Federal Court: no general responsibility on employers to rehabilitate injured workers

Hooley v Comcare [2020] FCA 1880

Key Points

- An employee of the CSRIO claimed that its failure to provide a rehabilitation program caused him to suffer ongoing psychological problems.
- The Federal Court was asked to consider whether an employing agency has a general responsibility or obligation to provide a rehabilitation program to an injured employee.
- The Federal Court found there is no such obligation and the appeal was dismissed.

Background

Mr Andrew Hooley was employed by the Commonwealth Scientific and Industrial Research Organisation (**CSIRO**). In 2009, Mr Hooley made a claim for workers' compensation in relation to a psychological condition. Liability for his claim was accepted, pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**). In February 2011, Mr Hooley's position was made redundant.

In 2016, a delegate of Comcare determined that Mr Hooley was no longer entitled to receive compensation in respect of his psychological condition, on the basis that his employment with CSIRO no longer contributed to his symptoms, to a significant degree. Mr Hooley unsuccessfully sought reconsideration of that determination, which eventually resulted in an appeal to the Administrative Appeals Tribunal (**the Tribunal**).

Before the Tribunal, Mr Hooley claimed that his ongoing psychological condition was due to the treatment he received from his Manager and by his employer's failure to provide a rehabilitation program. Comcare claimed that Mr Hooley's ongoing symptoms were the result of the "*natural course of [his] pre-existing underlying condition*", and the claims management process, rather than due to his employment.

The Tribunal noted contributing factors to ongoing symptomology included a new workplace, the litigation process, financial stringency and personality factors. The Tribunal found that Mr Hooley's employment no longer contributed, to a significant degree, to his ongoing psychological condition. Accordingly, the reviewable decision was affirmed.

Mr Hooley appealed the Tribunal's decision to the Federal Court. The grounds of appeal included:

1. That the Tribunal erred in law in finding that Mr Hooley's "employment" did not extend to including the provision of a rehabilitation program or professional development training.

2. The Tribunal erred in law in failing to find that the failure to provide a rehabilitation program was an event which was "during the course of" Mr Hooley's employment.

Mr Hooley identified three questions of law for the Federal Court to determine, which centred on whether the phrase "*the employee's employment*" in section 5B of the SRC Act can include a situation where an employee was not provided with a rehabilitation program.

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 is defined as any physical or mental ailment, disorder, defect of morbid condition.

Section 36 of the SRC Act provides for an assessment of an employee's capability to undertake a rehabilitation program.

Section 37 of the SRC Act provides for a rehabilitation authority to make a determination whether an employee should undertake a rehabilitation program.

Section 38 of the SRC Act provides for notice of a determination made under sections 36 or 37 and the opportunity for an employee to seek a review of such a determination.

Conclusion

During his Federal Court appeal, Mr Hooley contended that it was implicit from the "*overall objectives*" of the SRC Act, that an employing agency such as the CSIRO had a general responsibility to rehabilitate an employee. He contended that, since the CSIRO had the general responsibility to do so, and had not done so, and since that failure led to a claimed worsening of his pre-existing condition, then that outcome should be treated as having been "*contributed to, to a significant degree, by [his] employment*" within the terms of section 5B of the SRC Act. Comcare contended that no such responsibly is imposed on the CSRIO under the SRC Act. It follows that any failure to provide such a program cannot be considered to be part of Mr Hooley's employment.

Reeves J found that the SRC Act did not set out a general responsibility or obligation to provide rehabilitation support to an injured employee. Therefore, it followed that the CSIRO was under no obligation to provide such support to Mr Hooley. Further, Mr Hooley failed to establish a link between his employment with the CSIRO and its failure to provide rehabilitation. Therefore, it was unnecessary to decide whether the expression "*employment*" in section 5B of the SRC Act extended to include participating in such a program or support.

Accordingly, Reeves J held that Mr Hooley had failed to establish any relevant error in the Tribunal's decision. The appeal was dismissed.

Lessons Learnt

This decision confirms that in the absence of a written request under section 36(1) of the SRC Act (which is in relation to a rehabilitation assessment only), employers are under no general responsibility or obligation to provide rehabilitation support to an injured employee.

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