

## Tribunal finds Youth Worker suffered lower back injury while setting up for Karaoke event

*FSBS and Australian Capital Territory [2021] AATA 1661 (10 June 2021)*

### Key Points

- The Tribunal was asked to consider liability for a back injury sustained by a Youth Worker while carrying chairs at a school.
- The Tribunal found that the employee suffered a soft tissue strain injury, as a result of the work incident.
- The Tribunal set aside the reviewable decision and found in favour of the employee.

### Background

FSBS commenced employment with the ACT Department of Education and Training in 2007 as a Youth Worker at a school. During his employment, FSBS made various claims for compensation for injuries to his right knee, right ankle, finger and back injuries.

On 23 August 2019, FSBS was descending some stairs while carrying chairs, to set up for a karaoke event at the school. FSBS submitted a claim for workers' compensation for an injury to his lower back. Liability to pay compensation was denied, pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the SRC Act). The determination was affirmed on reconsideration and FSBS sought further review at the Administrative Appeals Tribunal.

The Tribunal was asked to consider whether:

1. FSBS suffered from an 'ailment' or an 'aggravation' of an ailment;
2. FSBS's employment contributed to the ailment, to a significant degree; and if not
3. FSBS sustained a physical injury, or an aggravation of a physical injury, arising out of, or in the course of, his employment.

There were inconsistencies in FSBS's account of the incident which raised questions about the reliability of his evidence. The Tribunal noted the case would largely turn on the reliability of his evidence and whether it could be supported by contemporaneous material.



## 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(1) of the SRC Act and includes:

- (a) a disease suffered by an employee;
- (b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment; or
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee that is an aggravation that arose out of, or in the course of, the employee's employment.

Disease is defined in section 5B 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.

## Conclusion

The Tribunal found that although there were inconsistencies with FSBS's recollection of events, the medical evidence corroborated FSBS's claim that he experienced lower back pain on 23 August 2019 and sought medical treatment later that day. The soft tissue strain therefore met the description of an 'ailment', as defined in s 4(1) of the SRC Act.

There was no dispute that the usual duties of FSBS's employment may have included the activities he was engaged in when he sustained the soft tissue strain. On that basis, FSBS's employment contributed to the ailment, to a degree that is substantially more than material which meets the definition of 'disease' for the purposes of the SRC Act.

The Tribunal found that if the injury was not considered to be a 'disease' for the purposes of the SRC Act, then the alternate basis for liability was the 'injury' provisions of section 5A(1)(b) of the SRC Act which requires that the condition must have arisen in the course of employment. The Tribunal found that the musculoligamentous strain was an ascertainable physiological change that was consistent with a frank injury that occurred in the course of FSBS's employment.

The Tribunal found the soft tissue strain caused a 'partial incapacity for work' and an 'impairment', for the purposes of section 14 of the SRC Act since FSBS was unable to continue with the work task.

The Tribunal set aside the reviewable decision and found in favour of FSBS.





## Lessons Learnt

When determining liability for a claim for workers' compensation, the Tribunal will consider whether the employee's claimed mechanism of injury, accords with other contemporaneous evidence, such as witness evidence and medical records. A lack of contemporaneous supporting evidence is not fatal to a claim, and if there is no contradictory evidence, a Tribunal may accept the employee's version of events.

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