

## Tribunal rejects application for Stay Order *Clavero and Australian Postal Corporation* [2020] AATA 4167

### Key Points

- Mr Clavero sustained an injury to his cervical spine while working for the Australian Postal Corporation.
- After his compensation payments were ceased, Mr Clavero applied to the Administrative Appeals Tribunal for a stay order.
- The Tribunal refused to grant the order.

### Background

Mr Clavero was employed by the Australian Postal Corporation. On 12 September 2019, Mr Clavero submitted a claim for compensation in respect of '*compression of the neck C6 & C7*' sustained on 26 August 2019. On 7 November 2019, Australia Post accepted liability in respect of '*aggravation of the pre-existing multi-level degeneration of the cervical spine*' pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**), sustained on 26 August 2019.

On 8 April 2020, Australia Post reconsidered the determination of 7 November 2019, on the basis that Mr Clavero had made a wilful and false representation that he had not previously suffered the same or substantially the same condition, pursuant to section 7(7) of the SRC Act. The decision denied liability to pay compensation under section 14 of the SRC Act.

In its decision, Australia Post noted that it was entitled to recover compensation payments made, pursuant to section 114 of the SRC Act, although would not seek to do so "at this stage". Mr Clavero made an Application for review with the Administrative Appeals Tribunal on 5 May 2020.

Subsequently, on 26 June 2020, Mr Clavero made an application for a stay order

### The Law

Pursuant to section 41(2) of the *Administrative Appeals Tribunal Act 1975* (Cth), the Tribunal has the power to order a stay on proceedings. A stay order works to prevent the implementation of the decision to which the proceeding relates. In considering whether a stay order should be granted, a Tribunal will consider:

1. the prospects of success of the Application under review;
2. the likelihood of recovery of recovering money paid under the determination sought to be stayed, should the applicant ultimately be unsuccessful;
3. any hardship the applicant would suffer if the stay order is granted or refused.



## Conclusion

Mr Clavero denied that he had made a wilful and false representation and submitted that his substantive Application would succeed. The Tribunal found that the evidence indicated a pattern of conduct whereby Mr Clavero failed to disclose his medical history, suggesting that he had wilfully made false representations. The Tribunal found it was likely that Australia Post would succeed in establishing that Mr Clavero made wilful and false representations in respect of his previous injuries for the purposes of section 7(7) of the SRC Act.

Mr Clavero claimed that his financial circumstances were “perilous” as he was without income and unable to access his superannuation entitlements. However, he also argued that he was in a position to repay the compensation paid to him if he was unsuccessful in his Application, by using funds held in his superannuation account. The Tribunal considered Mr Clavero’s ability to repay compensation was limited.

The Tribunal pointed to the authority in *Blackwell and Comcare* [2017] AATA 1118, and found that it could not bind Australia Post to decide to make future payments even if a stay were granted. This is because it is not the function of the Tribunal to prevent Australia Post from making considered decisions based on the evidence before it. The Tribunal found that the submission that a stay order would secure the effectiveness of the hearing, because it would guarantee ongoing compensation payments was not sustainable.

The Tribunal made the following findings:

1. Mr Clavero’s prospects of success in the substantive Application were poor;
2. Mr Clavero’s capacity to repay compensation was limited; and
3. The making of a stay order would not bind Australia Post to make ongoing compensation payments.

The Tribunal refused the request for a stay order.

## Lessons Learnt

While the Tribunal has the power to make a stay order, it does not have the power to bind a compensation payer to make future payments for compensation. On this basis, such an application appears to be of limited use for applicants seeking ongoing compensation payments.

## Contact:

Rebecca Tloczek  
Solicitor  
Direct: +61 (0) 8 9265 6020  
rebecca.tloczek@hbalegal.com

Claire Tota  
Partner  
Direct: +61 8 9265 6011  
claire.tota@hbalegal.com

Visit [www.hbalegal.com](http://www.hbalegal.com) for more case articles and industry news.

*Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.*