

Inconsistent evidence leads Tribunal to uphold denial of liability *Watterson and Visionstream Pty Ltd [2019] AATA 5457*

Key Points

- The Tribunal was required to consider whether Mr Watterson had sustained radiation exposure and a psychological injury as a result of his employment with Visionstream.
- The Tribunal found credibility issues with Mr Watterson's evidence, and found in favour of the employer.

Background

Mr Watterson was employed by Visionstream as a Rigger. In June 2015, Visionstream sent Mr Watterson and other workers, to Mt Burr to undertake work on a telecommunications tower. The work was conducted over a period of about two weeks. While working on the tower, Mr Watterson reported that a safety device, known as a RadMan, was alerting that there were high levels of radiation in the area he was working.

Mr Watterson made a number of inconsistent statements about how high up on the tower he was working. This was important as there were a number of levels on the tower which were unsafe to work in due to high levels of radiation. The evidence of the other people working on the tower, which was accepted by the Tribunal, was that most of the work was done at around the 23 metre mark, which was safe to work in. Testing undertaken showed there was no radiation present, and work resumed on the tower.

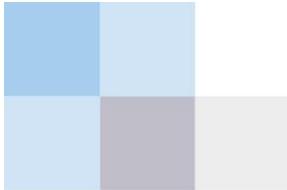
Mr Watterson reported various symptoms which he said were the result of radiation exposure, including headaches, vision problems, dizziness, and redness and scaly skin on his right hand. Mr Watterson subsequently made two claims for workers' compensation, the first in respect of the radiation exposure, and the second in respect of a psychological condition he claimed to have arisen as a result of the radiation exposure. Liability for both claims was denied by Visionstream. The basis for the denial was that testing on the tower showed no radiation and, therefore, Mr Watterson could not have suffered the injury.

The Law

The Tribunal was required to consider whether both Mr Watterson's claimed psychological condition and the alleged radiation constituted an injury or disease for the purposes of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**).

Pursuant to section 5A of the SRC Act, an injury is a physical or mental injury arising out of, or in the course of, an employee's employment.

A disease is defined under section 5B of the SRC Act as an ailment or an aggravation of an ailment, that was contributed to, to a significant degree, by an employee's employment.



Conclusion

Over the course of Mr Watterson's claim and the proceedings before the Tribunal, the applicant complained of various symptoms which were subjective and difficult to test, including headaches, vision problems, dizziness, diarrhoea, anxiety, vomiting and being bed-ridden. He claimed he was unable to work following the incident, nor could he undertake activities he previously enjoyed, such as SuperBike racing.

Summoning over the course of the proceedings showed that following the alleged irradiation, and despite his claimed incapacity, Mr Watterson undertook work as a Rigger with an alternate employer and that he had taken part in the Australian Motorcycle Grand Prix for SuperBike racing. The summonsed material also revealed a number of inconsistencies in the evidence provided by Mr Watterson in his witness statements, to the various doctors, and at hearing.

The Tribunal discussed the inconsistencies with Mr Watterson's evidence at length, concluding that he had attempted to mislead the doctors and the Tribunal for the purpose of his claim. The Tribunal considered Mr Watterson was argumentative on cross examination and would not listen to questions being asked of him. The Tribunal concluded Mr Watterson's evidence could not be relied upon without substantial collaboration. On this basis, the Tribunal found there was insufficient factual evidence to support the claims that there was exposure to radiation, and that he had suffered a physical or psychological injury. The Tribunal affirmed both of the reviewable decisions.

Lessons Learnt

This case highlights the importance of conducting thorough investigations into claims for workers' compensation by utilising the summoning powers of the Tribunal. Had the evidence as to Mr Watterson's motorcycle racing and alternate employment not come to light, the Tribunal would likely have accepted the applicant's evidence at face value, which may have resulted in an incorrect decision.

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