

## Should Comcare foot the bill for Hydrotherapy Treatment in France?

*SRFR and Comcare [2020] AATA 378*

### Key Points

- The Tribunal was asked to decide whether it was reasonable for an employee to obtain hydrotherapy treatment at the Avene Centre in Montpellier, France, to treat dermatological issues.
- The Tribunal found in favour of Comcare.

### Background

SRFR suffered from long-term eczema and atopic dermatitis, as well as being allergic to dust mite, mould and grasses. She had an accepted claim for workers' compensation in respect of "*aggravation of contact dermatitis and other eczema*".

In September 2016, SRFR attended the Avene Centre in Montpellier, France for thermal treatment. She later submitted a form claiming compensation for hydrotherapy treatment at the Avene Centre, associated flights, accommodation and car hire expenses. The claim for these items totaled \$5,793.91.

Comcare denied liability to pay compensation for the medical treatment and associated expenses under section 16 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**). This decision was affirmed on reconsideration and SRFR sought further review at the Tribunal.

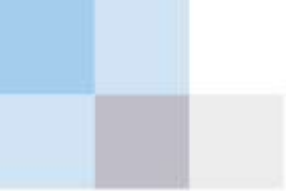
### The Decision

Section 16 of the SRC Act deals with compensation in respect of medical expenses and relevantly provides that Comcare will fund the cost of treatment which is reasonable for the employee to obtain in the circumstances and obtained in relation to an accepted injury.

Comcare conceded that hydrotherapy treatment at the Avene Centre constituted medical treatment obtained in relation to the injury, for the purpose of section 16 of the SRC Act.

The key issue before the Tribunal was whether it was reasonable for SRFR to obtain the hydrotherapy treatment at the Avene Centre, in the circumstances.

Dr Megan Andrews, Consultant Dermatologist, believed that the Avene expenses were not reasonable medical treatment in the circumstances. She explained that although the Avene Centre was useful in the management of atopic dermatitis, at the time SRFR sought treatment, she was experiencing an allergic flare of her eczema/dermatitis. Dr Andrews outlined a course of treatment that SRFR could have undertaken in Australia, which would have targeted SRFR's allergic contact dermatitis.



SRFR submitted that the cost of her treatment was reasonable in comparison to six weeks of her salary when needed time off from work, as well as the products, specialist fees, and household expenditure which went towards treating her condition. She contended that the decisions in *Holt*<sup>i</sup> and *Rope*<sup>ii</sup> did not apply in the circumstances because the Avene Centre treatment was not available in Australia. SRFR submitted that Dr Andrews did not present any medical evidence to the Tribunal that the treatment was not effective in treating allergic reactions.

Comcare contended that the cost of treatment claimed was much higher than potential alternative treatments. Comcare relied on the opinion of Dr Andrews that alternative treatment was available in Australia, which would have been appropriate for SRFR's condition at the time. Comcare submitted that SRFR had failed to point to any specialist medical evidence in relation to side effects or potential treatments which contradicted Dr Andrews' evidence regarding SRFR's personal circumstances.

The Tribunal concluded that the evidence of SRFR's general practitioner, Dr Susan Andersen, while supportive of her, did not of itself constitute Dr Anderson recommending, referring or prescribing that she undertake the Avene Centre treatment. The Tribunal was not satisfied that the Avene Centre treatment was reasonable for the employee to obtain, in the circumstances, pursuant to section 16 of the SRC Act. Accordingly, the decision under review was affirmed.

## Lessons Learnt

The Tribunal will undertake a cost/benefit analysis of medical treatment when determining whether it is reasonable in the circumstances. In this decision, the Tribunal maintained the previous positions expressed in *Holt* and *Rope*.

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<sup>i</sup> *Comcare v Holt* [2007] FCA 405

<sup>ii</sup> *Comcare v Rope* (2004) 135 FCR 443; [2004] FCA 540