

Tribunal accepts that ATO employment no longer contributes to
mental health problems in worker
Karabolovska and Comcare [2020] AATA 5189

Key Points

- The Tribunal was asked to consider ongoing liability in respect of a psychological condition, sustained as a result of an abusive phone call from a taxpayer.
- Medical evidence showed that the employee had significant psychological problems prior to commencing Commonwealth employment.
- The Tribunal found in favour of Comcare, that any work caused exacerbation had ceased and the employee was no longer entitled to compensation for medical treatment and incapacity for work.

Background

Ms Rosa Karabolovska commenced employment with the Australian Taxation Office (the **ATO**) in 2013 and was subsequently promoted to APS2 Level. Ms Karabolovska submitted a claim for workers' compensation for a psychological condition which arose as a result of a phone call with a taxpayer on 25 February 2014. The taxpayer allegedly became irritated and suggested he would harm himself.

On 13 June 2014, Comcare accepted liability to pay compensation pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the **SRC Act**) for aggravation of major depressive disorder, recurrent episode. Ms Karabolovska ceased work in May 2014 and continued to receive compensation for medical treatment expenses and incapacity for work.

On 11 October 2017, Comcare issued a determination which denied liability to pay compensation for medical treatment expenses and incapacity for work, as of 30 September 2017 on the grounds that any ongoing symptoms were unrelated to the work incident on 25 February 2014. The determination was affirmed on reconsideration and Ms Karabolovska sought review of that decision at the Administrative Appeals Tribunal. A hearing was conducted in June 2019. The reviewable decision was affirmed.

Following an appeal to the Federal Court of Australia by Ms Karabolovska, the matter was remitted to the Tribunal to be heard according to law. When the matter again came before the Tribunal, the parties agreed that the review could be determined without a hearing in accordance with section 34J of the *Administrative Appeals Tribunal Act 1975* (Cth).

The issues for the Tribunal to decide were:

- i. Whether Comcare was liable to compensate Ms Karabolovska in respect of the cost of any medical treatment obtained by her in relation to the compensable injury on or since 30 September 2017; and
- ii. Had Ms Karabolovska been incapacitated for work as a result of the compensable injury on, or at any time since, 30 September 2017.



The Law

Section 16 (1) of the SRC Act provides that where an employee suffers an injury, Comcare is liable to pay, in respect of the cost of reasonable medical treatment obtained in relation to the injury.

Section 19 of the SRC Act provides that Comcare is liable to pay compensation for each week that is a maximum rate compensation during which the employee is incapacitated for work as a result of an injury.

Conclusion

The Tribunal found that Ms Karabolovska suffered from significant mental health problems, which required medication, immediately prior to the commencement of her employment with the ATO. The Tribunal did not accept Ms Karabolovska's evidence that she was in remission at that time.

The Tribunal accepted the expert evidence of Dr Champion, that the exacerbation of her pre-existing psychological condition, caused by the workplace incident, was transient. This exacerbation ceased, and Ms Karabolovska's significant mental health problems had returned to their baseline level of dysfunction. Accordingly, any requirement for medical treatment and incapacity for work, since September 2017, was not due to the workplace incident.

The Tribunal affirmed the reviewable decision.

Lessons Learnt

Investigating an employee's medical history is imperative. In this case, the medical records showed a history of significant psychological problems that pre-existed the Commonwealth employment.

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