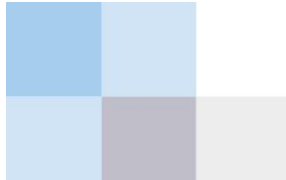
The Law

Section 5A of the SRC Act excludes injuries that are "... suffered as a result of **reasonable administrative action** taken in a reasonable manner in respect of the employee's employment".

Mid Cycle Review – 2 March 2015

In 2014 Ms Nguyen experienced friction with her supervisor relating to a request to start work at 9.30am so she could take her children to school. Her request was refused. Around this time, Ms Nguyen also declined to accept the terms of a new instruction imposed by her supervisor which meant she was to raise all technical questions with her lay supervisor rather than directly to the Chief Engineer. A mid cycle review was conducted on 2 March 2015 - Ms Nguyen's work hours and her reporting line were discussed. Ms Nguyen's supervisor advised that her unpredictable attendance patterns at work were unacceptable and the new reporting line was confirmed.

Comcare argued that Ms Nguyen's psychiatric condition emerged in March 2015 in response to the mid-cycle review, and the review amounted to reasonable administrative action. The Tribunal found



that although Ms Nguyen experienced symptoms of depression before March 2015, her symptoms became clinically significant in response to the review. The review was considered to be an appraisal of the employee's performance within the meaning of s5A(2)(a).

While it was noted that there were some short comings on behalf of her Managers, the Tribunal concluded that both the motivation behind the review and the conduct of the review were reasonable.

Formal Enquiry – December 2015

In around October 2015, a Senior Engineer made allegations about Ms Nguyen's competence to hold engineering authority. Due to the seriousness of the allegations a formal enquiry was held. On 15 December 2015, Ms Nguyen was called in to work for a meeting where she was advised that the enquiry had been completed and, as a result, her engineering authority had been removed.

Ms Nguyens' partner gave evidence that she returned home from work that day in a very distressed state. Ms Nguyen attended her General Practitioner and complained of symptoms of stress and depression. The Tribunal found that the enquiry caused a clinically significant decompensation requiring medical intervention.

The Tribunal found that the enquiry was akin to an appraisal of the employee, a suspension, or a disciplinary meeting. The Tribunal found that that although the enquiry had its shortcomings, in that it took longer than expected and Ms Nguyen was not well informed of the delay, there was nothing to suggest that it was conducted in an unreasonable manner.

The Decision

The decision to deny liability for the psychological condition was affirmed on the basis of the reasonable administrative action exclusion.

Lessons Learnt

The Tribunal was critical of some aspects of the employer's conduct towards Ms Nguyen. But the standard of reasonableness is not a test of perfection. It is not the role of the Tribunal to assess whether the employer is managing the worker wisely, or sympathetically, or if there is an appropriate management culture in place. The Tribunal's task is to decide whether the particular administrative action was reasonable.

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