

Tribunal: chemical sensitivity not an ‘injury’ but employee’s claim gets up

Flood and Comcare (Compensation) [2020] AATA 2152

Key Points

- The Tribunal considered whether a Centrelink employee was entitled to receive ongoing compensation for multiple chemical sensitivity syndrome.
- The Tribunal found that multiple chemical sensitivity syndrome is not commonly accepted as a medical condition and instead concluded that Ms Flood suffers from a psychological condition.
- Despite the change in diagnosis, the Tribunal ultimately found in favour of Ms Flood.

Background

Ms Flood was an employee at Centrelink’s office in Devonport, Tasmania. In February 2009, she experienced headaches and nausea which escalated to shakiness, a husky voice, a running nose, watering eyes, muscle aching, exhaustion, shortness of breath and chest pains. She attributed the symptoms to chemical odours in the Devonport office. Ms Flood was subsequently diagnosed with multiple chemical sensitivity syndrome (**MCS**) and she submitted a claim for workers’ compensation.

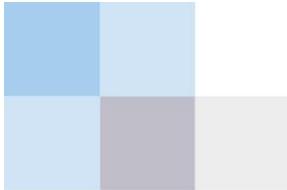
Comcare accepted liability in respect of ‘*respiratory conditions due to external agents*’ under section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**). In 2012, Comcare extended liability for a secondary psychological condition of adjustment disorder and mixed depression.

Following various attempts to return to work, Ms Flood was retired on the grounds of invalidity and she has not worked since 31 December 2014. On 15 June 2016, Ms Flood made a claim for permanent impairment and non-economic loss, which was later denied and appealed to the Tribunal.

Comcare issued a determination dated 18 July 2017, stating that it had no present liability to pay compensation in relation to medical expenses and incapacity for work under sections 16 and 19 of the SRC Act in respect of the previously accepted respiratory condition and the secondary psychological condition. After seeking a review of the determination, Comcare affirmed the determination and Ms Flood sought review of this decision at the Tribunal.

The Tribunal was required to determine:

- (a) What condition(s) did Ms Flood suffer and for which liability was accepted until 16 October 2017; and
- (b) Did Ms Flood continue to suffer the condition(s), referred to in answer to the first issue, after 16 October 2017, and if so:

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- (i) was there continuing incapacity for work; and/or
 - (ii) a need for reasonable medical treatment for the condition(s); and
- (c) If Ms Flood continued to suffer the condition(s) referred to in answer to the first issue after 16 October 2017, was she entitled to compensation for permanent impairment and non-economic loss.

The evidence from Dr Reid (Consultant Psychiatrist) was that Ms Flood suffered from a somatic symptom disorder (**SSD**). Dr Reid explained that the diagnosis of SSD was not dependent on determining whether symptoms have a physical basis or not. He was of the view that the triggers for the SSD were environmental factors and odours in the workplace. He concluded that Ms Flood had SSD, whether an overall chemical sensitivity existed or not.

Dr Chow (Consultant Psychiatrist) initially diagnosed Ms Flood with an adjustment disorder however, this was on the basis that MCS was a physically based condition. When asked to make assumptions about Ms Flood's condition not having a physical basis, his diagnosis was also SSD.

The Law

A disease is defined under section 5B of the SRC Act as an ailment, or an aggravation of an ailment, which has been contributed to, to a significant degree, by the employee's employment.

Under section 4 of the SRC Act, an ailment means any physical or mental ailment, disorder, defect or morbid condition.

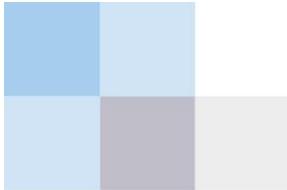
Conclusion

The Tribunal was not persuaded that MCS was commonly accepted as a medical condition which was pathologically or physically based. Accordingly, the Tribunal was not satisfied, to the requisite degree, that MCS was an ailment for the purposes of the SRC Act.

The Tribunal found that Ms Flood suffered SSD, as opposed to '*respiratory conditions due to external agents*' as accepted by Comcare. Further, given the nature of SSD there was no secondary psychological condition; the symptoms of anxiety and depression were composite elements of the SSD itself. The Tribunal accepted that Ms Flood suffered and continues to suffer SSD because she likely holds an honest belief that she experienced and experiences a constellation of physical symptoms related to chemicals, odours or agents in the workplace, but in fact she does not experience them.

The evidence of Dr Reid and Dr Chow persuaded the Tribunal that SSD was a mental ailment within the meaning of section 4 of the SRC Act, and in turn because of the significant contributory effect of the chemicals and odours in the workplace, a disease within the meaning of section 5B of the SRC Act.

Accordingly, the Tribunal found that Comcare was liable to continue paying compensation in respect of



SSD suffered by Ms Flood on 15 September 2009.

Finally, the Tribunal held that Ms Flood did not suffer a permanent impairment of 10% or greater.

Lessons Learnt

When deciding if a medical condition meets the definition of an ailment for the purposes of section 4 of the SRC Act, the Tribunal will look at whether it is commonly accepted as a medical condition and has a commonly accepted diagnosis and diagnostic criteria.

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