

False perceptions are not considered contributing factors to psychological condition *WNBR and Comcare (Compensation) [2021] AATA 32*

Key Points

- The Tribunal was asked to consider initial liability for a psychological condition.
- All that is required is that the employee is exposed to some incident, or state of affairs, in the course of the performance of his/her duties and to which he/she would not otherwise have been exposed as per *Wiegand v Comcare*.
- The Tribunal found that false perceptions about employer's motivations, even if they lead to the worsening of a pre-existing condition, can be hard to fit within the category of strong contributing factors.
- The Tribunal found in favour of the employer.

Background

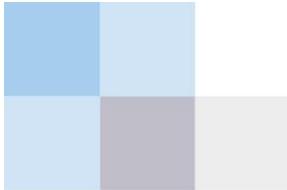
WNBR was employed by the Australian Prudential Regulation Authority (**APRA**). WNBR became depressed when he visited the UK on holiday, due to family concerns. In April 2018, WNBR was diagnosed with Bipolar II with possible post-traumatic stress disorder and prescribed medication. He took some time off work.

In August 2018, WNBR's employer began to discuss a return to work program and arranged for him to attend a rehabilitation specialist for an assessment. In September 2018, WNBR was certified 'fit to return to work'. Disputes arose between WNBR and APRA about the proposed return to work program. WNBR believed the program amounted to a demotion and felt undervalued and depressed as a result of this perception. In January 2019, WNBR was advised that his position was being made redundant.

WNBR submitted a claim for workers' compensation in respect of "*aggravation of bipolar affective disorder, unspecified and aggravation of post-traumatic stress disorder*". Liability was denied under section 14 of the SRC Act. That decision was affirmed on reconsideration. WNBR sought further review at the Administrative Appeals Tribunal.

The issues for the Tribunal to decide included:

1. Did the applicant suffer an injury as defined in section 5A of the SRC Act? And if so,
 - a) Whether the aggravation of his pre-existing condition arose out of, or in the course of, his employment; and if so,
 - b) Whether the condition was suffered as a result of reasonable administrative action, taken in a reasonable manner, in respect of that employment;

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2. If the injury was an aggravation of an ailment, did it satisfy the definition in section 5B of the SRC Act?

Comcare argued that the condition, or aggravation of the condition, did not arise out of or in the course of the applicant's employment because WNBR had not returned to work. Comcare argued that the negotiation of a return to work cannot be said to fall within "arising out of, or in the course of, employment". Comcare argued that WNBR failed the test specified in section 5B of the SRC Act as his condition was not contributed to, to a significant degree, by his employment. It was further submitted that any aggravation was suffered as a result of reasonable administrative action taken in a reasonable manner.

The Law

Section 14 of the SRC Act provides that Comcare is liable to pay compensation in respect of an injury suffered by an employee if the injury results in death, incapacity for work, or impairment.

"Injury" is defined in section 5A of the SRC Act as a disease; or an injury (other than a disease) arising out of, or in the course of, an employee's employment; or an aggravation of a physical or mental injury (other than a disease). 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 is excluded.

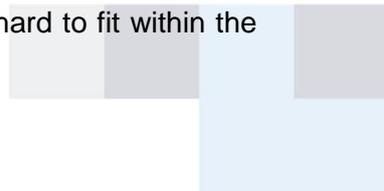
"Disease" is defined in section 5B of the SRC Act as an ailment or the aggravation of such an ailment, that was contributed to, to a significant degree, by the employee's employment. The expression "significant degree" is defined as a degree substantially more than material.

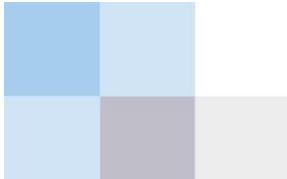
Conclusion

The Tribunal resolved the section 14 threshold question in favour of WNBR. The Tribunal found that since WNBR was still employed by APRA, a graduated return to work program to reintroduce him to his workplace satisfied the *Hatzimanolis* principle and was therefore "in the course of" his employment.

The Tribunal found that it was difficult to describe attempting and failing to settle upon an agreed return to work as "administrative action". Asking an employee to work below his station was considered to be operational rather than administrative and so the reasonable administrative action provisions did not exclude WNBR's claim.

WNBR's evidence was that he felt undervalued and worthless because of his perception that APRA required him to work below his Level 4 Principal Analyst role. He felt he was being managed out of his role. This perception led him to become so depressed he was incapacitated for work. WNBR had other perceptions about events in the workplace, but there was no evidence they had occurred. The Tribunal considered the case of *Wiegand v Comcare* regarding s 5B of the Act where it was held that all that is required is that the employee is exposed to some incident or state of affairs in the course of the performance of his duties and to which he would not otherwise have been exposed, which is a significant contributing factor to the ailment or an aggravation of the ailment suffered by the employee. Ultimately, the Tribunal held that WNBR's false perceptions about his employer's motivation for proposing initial duties requiring less skill, even if leading a pre-existing condition to worsen, were hard to fit within the





category of strong contributing factors to the relevant aggravation.

Accordingly, the reviewable decision was affirmed.

Lessons Learnt

When considering a claim for workers' compensation for a psychological condition, the Tribunal will consider all the contributing factors including, where relevant, the applicant's perceptions of their employers' actions however all that is required is that the employee is exposed to some incident or state of affairs in the course of the performance of his duties and to which he would not otherwise have been exposed, which is a significant contributing factor to the ailment or an aggravation of the ailment suffered by the employee.

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