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Injured on a work trip: is the employer liable?
AAT considers another hotel injury claim
Dring and Telstra Corporation Limited [2018] AATA 3149

Key Points

- While on a work trip, the applicant slipped over at her hotel after a night out drinking.
- The Tribunal found that the injury was sustained in an interval from her employment as the activities undertaken were not induced or encouraged by Telstra.

Background

The applicant was a Telstra employee who went to Melbourne on a work trip from 11 April 2016 to 14 April 2016. On 13 April 2016, the applicant attended a workshop which finished at 5:00pm, following which she went to her hotel room and consumed part of a bottle of champagne. She then went to dinner with a friend, where they shared a bottle of wine. They remained at the restaurant until 11:30pm.

She and her friend then went to a bar, where they each consumed another cocktail, before leaving at around 1:00am. The applicant returned to her hotel at 2:30am.

When the applicant arrived at the hotel, she used the bathroom near the reception area of the hotel, where she slipped over and landed on her left hip and thigh.

The applicant submitted a claim for workers' compensation in respect of left hip contusion affecting the upper left leg/hip. Telstra denied liability to pay compensation pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act* 1988 (Cth) (**the SRC Act**) on the basis that the injury had not arisen out of, or in the course of her employment.

The Decision

Member Anna Burke was required to consider whether the applicant suffered an injury arising out of, or in the course of, her employment with Telstra, applying the principles in the leading case, *Comcare v PVYW*. Member Burke also had to consider whether the injury was excluded under section 4(13) of the SRC Act, which provides that an employee who is under the influence of alcohol or a drug (other than a drug which has been prescribed by a medical practitioner and is being used in accordance with the prescription), will be guilty of serious and wilful misconduct, and compensation will not be payable.

Conclusion

Member Burke rejected the idea that the applicant had engaged in serious and wilful misconduct in accordance with section 4(13) of the SRC Act. She stated that the applicant was within her rights to consume alcohol during a break from her employment. Further, there was no evidence as to how intoxicated the applicant was, therefore serious and wilful misconduct on the applicant's part could not be established.

In accordance with the leading case of *Hatzimanolis v ANI Corporation*, the Tribunal also had to determine whether the applicant's presence at the hotel and activities undertaken had been "*induced or encouraged*" by Telstra. Further, as per the authority in *Comcare v PVYW*, the Tribunal had to determine whether this inducement or encouragement was connected to her employment with Telstra.

Member Burke was of the view that attending dinner as part of her work-related travel was reasonable, however the extended period of time at dinner and at the bar afterward was not induced or encouraged by Telstra. Member Burke ultimately found that the extent and duration of her social activities broke the connection with her employment, meaning that the injury was sustained between two discrete periods of work. Therefore, the injury was not connected to her employment and was not compensable.

Lessons Learnt

When deciding whether an injury is connected to an employer's inducement or encouragement, the Tribunal will closely consider the timeline of events leading to the injury and whether they can be reasonably connected to the person's employment. Cases like this and *PVYW* show that it is difficult for workers to succeed in claims where the employment nexus is broken by social activities.

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