

*Employer liable for Customer Service Officer's recreational netball injury*  
*Rye and Comcare [2018] AATA 4658*

## Key Points

- The applicant sustained an injury while participating in a netball game.
- The Tribunal was satisfied that her employer had actively encouraged her to participate in the netball game and, therefore this injury was compensable under the SRC Act.

## Background

The applicant was employed by the Department of Human Resources (**the Department**) as a Customer Service Officer. In January 2017, the applicant received an email from a colleague encouraging her and other staff to participate in a netball game as part of NAIDOC week in July 2017. The applicant's supervisor encouraged her to participate in the netball game. He said that being part of the netball team would be a good way to represent the Department and would help her to advance her career.

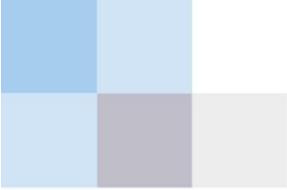
The applicant was of Aboriginal descent and was therefore entitled to two days of cultural/ceremonial leave per year. The applicant was encouraged to use this leave to participate in the netball game, which she did.

On 5 July 2017, the applicant participated in the netball game and suffered an injury to her right knee which later required surgery. On 11 July 2017, the applicant submitted a workers' compensation claim for the knee injury. On her claim form, the applicant alleged that at the time of her injury, she was "*engaged in an employer approved activity*".

Section 14 of the SRC Act provides that an employer will be liable to pay compensation in respect of an injury suffered by an employee. Under section 5A of the SRC Act, an injury is defined as a physical or mental injury arising out of, or in the course of the employee's employment. The Department denied liability to pay compensation pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (**the SRC Act**), as it considered the injury had not arisen in the course of the applicant's employment with the Department.

## The Decision

Section 6(1)(c)(i) of the SRC Act, provides that an injury may be considered to have arisen out of, or in the course of an employee's employment where an employee was temporarily absent from their workplace, while undertaking an activity associated with their employment.



The applicant argued that Section 6(1)(c)(i) of the SRC Act applied in her situation because the netball game was an activity associated with her employment. In support of this, she said the Department clearly encouraged participation in NAIDOC activities, as evidenced by it permitted staff to take time out of their working day to organise these events. She stated she probably would not have participated if she wasn't encouraged to do so by the Department.

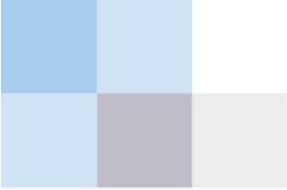
The Department argued that the applicant had not sustained an injury under section 5A of the SRC Act as the netball game was not an activity which was organised, supervised or controlled by it. The Department considered that the netball game was far removed from the applicant's normal daily activities and was physically remote from her usual workplace. Further, the Department argued that the applicant was on cultural leave away from her workplace.

## Conclusion

- Deputy President Cowdroy noted that when an employee has been injured in an activity “*sanctioned, expressly or impliedly by an employer or specifically requested or directed by an employer*” (*Prieto and Comcare* [2010] AATA 546) the activity will generally fall within the scope of their employment.
- Deputy President Cowdroy stated that the Department's policies showed that its objective was to promote better understanding and relationships with those of Aboriginal descent. Further, that the evidence showed that the Department actively encouraged the applicant to take cultural leave for the day of the game and participate in the netball game in order to promote its own interests.
- Deputy President Cowdroy concluded the applicant had sustained an injury pursuant to section 5A of the SRC Act and the injury was sustained while the applicant was temporarily absent from her place of work, undertaking an activity associated with her employment as defined in section 6(1)(c)(i) of the SRC Act. Accordingly, Comcare was liable to pay compensation for such injury pursuant to section 14.

## Lessons Learnt

- When considering whether an injury was sustained while an employee was temporarily absent from work, while undertaking an activity associated with an employee's employment, the critical issue is whether the employer has actively encouraged the employee to participate in the activity that caused the injury.
  - Employers seeking to reject claims involving recreational activity, undertaken by groups of their employees, should ensure they have clear policies in place to the effect that such activities are not approved or encouraged.
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