

## Gotcha! Surveillance ensures Telstra's success in migraine claim

*Cagliostro and Telstra Corporation Limited [2019] AATA 559*

### Key Points

- Ms Cagliostro claimed to suffer ongoing symptoms as a result of an injury to her head and neck from walking in to a door in 2012.
- The Tribunal was required to consider whether she had an ongoing entitlement to compensation.

### Background

Ms Cagliostro was employed as a Business and Enterprise Website Manager with Telstra. Four months into her employment, Ms Cagliostro sustained an injury to her head and neck when she walked into a glass door while checking her mobile phone, at the Queen Victoria Building in Melbourne. She received workers' compensation up until 24 August 2015, when it was decided that she had ceased to suffer from the effects of the injury.

Ms Cagliostro appealed that decision to the Administrative Appeals Tribunal. The issues for determination were whether, as at 24 August 2015, Ms Cagliostro:

- a) continued to suffer from the compensable injury;
- b) was incapacitated for work as a result of the compensable injury; and
- c) reasonably required medical treatment as a result of the compensable injury.

Ms Cagliostro argued that she continued to suffer headaches on a daily basis, with some of those being migraines, which caused her to be incapacitated for work. Ms Cagliostro claimed to be home bound and unable to drive when suffering from migraines. She complained of nausea, photophobia and vomiting.

The consensus of the medical evidence was that Ms Cagliostro suffered from post-traumatic migraines. This was based on the subjective complaints and history provided by Ms Cagliostro. Ms Cagliostro underwent neurological assessment which showed her migraines to be within the above, to above average range.

Surveillance undertaken over five days during the period 13 June 2015 to 20 June 2015; 15 days over the period 1 July 2015 to 30 July 2015; and seven consecutive days over the period 14 August 2015 to 20 August 2015 showed Ms Cagliostro to be active outside her home for 5 to 7 days per week, carrying a young child in a baby carrier, shopping, wheeling trolleys around shopping centres, grocery shopping, attending a cafe, looking at her smart phone for periods of time, leaving undercover car parks and entering bright sunshine and walking to her local shopping centre.



## The Decision

The Tribunal found that the surveillance footage cast doubt over the accuracy of Ms Cagliostro's reporting of her condition to the medical practitioners, which showed her to have a capacity to work beyond what she claimed. The Tribunal agreed with Telstra's argument that the neurological assessment and the surveillance footage were not consistent with the history she reported, and she was not as severely disabled as she claimed.

The Tribunal concluded that Ms Cagliostro did not continue to suffer from the effects of the compensable injury as at 24 August 2015, and she was not entitled to compensation for incapacity to work or for medical treatment beyond that date.

## Lessons Learnt

Surveillance footage can be very useful, when bolstered by other objective evidence, such as a neurological assessment, to counteract subjective complaints of ongoing symptoms and incapacity to work. Surveillance footage over consecutive days can be helpful to show a pattern of consistent behaviour.

## Contact:

Naomi Adams

Associate

Direct: +61 (08) 9265 6015

[naomi.adams@hbalegal.com](mailto:naomi.adams@hbalegal.com)

Visit [www.hbalegal.com](http://www.hbalegal.com) for more case articles and industry news.

*Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.*

