

## How to stop paying compensation after 33 years *Tocade and Comcare* [2018] AATA 3863

### Key Points

- Ms Tocade suffered an aggravation of pre-existing arthritis in the neck at a work function in 1984.
- Comcare paid compensation for some 33 years before ceasing payments.

### Background

Ms Tocade was an employee of the Department of Defence. On 6 January 1984, Ms Tocade was attending a work-related function. She stepped backwards into a landing bay, fell down striking her head and flexing her head forwards.

X-rays were taken of Ms Tocade's spine, which revealed arthritis that had been present for quite some time. The Commonwealth began to pay workers' compensation to Ms Tocade on the basis that the fall had aggravated her pre-existing spondylosis. Compensation was paid for 33 years until 29 May 2017, when Comcare determined it was no longer liable to pay compensation for medical expenses and incapacity. Ms Tocade brought proceedings seeking review of this decision. She was 82 years old at the time of the Hearing.

### The Law

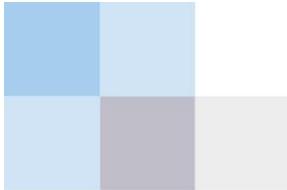
The issue before the Tribunal was that of medical causation.

Ms Tocade, who was self-represented and did not call any witnesses other than herself, gave evidence that she had been symptom-free prior to the incident in 1984, and that her symptoms had continued unabated since then.

Comcare had Ms Tocade re-examined in 2005 and the diagnosis of aggravation of neck arthritis was confirmed, albeit with a marker from the diagnosing practitioner that the contribution of the incident to Ms Tocade's symptoms was "*miniscule*". This diagnosis was supported by other practitioners, but Comcare continued payments.

Comcare discontinued payments in May 2017 following a report from an independent medical examiner, who was of the opinion that:

*"...after some 33 years, it is impossible to attribute what proportion of her current symptoms are attributable to her neck injury and what proportion is attributable to osteoarthritis independent of the fall."*



At Hearing, Comcare called an occupational physician who gave evidence that over the some 33 years since the incident, Ms Tocade would have ordinarily developed a degree of neck ache and headache related to her pre-existing arthritis.

The Tribunal considered the evidence given at Hearing from Comcare's medical expert, and found that all that could be ascertained on the evidence was that Ms Tocade should have some ongoing symptoms as a result of pre-existing osteoarthritis that would have developed even if the incident had no occurred. The fact that Ms Tocade gave anecdotal evidence that the neck pain had been ongoing since the incident was not sufficient to refute expert medical evidence.

## Conclusion

The Tribunal held that Ms Tocade's current condition was not related to the incident in 1984. Comcare's reviewable decision not to pay compensation was affirmed.

## Lessons Learnt

In circumstances where compensation has been paid for extended periods of time and an applicant gives evidence that their symptoms have continued since an incident, it is imperative for Comcare to adduce expert evidence to support the assertion that the causal chain has been 'broken'. That is, that the applicant's ongoing symptoms are no longer attributable to the incident.

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