

Tribunal concludes that Telstra didn't cause heart attack *Faltusz and Telstra Corporation Ltd [2019] AATA 5995*

Key Points

- Mr Faltusz claimed workers' compensation following a heart attack, suffered outside of his workplace, while he was waiting for a bus.
- The Tribunal found there was no link between Mr Faltusz's employment and the claimed condition.
- The Tribunal found in favour of the employer.

Background

Mr Faltusz had been employed with Telstra since 2009. In 2010, he was assaulted by a customer while at work. Mr Faltusz suffered a physical injury but was also distressed as none of his fellow employees came to his assistance during the incident. Liability was accepted in respect of Mr Faltusz' workers' compensation claim for stress, anxiety and depression (**SAD**).

On 5 November 2015, while he was on leave from work, Mr Faltusz was waiting for a bus near his workplace, when he began to experience shortness of breath and pains in his chest. Mr Faltusz was taken to hospital and examined in respect of a possible heart attack. However, it was found that his troponin (a protein found in the heart muscle) levels were less than 14, which led doctors to the conclusion that there had been no heart attack.

Instead, Mr Faltusz suffered from a critical stenosis in the left circumflex artery in his heart. For several years prior to this incident, Mr Faltusz had experienced episodes of breathlessness and chest discomfort. Mr Faltusz's was also found to have significant heart disease.

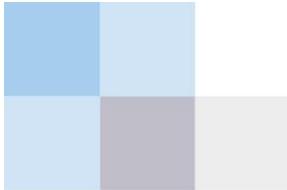
Mr Faltusz submitted a workers' compensation claim in respect of a heart attack. Liability for the claim was denied and Mr Faltusz appealed that decision to the Administrative Appeals Tribunal. Mr Faltusz argued that his previously accepted psychological injury, SAD, had caused and/or contributed to him experiencing a heart attack.

The Law

The Tribunal was required to consider whether Mr Faltusz had suffered an injury for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**).

Pursuant to section 5A an "injury" means:

- a disease suffered by an employee; or

- 
- an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment; ...

... but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

Section 5B defines a “disease” to mean:

- an ailment suffered by an employee; or
- an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee's employment by the Commonwealth or a licensee.

Conclusion

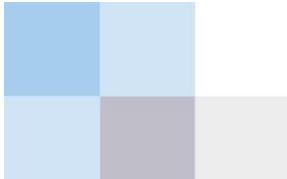
The Tribunal found that Mr Faltusz did not suffer a heart attack in November 2015 and instead found he had suffered an angina attack. The Tribunal then considered whether liability existed in respect of Mr Faltusz's angina.

A report provided by Associate Professor Gutman noted that a person's general lifestyle was a significant risk factor for angina as well as a person's blood pressure, cholesterol levels and having diabetes. Professor Gutman's evidence was that there was no clearly established causal link between stress and angina. His evidence was that in this particular case, stress was not a relevant consideration as there was a clear contributing factor leading to the angina attack, which was Mr Faltusz's very high cholesterol levels. Professor Gutman also gave evidence that Mr Faltusz's cholesterol plaques had blocked 90% of the relevant artery and that he could not find any connection between Mr Faltusz's depression and the angina from which he suffers.

The Tribunal considered whether Mr Faltusz's angina attack was an injury for the purpose of section 5A of the SRC Act. Mr Faltusz argued that his injury arose out of his employment because it occurred outside his place of employment when some of his supervisors were present. However, the Tribunal had regard to the fact that Mr Faltusz was not working at the time due to his previously accepted psychological injury. Mr Faltusz was not required or expected to be outside his place of employment at the time he suffered the angina attack. The Tribunal found that Mr Faltusz did not suffer an injury within the meaning of section 5A of the SRC Act.

The Tribunal then considered the disease provisions set out in section 5B of the SRC Act as to whether there was liability to pay compensation for the angina. When considering whether Mr Faltusz's employment had contributed, to a significant degree, to his ailment, the Tribunal found that Mr Faltusz had for some time, suffered from substantially elevated cholesterol levels, and prior to 2015, had experienced several angina attacks. The Tribunal found that there was no link between Mr Faltusz's SAD and his cholesterol levels or his coronary artery disease. Mr Faltusz's angina attack was caused by a build-up of cholesterol plaques in the relevant artery.

The Tribunal found that Mr Faltusz's condition did not fall within the meaning of an injury under either section 5A or 5B of the SRC Act and he was not entitled to workers' compensation pursuant to section



14 of the SRC Act.

Lessons Learnt

Helpfully for employers, the Tribunal's decision is supportive of the conclusion that there is no general link between stress at work causing employees to suffer heart attacks. Lifestyle factors such as blood pressure, cholesterol and diabetes are significant risk factors for angina and heart attacks.

Contact:

Kate Watson
Partner
Direct: +61 409 578 461
kate.watson@hbalegal.com

Aimee Daga
Solicitor
Direct: +61 (08) 9265 6026
aimee.daga@hbalegal.com

Visit 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.