

Staying inside the lines: Tribunal critical of the rigid Comcare Guide but still must abide by it *Dillon and Comcare* [2019] AATA 214

Key Points

- The Tribunal needed to determine whether an assessment of whole person impairment (WPI) was correct.
- The constraints of the Comcare Guide in regard to the Assessment of the Degree of Permanent Impairment were criticised in circumstances where the impairment was more significant than the assessable WPI percentage.

Background

Tracie Dillon was employed as a Customer Service Officer with the Department of Human Services.

Ms Dillon suffered separate compensable psychological conditions in 2004 and 2012. Ms Dillon was also diagnosed with bipolar disorder in 2010.

After receiving an invalidity retirement in early 2014, Ms Dillon submitted a claim for permanent impairment and non-economic loss. Having been assessed by a Consultant Psychiatrist, Ms Dillon was awarded compensation for a 10% whole person impairment and non-economic loss scores totalling 11. However, Ms Dillon requested reconsideration of that determination on the basis that her whole person impairment exceeded 10% and that her non-economic loss scores had been incorrectly assessed.

From 2015 to 2018, Ms Dillon's psychological condition further deteriorated in the context of illicit drug use, failure to take her anti-psychotic medication, and a lack of sustained treatment.

The Tribunal was required to consider whether Ms Dillon suffered from a degree of whole person impairment and non-economic loss that was greater than the values determined by Comcare.

The Law

Sections 24 and 27 of the SRC Act provide that compensation is payable where an employee suffers from permanent impairment of 10% or greater.

Section 28 of the SRC Act provides that an assessment of the degree of permanent impairment and non-economic loss must be in accordance with the Comcare *Guide to the Assessment of the Degree of Permanent Impairment* (Edition 2.1).



Conclusion

Despite evidence that Ms Dillon suffered from unrelated bipolar disorder and was an illicit drug user, it was accepted that her employment with the Department of Human Services was the significant contributing factor to her ongoing condition.

In assessing Ms Dillon's percentage of whole person impairment, particular attention was drawn to the fact that she would go weeks without getting out of bed and that she only ever occasionally socialised with one friend. Further, Ms Dillon's ex-husband was the only person who could coax her out of bed, while her treating Psychologist was the only other 'support person' available to her.

Deputy President Melick went through Table 5.1 of the Guide and concluded that Ms Dillon suffered from a 10% whole person impairment and a non-economic loss score of 11.

Deputy President Melick was critical of the constraints of the Comcare Guide, in particular the Guide's notes set out at Table 5.1 detailing who constituted a 'suitably qualified' person for providing care to an employee.

Deputy President Melick noted that despite Ms Dillon suffering from a significant impairment, he could not assess her as suffering a whole person impairment of more than 10% as he was bound to follow the notes and tables of the Guide by virtue of section 28 of the SRC Act.

Lessons Learnt

The decision highlights that in assessing the degree of whole person impairment and non-economic loss, a decision maker must also follow the notes and tables of the Comcare Guide. This is a somewhat mechanical process that does not allow a significant amount of discretion.

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