

How long is too long when making a claim under the *Safety, Rehabilitation and Compensation Act 1988*?
Misha Di Carlo-Casablanca and Australian Capital Territory [2019] AATA
4772

Key Points

- Ms Di Carlo-Casablanca made a claim for anorexia nervosa eight years after the date of injury.
- Ms Di Carlo-Casablanca's claim was excluded pursuant to section 53 of the SRC Act, on the basis that Comcare had suffered prejudice as a result of the delay.

Background

Ms Misha Di Carlo-Casablanca was a teacher at Belconnen High School between 2006 and 2010 when she experienced a relapse of an eating disorder she had previously suffered from. On 26 March 2015, she lodged a workers' compensation claim for "*deterioration/relapse of anorexia nervosa*". On 27 May 2015 Comcare issued a determination denying liability in respect of "*anorexia nervosa, obsessive compulsive disorder and eating disorder, unspecified (mixed eating disorder)*". This was affirmed by reviewable decision dated 19 September 2015. Ms Di Carlo-Casablanca applied to the Tribunal for review of this decision.

It was agreed between the parties that Ms Di Carlo-Casablanca had a history of suffering from the eating disorder, anorexia nervosa. At hearing, Ms Di Carlo-Casablanca gave evidence that her condition had been stable for the 15 years before she entered the teaching profession. Ms Di Carlo-Casablanca described Belconnen High School as a difficult teaching environment where she experienced confrontations with students in classroom settings, including students who would refuse to follow her instructions and stand over her in a threatening manner. Ms Di Carlo-Casablanca gave evidence that she felt scared of those students. The Tribunal accepted her evidence and other contemporaneous evidence that this was a difficult school to teach at.

In between 2006 and 2010, Ms Di Carlo-Casablanca lost considerable weight. In 2007 Ms Di Carlo-Casablanca reported that she noticed she was beginning to focus on her eating habits and exercise. At this time she asked to have her workload reduced to help her better manage her job and to avoid losing more weight. By January 2010 she weighed only 35 kg and was certified unfit for work by her general practitioner. In 2011, Ms Di Carlo-Casablanca was admitted to Canberra hospital for three weeks where she was fed via a nasogastric tube. Ms Di Carlo-Casablanca remained off work until November 2012. In November 2012, Ms Di Carlo-Casablanca returned to work for the Education Department, but not as a classroom teacher. Her weight has been stable since. Despite first becoming aware of her injury in 2007, Ms Di Carlo-Casablanca did not make a claim until 2015.



The Law

Section 5B of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the **SRC Act**), sets out that a disease is defined as:

- (a) an ailment suffered by an employee; or
- (b) an aggravation of such an ailment; that was contributed to, to a significant degree, by the employee's employment.

Pursuant to section 53 of the SRC Act, the Act will not apply in relation to an injury to an employee unless notice in writing of the injury is given to the relevant authority as soon as practicable after the employee becomes aware of the injury.

The Tribunal was required to consider:

- Whether Ms Di Carlo-Casablanca suffered an aggravation of her disease, which was significantly contributed to by her employment, pursuant to section 5B of the SRC Act?
- Whether Ms Di Carlo-Casablanca's claim was excluded by virtue of section 53 of the SRC Act?

Conclusion

The Tribunal found that the stressors that Ms Di Carlo-Casablanca experienced at the school were more likely than not to have brought about a worsening of Ms Di Carlo-Casablanca's condition. The Tribunal considered this to be an aggravation of her pre-existing condition. The Tribunal said that in this regard the relevant test is whether the employment made a significant contribution to the aggravation of the disease, it does not require that the employment contribution be the sole or the dominant cause of the aggravation. The Tribunal concluded that Ms Di Carlo-Casablanca had suffered an injury for the purposes of the SRC Act.

The Tribunal then went on to consider whether Ms Di Carlo-Casablanca's claim was excluded due to the delay in her making her claim, pursuant to section 53 of the SRC Act. Ms Di Carlo-Casablanca argued at hearing that she did not have the mental capacity to lodge her claim any earlier due to her reduced mental functioning caused by her condition. The Tribunal did not accept Ms Di Carlo-Casablanca's evidence and instead relied on medical opinions that impaired function is not invariably a feature of low body weight. Both doctors thought that in this case cognitive impairment due to weight loss was unlikely.

The Tribunal deemed the date of Ms Di Carlo-Casablanca's injury to be mid-2007, which was when Ms Di Carlo-Casablanca made a request to reduce her working hours. The Tribunal said that the date of injury would have been no later than 2010 as this is when Ms Di Carlo-Casablanca first sought treatment. Accordingly, notice of injury was not provided until at least five years and most probably eight years after the date of injury. The Tribunal found that such delay had caused prejudice to Comcare and the passage of time had eroded the quality of the evidence. The Tribunal also found that Comcare was prejudiced by the failure of Ms Di Carlo-Casablanca to give earlier notice as Comcare was denied the opportunity to manage the emerging injury through medical treatment and/or rehabilitation.

The Tribunal concluded that Ms Di Carlo-Casablanca's otherwise compensable injury was excluded by section 53 of the SRC Act.



Lessons Learnt

It is a requirement under the SRC Act that employees give notice of injury as soon as practicable after they become aware of the injury. Failure to do so, may prevent employers from having the opportunity to adequately manage the injury and /or prevent it occurring at all. Lengthy delays in making a claim may also cause the quality of evidence to be eroded.

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