

Fed Court decides Tribunal's reasons fall short *Comcare and ZZRP* [2019] FCA 952

Key Points

- Comcare appealed a Tribunal decision to the Federal Court on the basis that it failed to apply the appropriate statutory test and did not provide adequate reasons for its decision.
- Justice Flick accepted that adequate reasons were not provided and the matter was remitted back to the Tribunal for reconsideration.

Background

The applicant, ZZRP, was employed by the Australian Taxation Office (the **ATO**). In May 2011, he lodged a claim for workers' compensation for a back injury. After returning to work, ZZRP claimed that he was harassed by his new Manager. He submitted a claim for workers compensation in respect of "*depressive disorder*" and "*anxiety state*". Liability to pay compensation for his psychological condition was accepted pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the **SRC Act**).

ZZRP retired from his employment in 2012 on the grounds of invalidity. In May 2014, Comcare found that it had no present liability for ZZRP's psychological condition because it was no longer attributable to his former employment with the ATO. The decision was based on the medical evidence of three psychiatrists.

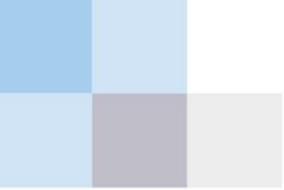
ZZRP sought review of the reviewable decision through the Administrative Appeals Tribunal (the **Tribunal**). The Tribunal set aside the decision under review. Comcare appealed this decision to the Federal Court on the grounds that the Tribunal failed to:

1. Apply the correct statutory test;
2. Resolve its submission that ZZRP's psychological ailment was no longer contributed, to a significant degree, by his employment with the ATO; and
3. Provide adequate reasons.

The Decision

Section 5B of the SRC Act provides that a "disease" is an ailment, or aggravation of such an ailment, that was contributed to, to a significant degree, by an employee's employment.

Section 64 of the SRC Act provides that the Tribunal has jurisdiction to undertake a merits review and to come to the "*correct and preferable decision*" with respect to the matters before it.



Section 44(1) of the *Administrative Appeals Tribunal Act 1975* (Cth) provides that the Federal Court has jurisdiction to hear appeals from the Tribunal on questions of law.

Section 43(2B) of the AAT Act, provides that where the Tribunal provides written reasons, those reasons should include its findings and reference the material on which those findings are based. The High Court authority in *Roncevich v Repatriation Commission* [2005] HCA 40 [at 62] provides that sufficient reasons must be provided to make the system of appeals effective.

Conclusion

There was no reference in the Tribunal's decision to the definition of disease, and the appropriate test, being whether ZZRP's psychological ailment, was contributed to, to a significant degree by his employment, as set out under section 5B of the SRC Act. The Tribunal's decision centred on whether ZZRP's psychological ailment was "*attributed...mainly to the events in the workplace of 2011*". As such, Justice Flick found that the Tribunal did not adequately identify and apply the appropriate statutory test.

Justice Flick found the decision of the Tribunal did not provide any reasoning as to why it preferred the evidence of one Psychiatrist over that of another. Justice Flick found that the reasons for the decision made by the Tribunal were not adequate to discharge the requirement under section 43(2B) of the AAT Act. While the Tribunal was not required to provide its reasoning for accepting or rejecting every piece of evidence before it, Justice Flick said it was appropriate that some reasoning is given where the competing evidence goes to the core of the decision reached.

Justice Flick expressed concern that the Tribunal had "*summarised the evidence before it and merely expressed an unreasoned conclusion*". The appeal was allowed and the matter was remitted back to the Tribunal for reconsideration.

Lessons Learnt

This decision is a timely reminder that the Tribunal is required to provide reasons which adequately deal with the relevant legal tests and the evidence at hand.

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