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# No diagnosis = claim denied
## *Crisp and Comcare* [2020] AATA 1122

## Key Points

- The Tribunal was asked to decide whether Mr Crisp sustained a bilateral wrist injury, as a result of his employment with the Department of Agriculture and Water Resources.
- The Tribunal concluded that Mr Crisp did not suffer from an ailment and found in favour of Comcare.

## Background

Robert Crisp was employed by the Department of Agriculture and Water Resources in Canberra. In June 2018, Mr Crisp was working in a temporary Project Support Officer role which required him to undertake data entry work using a computer and mouse. Mr Crisp noticed symptoms in his left wrist and informed his supervisor. A few weeks later, he developed similar symptoms in his right wrist. Mr Crisp submitted a claim for workers' compensation on 2 August 2018 in respect of 'tenosynovitis' in both his left and right wrists, as a result of 'repetitive computer data entry type work'.

Comcare denied liability for the claim under section 14 of the *Safety, Rehabilitation and Compensation Act* 1988 (Cth) (the SRC Act), on the basis that the condition was not contributed to, to a significant degree, by his employment. After Comcare affirmed this decision on 30 November 2018, Mr Crisp sought further review with the Administrative Appeals Tribunal. A hearing was conducted by telephone (due to the COVID-19 pandemic) over two days in March 2020. Mr Crisp was self-represented.

## The Law

A disease under s 5B(1) of the SRC Act is defined as an ailment or an aggravation of an ailment that was contributed to, to a significant degree, by the employee's employment.

The High Court held in *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19, that there must be a demonstrated physiological change for an ailment to be compensable under s14 of the SRC Act.

## Conclusion

The issue for the Tribunal to decide was whether Mr Crisp suffered from an ailment, or an aggravation of an ailment, as defined in the SRC Act, and if so, whether they were significantly contributed to by his employment.

Comcare relied on the evidence of Dr Tony Kostos, Rheumatologist, that Mr Crisp never suffered bilateral

de Quervain's tenosynovitis and Dr James Oppermann, Occupational Physician, who was unable to arrive at any diagnosis which adequately explained the claimed ongoing wrist complaints as well as Dr Sandra McBurnie, Occupational Physician, who could not explain the persistent problems experienced by Mr Crisp. Comcare argued that Mr Crisp did not suffer from a recognisable medical condition in either of his wrists and so there was no 'ailment' that was significantly contributed to by his employment.

The Tribunal found that the application turned on the medical evidence and the weight of the evidence laid with Comcare. The medical evidence of the three specialists was that Mr Crisp's condition was unable to be diagnosed. Mr Crisp did not call any medical evidence to support his claim.

The Tribunal accepted the medical evidence that Mr Crisp does not suffer from de Quervain's tenosynovitis or any other recognisable medical condition. Furthermore, the Tribunal was not satisfied that the data entry work contributed to his symptoms to a significant degree.

The Tribunal found that, in accordance with the reasoning in *May*, Mr Crisp did not demonstrate the requisite physiological change required to constitute an injury under section 14 of the SRC Act. More specifically, Mr Crisp did not meet the test under the SRC Act of having an ailment, that in the context of disease, pursuant to section 5B of the SRC Act, was contributed to, to a significant degree, by his employment.

## Lessons Learnt

In situations where the medical experts cannot point to an anatomical complaint or reason for symptoms, a Tribunal may be unable to conclude that a worker is suffering from an ailment under the SRC Act. The decision in *May* applies where there is no demonstrable physiological change in the worker, and liability will de denied.

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