

Typing duties did not aggravate carpal tunnel syndrome *Cavanagh and Comcare [2021] AATA 499*

Key Points

- The Tribunal was asked to consider whether a Customer Service Officer's pre-existing carpal tunnel syndrome was aggravated by typing duties.
- The Tribunal found that while the employee may have experienced an increase in her symptoms, there was inadequate evidence to suggest that the employment duties caused that change.
- The Tribunal found in favour of Comcare - the symptoms increased, but as a natural progression of the pre-existing carpal tunnel syndrome, not as a result of employment.

Background

Ms Cavanagh commenced employment with the Fair Work Ombudsmen in April 2006. By 2017, Ms Cavanagh was working in a full-time role at the APS4 level, as a Customer Service Officer.

On 15 February 2017, Ms Cavanagh lodged a workers' compensation claim for pain in her neck, shoulders and wrists, from typing duties. Liability to pay compensation was accepted in respect of "*an aggravation of soft tissue injuries to bilateral wrists, forearms, neck and bilateral shoulders*", pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the **SRC Act**). Comcare accepted liability to pay compensation for physiotherapy treatment. Ms Cavanagh returned to full-time work on 22 June 2017.

Ms Cavanagh lodged a further claim on 20 October 2017 in respect of carpal tunnel syndrome caused by her computer-based work and the physiotherapy treatment. By determination dated 31 January 2018, liability to pay compensation was denied pursuant to section 14 of the SRC Act. This was affirmed on reconsideration and Ms Cavanagh sought review of that decision at the Administrative Appeals Tribunal.

Ms Cavanagh agreed at the hearing that her carpal tunnel syndrome was a pre-existing condition and was therefore not caused by her work. However, at hearing she argued that physiotherapy treatment paid for by Comcare, as well as her employment duties, aggravated the pre-existing condition.

The issue for the Tribunal to decide was whether Ms Cavanagh's claimed increase in symptoms was an aggravation of her pre-existing ailment, within the definition of section 5B of the SRC Act.



The Law

'Disease' is defined in section 5B of the SRC Act as:

- (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.

Significant degree means a degree that is substantially more than material.

"Ailment" means any physical or mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development).

In *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19; [2016] 257 CLR 468, the High Court found that an "injury" as defined in section 5A of the SRC Act, cannot be found where symptoms subjectively experienced by an individual are not accompanied by a physiological change.

In *Re Whitlock and Comcare* [2020] AATA 1353, the Tribunal found that for a pre-existing condition to be aggravated under the SRC Act, there must be evidence of a physiological change to an employee's pre-existing condition.

Conclusion

The Tribunal found the evidence produced by Ms Cavanagh's medical practitioners to be insufficient in supporting Ms Cavanagh's claims that her condition was aggravated by her employment. Further, the Tribunal found there to be medical evidence showing that Ms Cavanagh had symptoms of carpal tunnel syndrome sufficient for a diagnosis as early as February 2017. Due to her delayed diagnosis, her symptoms worsened as a natural progression of her pre-existing condition.


The Tribunal accepted that Ms Cavanagh's symptoms worsened between January and May of 2017 in a way that could be described as a physiological change. Although the Tribunal agreed that the change in Ms Cavanagh's symptoms coincided with changes relating to her employment, this was not enough for a finding that Ms Cavanagh's employment contributed to the physiological change.

The Tribunal also found there to be insufficient evidence to suggest that the physiotherapy treatment approved by Comcare contributed to Ms Cavanagh's physiological change.

The reviewable decision was affirmed, on the basis that any aggravation of the pre-existing carpal tunnel condition, was not contributed to, to a significant degree, by Ms Cavanagh's employment.

Lessons Learnt

For a pre-existing medical condition to be aggravated by employment, there must be evidence to show that the work duties contributed to a physiological change. Evidence of physiological change is not sufficient on its own, and a Tribunal must be satisfied that the work duties contributed to that change.





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