

## Tribunal finds ATO Analyst suffered burnout and depression from employment

*Gibson and Comcare [2021] AATA 1183 (7 May 2021)*

### Key Points

- The Tribunal was asked to consider liability for a psychological condition suffered by an analyst for the Australian Taxation Office.
- The Tribunal found that the reasonable administrative action exclusion did not apply to this claim, and ultimately concluded that the condition was contributed to, to a significant degree by employment and found in favour of the employee.

### Background

Mr Gibson commenced employment with the Australian Taxation Office (**ATO**) as an analyst in 2000 at an APS5 level. Between July 2016 and June 2017, Mr Gibson was temporarily placed on higher duties at an APS6 level. From 2017, Mr Gibson was supervised remotely from Melbourne, by Mr Miller. During that time, Mr Gibson said he was “*under a lot of stress and was experiencing increasing anxiety*” as well as experiencing symptoms like “*fatigue, pain, insomnia and anxiety with unexplained headaches*”.

In 2018, Mr Gibson consulted with an ENT specialist, a psychologist and later a psychiatrist, Dr Thomas, who diagnosed him as suffering from severe major depression with anxiety and panic attacks. In 2018, Mr Gibson submitted a claim for workers’ compensation in respect of “*burnout, anxiety and depression*” caused by his employment. Mr Gibson claimed that he developed the condition in the first half of 2017.

The Tribunal was asked to consider:

1. whether Mr Gibson suffered from a disease within the meaning of section 5B of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**) on the basis that his condition was contributed to, to a significant degree by his employment; and
2. whether the disease was a result of reasonable administrative action taken in a reasonable manner within the meaning of section 5A of the SRC Act.

### The Law

Section 5A of the SRC Act sets out that an injury 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. A non-exhaustive list of administrative actions is included at section 5A(2).

Disease is defined in section 5B as an ailment or aggravation of such an ailment that was contributed to, to a significant degree, by the employee’s employment.



## Conclusion

Comcare argued that Mr Gibson was predisposed to develop a psychological condition as he had a prior case of depression in 2010 after the death of his mother. The Tribunal acknowledged other minor possible causes of the condition such as his partner's own depressive illness and the worsening of his partner's family members' dementia. However, Mr Gibson stated these did not significantly distress him and it was held these were part of "the vicissitudes of ordinary life", rather than something significantly causing his depression.

The Tribunal accepted that the condition arose due to Mr Gibson having to work long hours and because he was stressed by adverse comments about his performance made by Mr Miller. The Tribunal found that Mr Gibson's condition was contributed to, to a significant degree, by his employment.

Comcare argued that the claim should be excluded on the basis that the psychological condition was caused by events that fell within the meaning of reasonable administrative action pursuant to section 5A of the SRC Act. The Tribunal referred to the authority in *Commonwealth Bank of Australia v Reeve* [2012] FCAFC 21 and held that the tasks, hours and workload committed to by Mr Gibson during the relevant period were not reasonable administrative action taken in respect of his employment.

The Tribunal set aside the reviewable decision.

## Lessons Learnt

When considering a claim for worker's compensation for a psychological condition, the Tribunal will assess pre-disposing factors and other non-employment related causes, that may have contributed to the disease. If these factors are part of the normal vicissitudes of life, they may not be considered to have made a significant contribution to the disease.

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