

A reminder for employers to tread carefully with employees suffering pre-existing psychological conditions

Bailey and Comcare (Compensation) [2020] AATA 1244 (8 May 2020)

Key points

- The Tribunal was asked to decide whether Ms Bailey's psychological condition was suffered as a result of reasonable administrative action, taken in a reasonable manner, in respect of her employment.
- The Tribunal found in favour of Ms Bailey.

Background

Ms Bailey commenced employment with the Department of Human Services in Queensland on 9 July 2007, reviewing child support cases.

Ms Bailey had an accepted claim for workers' compensation in relation to work related stress and anxiety, after bullying and harassment in 2011.

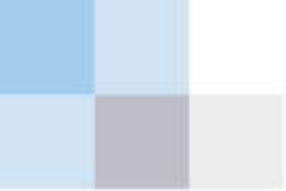
Ms Bailey lodged a further workers' compensation claim on 14 November 2016, in regards to a psychological condition after attending a meeting on 27 October 2016. On 17 January 2017, Comcare denied liability to pay compensation under section 14 of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (the **SRC Act**). The determination was made on the basis that Ms Bailey's psychological condition was suffered as a result of reasonable administrative action, taken in a reasonable manner, in respect of her employment. The decision was affirmed on reconsideration and Ms Bailey sought further review at the Administrative Appeals Tribunal.

Ms Bailey returned to her pre injury duties in 2014 and according to her evidence, it was agreed she would work remotely, and she would not have to participate in meetings, training or video conferences. A further aspect of the agreement was that Ms Bailey would be allowed to commence work at 7.00am.

On 20 June 2016, Ms Bailey was informed via email that her Regular Hours Agreement was overdue and that if she wished to continue commencing at 7.00am, a request had to be submitted by 27 June 2016. She was also informed that she would revert to standard hours after 27 June 2017, unless there was something under negotiation. Ms Bailey sent the Department a letter from her treating doctor recommending that she start work at 7.00am.

On 5 July 2016, Ms Bailey received an email from Ms Lynda Williams (Service Support Manager of Decision Makers) outlining points that needed to be discussed. The email originally came from a person who was named in Ms Bailey's 2011 claim as someone who had bullied her. Ms Bailey stated that this email caused her to suffer psychological symptoms and caused her to recommence treatment with her psychologist.

Ms Bailey met with Ms Williams on 12 and 25 July 2016, where she was informed that her request for a 7:00am start time had been rejected because a later start time provided



greater accessibility for customers. A case review meeting occurred on 27 October 2016. Ms Bailey stated that the meeting was deleterious to her mental health.

Conclusion

The Tribunal accepted that Ms Bailey suffered from a mental ailment, specifically an aggravation of her underlying condition in 2016, as a result of negotiating her Regular Hours Agreement.

Comcare argued that Ms Bailey's mental ailment was the result of an amalgam of non-work-related issues and her heightened sense of interpersonal sensitivity and obsessional personality traits. While the Tribunal accepted that Ms Bailey had a heightened interpersonal sensitivity which influenced her perceptions and interactions in the workplace, it found that Ms Bailey's accounts of various meetings and events were largely accurate, rather than the genuinely held belief of a person with underlying mental health problems who misinterpreted the state of affairs that existed in the workplace. The Tribunal found that Ms Bailey satisfied the significant contribution test as set out in section 5B of the SRC Act.

Comcare contended that the process of negotiating Ms Bailey's Regular Hours Agreement was reasonable administrative action taken by the Department in a reasonable manner, and as such the claim should fail. Comcare argued that the action fell within section 5A(2)(f) of the SRC Act, namely something reasonable done in connection with the employee's failure to retain a benefit.

The Tribunal noted that Ms Williams was advised to approach the Regular Hours Agreement negotiations with Ms Bailey in a manner that would not result in triggering an exacerbation of her underlying fragile mental health. The Tribunal found that the meetings convened by Ms Williams did not accord with that direction. The Tribunal noted that the parties involved in the meeting knew of Ms Bailey's psychological vulnerabilities yet conducted confronting and sometimes unnecessary conversations and failed to provide Ms Bailey with the support and, at times, with the courtesy she required and was entitled to receive.

The Tribunal found that the negotiations fell within the definition of administrative action however, the Tribunal was not satisfied that the administrative action taken by the Department, in negotiating Ms Bailey's regular hours agreement, was taken in a reasonable manner.

The Tribunal set aside the decision under review and in substitution decided that Comcare was liable to pay compensation to Ms Bailey pursuant to section 14 of the SRC Act for the aggravation of her Adjustment Disorder with Anxiety.



Lessons Learnt

The Tribunal's decision is relevant for all employers who have employees with pre-existing psychological conditions. It is clear from the decision that the Tribunal expects difficult conversations to be handled with a degree of sensitivity in situations where an employee has underlying constitutional issues which predispose them to the contraction or aggravation of an ailment.

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