

Aust. Post worker denied third back surgery
*Wilson and Australian Postal Corporation (Compensation) [2020] AATA
2446*

Key Points

- The Tribunal was asked to consider whether an Australia Post employee was entitled to compensation in respect of a C7/T1 anterior cervical discectomy under section 16 of the SRC Act.
- The Tribunal found in favour of the Respondent.

Background

Mr Wilson was employed by Australia Postal Corporation (**APC**) from 1997 to 2018. On 27 August 2012, Mr Wilson was involved in a car accident, where his APC van collided with a truck. Mr Wilson submitted a claim for workers' compensation and on 25 October 2012, APC accepted liability to pay compensation in respect of '*whiplash cervical strain and right shoulder impingement*' pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (the SRC Act). The description of Mr Wilson's injury was subsequently varied to '*canal stenosis C3/4, compression of the right C6/7 nerve root, lateral recess canal stenosis at L4/5 and right shoulder impingement*'.

Mr Wilson underwent spinal surgery on 3 June 2016 and further surgery to his spine in September 2016, both paid for by APC.

On 17 August 2017, Dr Michael Donnellan, Neurosurgeon, recommended Mr Wilson undergo a third surgery described as a '*C7/T1 anterior cervical discectomy and fusion surgery*' (**the cervical spine surgery**). APC denied liability to pay compensation for the cervical spine surgery.

Mr Wilson appealed the denial of liability for the cervical spine surgery to the Administrative Appeals Tribunal.

Mr Wilson's evidence at hearing was that neither of the previous operations had given him any long-lasting benefit. He could not recall exploring other more conservative approaches to address the pain in his neck, such as working with an exercise physiologist to strengthen muscle around the neck.

Dr Donnellan's evidence was that the previous surgeries had been successful but had resulted in a further disc prolapse and ossification. He was of the view that the cervical spine surgery was necessary to address neck pain, free up the nerves in the spine and to assist Mr Wilson in managing the pain in his arms. While he maintained that the cervical spine surgery was necessary, he acknowledged that it was likely to be of much less benefit now, than if it had been carried out when he first recommended it in August 2017. In cross-examination, Dr Donnellan agreed that a disc prolapse at C7/T1 usually occurred as a result of the aging process and conceded that there was some ambiguity as to whether the disc prolapse was attributable to Mr Wilson's accident.



The Law

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

Conclusion

The Tribunal was not satisfied that the medical evidence illustrated a sufficient causal link between the compensable injury and the proposed surgery. It reasoned that not only was there a lack of clear evidence demonstrating a causal link, there was also a general consensus amongst various medical practitioners that Mr Wilson's condition was commonly explained by age-related degenerative conditions in people of his age.

For the sake of completeness, the Tribunal also made a finding that the proposed surgery was not reasonable medical treatment pursuant to section 16(1) of the SRC Act. The Tribunal found that it was not reasonable or appropriate to proceed to surgery without first proceeding down the path of strengthening Mr Wilson's neck, which would be best assisted by a multidisciplinary team, alongside other alternative treatment. In coming to its conclusion, the Tribunal took into consideration Mr Wilson's total focus on surgery, the limited pain relief he had received from previous surgeries, the limited benefit, if any, he was likely to receive from further surgery and the fact that there were a number of alternative treatments available which had not been tried.

Lessons Learnt

The Tribunal's decision indicates that surgical intervention may not be reasonable to obtain in circumstances where an employee has not exhausted other more conservative treatment options, and where the employee has already undergone a number of previous surgeries with little demonstrable benefit.

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