

Bulging disc not caused by Centrelink, AAT finds *Hook and Comcare [2020] AATA 1792 (17 June 2020)*

Key Points

- The Tribunal was asked to decide whether an employee sustained a bulging disc in his neck as a result of his employment at a Centrelink call centre.
- The Tribunal found in favour of Comcare.

Background

Mr Nathan Hook was employed by the Department of Human Services in Brisbane, in a child support smart centre. In order to complete his work duties, Mr Hook was required to answer phone calls while looking at more than one computer screen and moving his head to make notes on a notepad on his desk. On 13 August 2018, Mr Hook answered a phone call when he turned his head to the left, in order to make notes. Mr Hook felt pain in his upper arm and neck. On 28 August 2018, Mr Hook completed a claim for workers' compensation in respect of "injured neck/shoulder and left arm".

Comcare denied liability to pay compensation under section 14 of the *Safety, Rehabilitation and Compensation Act 1988 (Cth) (the SRC Act)* on the grounds that the condition was not significantly contributed to by his employment. The decision was affirmed on reconsideration and Mr Hook sought further review of that decision at the Administrative Appeals Tribunal.

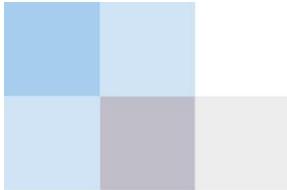
At hearing, the Tribunal was asked to consider:

- whether Mr Hook suffered a disease or an aggravation of a disease pursuant to section 5B (1)(b) of the SRC Act
- and if so, whether that disease or aggravation of a disease was contributed to, to a significant degree by his employment
- Or alternatively, whether Mr Hook suffered an injury which arose out of or in the course of his employment pursuant to section 5A (1)(c) of the SRC Act.

Mr Hook underwent an MRI scan of his cervical spine which showed spondylotic changes at the C5/6 level, with a mild disc bulge.

At hearing, Mr Hook's general practitioner Dr Christiaan Mostert, gave evidence that he suffered from age related arthritic pathology in his spine, which was a pre-existing condition. Mr Hook also suffered a bulging disc in his cervical spine. Dr Mostert could not exclude the possibility that the symptoms experienced by Mr Hook were due to an acute event occurring at work when he turned his neck.

Comcare relied on the evidence of Dr Simon Journeaux, orthopaedic surgeon, who gave evidence that Mr Hook suffered from arthritis at the C5/6 level and a prolapsed disc which was pre-existing, but asymptomatic. Dr Journeaux believed that turning his head at work caused the degenerative pre-existing pathology to become symptomatic, and that the only connection with employment was that Mr Hook happened to be at work at the time.



Dr Journeaux expressed the opinion that Mr Hook suffered a disc prolapse/disc protrusion rather than a disc bulge. Dr Journeaux gave evidence that the disc prolapse/disc protrusion arose as a result of age related changes and that turning of the head would not have caused that condition. Rather, the pathology was caused by constitutional changes occurring with age. The Tribunal set out the reasoning in *Szajna v Australian Postal Corporation* [2014] FCA 1136 that:

... (b) If the evidence establishes something that can be described as a sudden and ascertainable or dramatic physiological change or disturbance of the normal physiological state, it may qualify as such an “injury”.

(c) It is necessary to consider whether the propounded “injury” is distinct from the underlying pathology that constitutes a “disease” that directly or indirectly cause the sudden change to occur.

(d) The question of whether the physiological change or disturbance is the inevitable consequence of the progress of the disease may be relevant in deciding whether there is an “injury”, but it is not itself necessarily determinative.”

Conclusion

The Tribunal concluded that Mr Hook had degenerative changes in his neck and spine caused by age, which over a period of time resulted in a disc bulge/prolapse. The Tribunal found that the disc bulge/prolapse was present prior to the event at work on 13 August 2018. The symptoms occurred at work when Mr Hook turned his head in a normal movement, but the extent of work related involvement was purely temporal. The Tribunal found that Mr Hook did not suffer an injury, he suffered from an age related disease. The Tribunal found that the disease was not contributed to, to a significant degree, by his employment, pursuant to section 5B (1) of the SRC Act.

The Tribunal affirmed the decision under review.

Lessons Learnt

In order for a preexisting medical condition to be compensable under the SRC Act, there must be an incident which caused an identifiable physiological change to that condition. If the change to the condition which occurred at work, is seen as an inevitable consequence of the natural progress of the underlying condition, then it may not be compensable under the SRC Act.

Contact:

Naomi Adams
Associate
Direct: +61 (08) 9265 6015
naomi.adams@hbalegal.com

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