

Tribunal finds applicant exaggerated symptoms *Payten and Australian Postal Corporation [2020] AATA 1925*

Key Points

- Australia Post denied ongoing liability to pay compensation for medical treatment and incapacity to work in respect of Mr Payten's previously accepted brain injury.
- Evidence presented to the Tribunal suggested that Mr Payten was exaggerating his ongoing symptoms.
- The Tribunal did not accept Mr Payten's evidence and found in favour of Australia Post.

Background

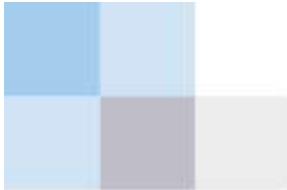
Mr Payten was employed by Australia Post as a delivery officer. On 8 April 1992, Mr Payten was involved in a car accident and submitted a claim for workers' compensation. Australia Post accepted liability to pay compensation in respect of "*closed (internal) head injury, fractured left mandible on 8/4/92*", pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**).

Mr Payten submitted a claim for permanent impairment and non-economic loss pursuant to sections 24 and 27 of the SRC Act and, on 19 December 1994, was paid a lump sum based on a permanent impairment assessment of 50%. On 29 November 1995, Mr Payten was retired on the grounds of invalidity.

On 27 November 2015, Australia Post issued a determination which found there was no present liability to pay compensation pursuant to sections 16 and 19 of the SRC Act for medical treatment and incapacity to work, on the basis that Mr Payten no longer suffered any work-related effects of his head injury. The determination was affirmed upon review. Mr Payten sought further review at the Administrative Appeals Tribunal.

Mr Payten maintained that he continued to suffer the effects of his brain injury and, as a result, had not worked in over 20 years, apart from occasional volunteer work. Mr Payten argued that he remained reliant on friends and family to manage his affairs and look after his children. Mr Payten gave evidence that since the accident, he had never been pain free and that he continued to experience pain in his knees, pelvis, lower back and feet.

Australia Post argued that there was no demonstrable pathology on an MRI scan of Mr Payten's brain and that Mr Payten's reports of ongoing symptoms and disability were unreliable, in that various experts had noted inconsistencies in his reported cognitive deficiencies. Further, Australia Post tendered evidence that showed Mr Payten was able to drive a car and travel extensively, operate bank accounts, buy and sell property, hold a heavy vehicle licence, to socialise, attend the gym regularly and compete in body building competitions.



The Law

Pursuant to section 16 of the SRC Act, where an employee suffers an injury, an employer is liable to pay for the cost of medical treatment obtained in relation to the injury, being treatment that it was reasonable to obtain in the circumstances.

Section 19 of the SRC Act provides that where an employee is incapacitated for work as a result of an injury, an employer is liable to pay to the employee compensation for incapacity for work.

Conclusion

The Tribunal found that Mr Payten did not suffer from any physical limitations caused by the car accident. The Tribunal then considered whether the head injury affected the work capacity of Mr Payten or impeded his daily activities.

The evidence before the Tribunal showed Mr Payten's history of being uncooperative with medical practitioners engaged by Australia Post, including for psychological testing. The Tribunal ultimately accepted that Mr Payten had likely exaggerated his symptomology over time. The Tribunal accepted that there were inconsistencies in Mr Payten's claims of disability and in his evidence given to the Tribunal. Of particular importance for the Tribunal was that Mr Payten had bought and sold various properties in the years since his injury, which was not consistent with his claims of being unable to make decisions.

On the basis of this information, the Tribunal found that Mr Payten no longer suffered any ongoing symptoms as a result of the injuries sustained in the accident.

Lessons Learnt

Where there are questions regarding cognitive ability, it is important to consider the sorts of day to day activities the employee undertakes and whether those activities show that the employee has the capacity to undertake employment. Where there are suspicions that an employee has greater cognitive capacity than previously realised, it is important to thoroughly investigate these issues.

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