

## AAT Confirms Payments Cut Off Due to Pre-existing Mental Health Disorder

*Oliver v Comcare* [2019] AATA 4194

### Key Points

- The Tribunal was required to consider whether an employee continued to suffer from the effects of her compensable psychological injury.
- The Tribunal found in favour of the employer.

### Background

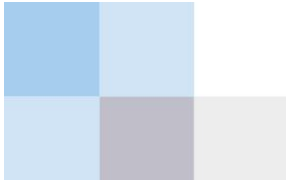
Sharon Oliver (the applicant) commenced employment with the Australian Tax Office (ATO) in 2001. The applicant submitted a claim for workers' compensation dated 21 February 2010 in respect of a psychological condition, as a result of an incident on 3 February 2009, where the applicant was inappropriately counselled and belittled by her team leader in front of her peers for making an error. By letter dated 30 September 2010, liability was accepted pursuant to section 14 of the *Safety Rehabilitation and Compensation Act 1988* (the SRC Act) in respect of "aggravation of major depressive disorder, single episode". The applicant retired from her employment with the ATO.

On 6 June 2017, Comcare determined that there was no present liability to pay compensation for medical expenses under section 16 and for incapacity to work under section 21 of the SRC Act. The applicant sought review of that decision at the Administrative Appeals Tribunal.

At hearing, the parties agreed that Ms Oliver continued to suffer from a mental health condition. The issue for the Tribunal to decide was whether as at 6 July 2017, the applicant continued to suffer from the effects of the compensable injury. Comcare argued that the work incident on 3 February 2009 had ceased to significantly contribute to the applicant's current mental health condition.

The applicant argued that the work incident caused a new psychiatric condition, unrelated to her past mental health issues. Her position was that her psychological condition continued, and the sole cause was the work incident on 3 February 2009.

The Tribunal looked closely at the applicant's medical history and found that the applicant suffered from postnatal depression following the birth of her first child and was admitted to a mental health unit at Nepean Hospital. Following the birth of the applicant's second child in 1996, the applicant was again admitted to the same mental health unit. The second bout of postnatal depression was worse than the first and in 1998 the applicant was admitted to hospital on multiple occasions and underwent



electroconvulsive therapy (ECT). In 1999 the applicant was admitted to hospital three times and attempted suicide. The applicant's medical records from her GP indicated that she suffered ongoing psychological symptoms from 2001 to 2009. The Tribunal found that the applicant continued to experience psychological symptoms up until the incident on 3 February 2009.

Based on the applicant's significant psychological history, the Tribunal did not accept that the applicant suffered a sudden catastrophic injury as a result of the work incident. Instead, the incident caused a new episode of her pre-existing disorder.

The Tribunal found that there were multiple personal issues that contributed to the applicant's ongoing psychological problems. They included responsibility for organising childminding while she was in hospital to undergo psychological treatment and issues with her parents.

## Conclusion

The Tribunal concluded that the applicant's current symptoms were attributable to her pre-existing condition. The Tribunal preferred the evidence of Dr Frank Chow, Psychiatrist, because his assessment and opinion was consistent with the other evidence before the Tribunal. They found his analysis of the applicant's mental health condition the most persuasive.

The Tribunal found the evidence of Dr Pusic, the applicant's treating Psychiatrist, unconvincing and felt that he was trying to structure his evidence to support a conclusion that the single incident in February 2009 was the sole cause of the applicant's chronic mental health condition.

The Tribunal found that it was unlikely that a single incident at work more than 10 years ago continued to contribute, to a significant degree, to the applicant's current symptoms and impairment.

The Tribunal found that as at 6 June 2017 the applicant's previous employment no longer contributed to, to a significant degree, her psychological condition and therefore the effects of the compensable injury had ceased.

## Lessons Learnt

In order to establish that employment is no longer the significant contributing factor to an ongoing psychological disorder, the Tribunal may be persuaded by evidence that the employee had a pre-existing condition, and that there are other factors (other than employment) which are contributing to the ongoing symptoms. The employment may still be contributing to the condition, but liability will only continue if that contribution is significant.



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