

Tribunal overturns liability for shoulder injury in Centrelink worker

Zaveczyk and Comcare [2020] AATA 4960

Key Points

- Ms Zaveczyk claimed that using a keyboard and mouse as part of her role at Centrelink caused her to suffer injuries to both upper limbs.
- The Tribunal found that Ms. Zaveczyk's employment did not contribute to a significant degree to her injury due to a lack of evidence of 'accompanying physiological change'.
- The Tribunal found in favour of Comcare.

Background

Ms Zaveczyk commenced employment with the Department of Human Services (DHS) in 2007 as a Centrelink Customer Service Officer. On 4 December 2013, Ms Zaveczyk lodged a claim for workers' compensation in respect of an injury to both of her upper limbs, sustained on 7 March 2013, as a result of keyboard and mouse use.

On 17 March 2014, Comcare accepted liability to pay compensation for 'subacromial/subdeltoid bursitis (right)', 'supraspinatus (muscle) (tendon) strain (left)' and 'aggravation of lateral epicondylitis (right)', pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the SRC Act). Ms Zaveczyk received compensation payments for medical treatment, including surgery, incapacity for work and home services.

Subsequently, Comcare issued a number of reconsiderations of own motion which revoked liability for Ms Zaveczyk's upper limb injuries. By letter dated 2 October 2020, Ms Zaveczyk was informed that on 24 September 2020, following a review of her claim all '*conditions/determinations*' had been revoked and, therefore, '*there is no liability on your claim*'. Ms Zaveczyk sought review of six reviewable decisions by the Administrative Appeals Tribunal.

Ms Zaveczyk contended that her employment as a Centrelink Customer Service Officer contributed to her shoulder disorder to a significant degree or, alternatively, contributed to an aggravation of her shoulder disorder to a significant degree. Comcare contended that Ms Zaveczyk's employment made no contribution or only insignificant contribution to her right and left shoulder disorder or an aggravation of her bilateral shoulder disorder.

The issue for the Tribunal to decide was whether Ms Zaveczyk ever suffered an 'injury' for the purposes of subsection 5A(1) or section 5B of the SRC Act.



The Law

Section 14 of the SRC Act provides that Comcare is liable to pay compensation in respect of an ‘injury suffered by an employee if the injury results in death, incapacity for work, or impairment’.

‘Injury’ is defined in subsection 5A(1) of the SRC Act to mean:

- (a) a disease suffered by an employee; or
- (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee’s employment; or
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee’s employment), that is an aggravation that arose out of, or in the course of, that employment; but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee’s employment.

‘Disease’ is defined in section 5B of the SRC Act:

- (a) an ailment suffered by an employee; or
- (b) an aggravation of such an ailment; that was contributed to, to a significant degree, by the employee’s employment.


Conclusion

The Tribunal had before it expert evidence from three orthopaedic surgeons, five occupational physicians and one rheumatologist. The Tribunal found that the weight of the expert evidence did not support Ms Zavecky’s claimed mechanism of injury. The Tribunal did not accept that sedentary office duties, such as keyboard and mouse work, can lead to permanent change to the underlying pathophysiological process affecting the shoulders.

The Tribunal found that Ms Zavecky’s shoulder disorder presented itself during a period when she was working and that she sometimes felt shoulder pain while at work. The fact that she perceived increased shoulder symptoms while at work was not sufficient to establish that her employment caused the condition or aggravated the condition. There has to be evidence of “*accompanying physiological change*”.

The Tribunal concluded that Ms Zavecky’s employment did not contribute, to a significant degree, to her condition, or to an aggravation of her condition. Accordingly, the Tribunal found that Ms Zavecky’s bilateral shoulder condition was not a ‘disease’ for the purposes of section 5B of the SRC Act. Comcare was not liable to pay compensation pursuant to section 14 of the SRC Act in respect of the right or left shoulder rotator cuff disorder.

The Tribunal pointed to the authority in *Portors and Comcare (Compensation)* [2017] AATA 2166, and found that Comcare can have an earlier decision set aside on the basis of a different factual finding made at a later point in time.





Lessons Learnt

While a worker may experience pain and other symptoms while at work, this is not always enough for liability to pay compensation under the SRC Act. For liability to exist, the Tribunal will look for evidence of an identifiable physiological change, caused by the work duties.

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