

## No diagnosis? No worries: Tribunal accepts claim for symptoms *Stefaniak and Comcare* [2019] AATA 1866 (12 July 2019)

### Key Points

- Mr Stefaniak submitted a claim for workers' compensation in respect of lower abdomen and groin pain.
- Despite no concrete diagnosis of his condition, the Tribunal found in favour of the employee.

### Background

Mr Stefaniak was a professional sprinter who trained with the Australian Institute of Sport between 2014 and 2017. He undertook an intense training routine from the end of 2016 through to the start of 2017.

In March 2017, Mr Stefaniak commenced employment as a courier with the Office of National Assessments (**ONA**). In his second week of work, he began to experience pain in his lower abdomen and pelvis. By May 2017, he was unable to undertake sprint training due to the pain. By July 2017, he was having difficulty walking. None of the specialists who reviewed Mr Stefaniak could provide a concrete diagnosis for Mr Stefaniak's condition.

Mr Stefaniak contended that he was required to lift packages of 10 kilograms and walk for up to two kilometres at a time and this had significantly contributed to his condition. He submitted a claim for workers' compensation for the condition.

Mr Stefaniak's claim was denied on the basis that he had not suffered an injury or disease pursuant to sections 5A or 5B of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the SRC Act). Alternatively, if he had suffered a condition, it had not been significantly contributed to by his employment with the ONA.

### The Decision

As there was no concrete medical explanation for Mr Stefaniak's pain, the Tribunal found there was no basis for a finding that he had suffered an injury for the purposes of section 5A of the SRC Act. Further, it was impossible to find his employment had significantly contributed to any ailment which was the root cause of his pain.

The Tribunal considered whether liability should have been accepted for a more limited claim based on a temporary aggravation of Mr Stefaniak's symptoms. The Tribunal relied on the authority in *Re Musmeci and Department of Health* (1990) 19 ALD 797, which was endorsed in the Federal Court in *Australian Postal Service and Lucas* (1991) 33 FCR 101, that an inability to come to a diagnosis is not a barrier to a successful claim. Further, an aggravation of symptoms, notwithstanding there is no alteration in pathology, may be sufficient to amount to an injury.



The Tribunal considered whether the applicant's pain symptoms had been significantly contributed to by his employment with ANO. The Tribunal was satisfied that Mr Stefaniak's condition had been significantly contributed to by his employment with ANO on the basis that his symptoms began after he started working at ANO and the longer he worked, the more sustained the pain came. Further, when Mr Stefaniak took time off work, the pain subsided.

## Lessons Learnt

The absence of a concrete medical diagnosis will not be a barrier to making a successful claim. Further, an aggravation of symptoms may be enough to establish that an employee has suffered an injury or disease for the purposes of the SRC Act.

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