

No workers' compensation for Adelaide NDIA employee who made a willful and false representation *WMZC and Comcare [2021] AATA 23*

Key Points

- The Tribunal was asked to consider liability for an employee's psychological condition claimed to have been caused by his employment with the NDIA.
- The Tribunal found the employee's mental health condition was not due to his employment, because his psychological condition was similar in nature prior to and during his employment with the NDIA.
- The Tribunal found that the employee made a false and wilful declaration in his application for employment, which precluded liability for the claim.

Background

WMZC commenced employment with the National Disability Insurance Agency (**NDIA**) in late 2016. In his application for employment dated 3 November 2016, WMZC completed an Employment Health Declaration in which he indicated that he had never suffered from mental health problems.

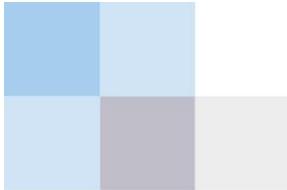
On 7 May 2019, WMZC submitted a claim for workers' compensation in respect of a psychological condition, caused by "*the lack of support by my employer, bullying and harassment by management*".

On 10 July 2019, Comcare denied liability to pay compensation under section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**), on the grounds that the condition was not contributed to, to a significant degree, by his employment. That decision was affirmed on reconsideration and WMZC sought review of that decision at the Administrative Appeals Tribunal. A hearing was conducted in Adelaide in December 2020.

The Tribunal was asked to consider whether:

- 1) WMZC suffered an 'ailment' for the purpose of the SRC Act?
- 2) WMZC's ailment was contributed to, by a significant degree, by his employment with the NDIA such as to constitute a disease for the purpose of section 5B of the SRC Act?
- 3) WMZC's claimed condition is excluded from the definition of 'injury' by virtue of section 7(7) of the SRC Act?

Comcare tendered evidence that WMZC suffered from significant psychological problems dating back to 1998, prior to commencing employment with the NDIA. These included, chronic anxiety, multiple trials of



antidepressants, paranoid and referential delusions and emotional sensitivity. Comcare relied on the evidence of Dr Gunapu, consultant psychiatrist, that WMZC's condition was not significantly contributed to by his employment and that WMZC would have had the condition, regardless of his employment.

Comcare relied on evidence that WMZC was admitted to the St George Hospital Mental Health Unit between 9 and 20 March 2016 for a mental health assessment under s 22 of the *Mental Health Act (2007)* prior to his employment with NDIA. The admitting note stated that WMZC had been harassing the police several times a day. This incident was one of several noted by the Tribunal in which WMZC made complaints about various issues of a persecutory nature. WMZC was discharged from hospital on a three-month Community Treatment Order.

At hearing, WMZC initially rejected the medical evidence regarding his 20-year history of depression. He admitted that he experienced depression in 2012 which stemmed from the collapse of a self-managed super fund. WMZC later accepted the evidence relating to his pre-existing depression after the Tribunal was provided extensive notes from his treating psychologists and GP which made reference to this history.

The Law

'Disease' is defined in section 5B (1) of the SRC Act as an ailment suffered by an employee or the aggravation of such an ailment, that was contributed to, to a significant degree, by the employee's employment.

The expression 'significant degree' is defined as a degree substantially more than material.

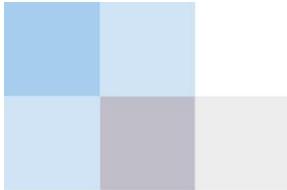
An 'ailment' is defined in section 4 (1) of the SRC Act as a physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development).

Section 7(7) of the SRC Act sets out that a disease will not be compensable if the employee made a wilful and false representation that he or she did not previously suffer from that disease.

Conclusion

The Tribunal found that WMZC had significant psychiatric illnesses, including chronic anxiety, paranoid referential delusions and sweeping beliefs of persecution on grounds of sexuality, physical appearance and ethnicity. The Tribunal concluded that WMZC's employment did not contribute to a significant degree to the aggravation of WMZC's ailment because WMZC presented similarly both prior to and during his employment with NDIA. Accordingly, the NDIA workplace was merely the setting in which WMZC's pre-existing conditions played out, rather than the catalyst for the development of the condition.

Further, the Tribunal concluded that section 7(7) of the SRC Act precluded an entitlement to compensation, because of WMZC's wilful and false declaration on commencement of his employment with NDIA that he did not suffer from mental health conditions. The Tribunal considered that WMZC deliberately failed to disclose this information.



Lessons Learnt

This decision highlights the importance of implementing comprehensive pre-employment health declarations as part of the recruitment process. A deficient disclosure by a prospective employee may enliven the section 7(7) defence and preclude liability for a claim for workers' compensation.

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