

Tribunal finds a fall in the course of employment did not cause or aggravate a rotator cuff injury

Dzajkoska and Comcare (Compensation) [2021] AATA 2035 (1 July 2021)

Key Points

- The Tribunal was asked to determine liability for a shoulder injury suffered when an Administration Officer fell over in a carpark at Sydney Airport.
- The Tribunal found that the employee's shoulder injury was pre-existing and was not aggravated by the fall.
- The Tribunal found in favour of Comcare and affirmed the decision under review.

Background

Ms Dzajkoska commenced employment with the Department of Home Affairs in September 2005. By 2014, she was employed by the Australian Border Force as an Administration Officer based at the Sydney International Airport.

On 8 May 2014, Ms Dzajkoska fell in a carpark at the airport. Ms Dzajkoska was referred for an ultrasound which, on 26 June 2014, revealed a partial tear of her right rotator cuff. In 2015, a further medical examination determined Ms Dzajkoska had sustained a full tear of her right rotator cuff.

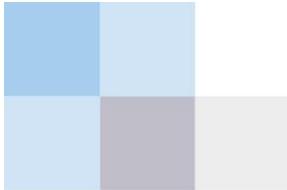
In July 2018, Ms Dzajkoska lodged a claim for workers' compensation in respect of "*right shoulder ligament tear, bursitis and neck pain*", sustained on 8 May 2014. Comcare determined that there was no liability to pay compensation under section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the **SRC Act**). That determination was affirmed on reconsideration. Ms Dzajkoska sought further review at the Administrative Appeals Tribunal.

The Law

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

"Injury" is defined in section 5A(1) of the SRC Act and includes:

- (a) physical injury arising out of, or in the course of, the employee's employment; or
- (b) an aggravation of such an injury arising out of, or in the course of, the employee's employment.



Conclusion

Ms Dzajkoska was examined on 3 July 2019 by Associate Professor Neil McGill, Rheumatologist, who concluded that Ms Dzajkoska had degenerative cervical spine disease in addition to a right rotator cuff tear.

The Tribunal found that Ms Dzajkoska's neck pain was not caused by the fall, but by her degenerative cervical spine disease. The Tribunal was not satisfied that Ms Dzajkoska suffered an injury to her neck in the fall of 2014.

Associate Professor McGill acknowledged that a rotator cuff tear could be caused by a fall of the nature experienced by Ms Dzajkoska. However, Ms Dzajkoska did not exhibit the expected pain symptoms of a rotator cuff tear in the 4 weeks following the fall. Medical evidence showed that Ms Dzajkoska had shoulder pain in the six months preceding the date of the fall and so it was concluded that the rotator cuff injury likely preceded the fall.

The Tribunal was not satisfied that Ms Dzajkoska's injuries, specifically the rotator cuff tear, were aggravated in the course of her employment.

The reviewable decision was affirmed.

Lessons Learnt

When considering a claim for an injury suffered in a frank incident, such as a fall, the Tribunal will look to contemporaneous medical records, rather than relying solely on the claimant's recollection of events. Contemporaneous records of prior symptoms and a lack of severe symptoms following an incident, will cast doubt over the veracity of the claim. Contemporaneous records may include clinical notes from a general practitioner or a physiotherapist, and these may assist medical specialists to comment on causation, many years after the incident.

Contact:

Naomi Adams
Associate
Direct: +61 (08) 9265 6015
naomi.adams@hbalegal.com

Visit www.hbalegal.com for more case articles and industry news.

Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.

