

Full Federal Court confirms compensation not payable where causal nexus between injury and employment no longer exists.
Woodhouse v Comcare [2021] FCAFC 95

Key Points

- The Full Federal Court was asked to decide whether the Tribunal had erred in deciding that Ms Woodhouse's psychological condition could no longer be said to be contributed to, to a material, degree, by her employment.
- The Full Court dismissed each of Ms Woodhouse's grounds of appeal, and confirmed the Tribunal's approach.
- The Appeal was dismissed.

Background

Ms Woodhouse was employed as the First Violinist with the Queensland Orchestra (**QO**) and experienced "*bullying, bitchiness and backstabbing behaviours*". Ms Woodhouse became aware of a complaint to the QO's leadership group by another musician to the effect that she "*had not been practising sufficiently and was undeserving of her placement in the first chair violin section*".

In August 2003, Ms Woodhouse experienced a severe panic attack while performing with the QO, resulting in her abruptly leaving the stage before the performance ended. On 9 February 2004, Ms Woodhouse lodged a claim for workers' compensation in respect of "*panic disorder with major depression*". Liability to pay compensation was accepted in respect of "*aggravation of major depression disorder (MDD), recurrent episode*" and "*aggravation of anxiety state*".

On 14 September 2017, Comcare determined that Ms Woodhouse had no present entitlement to compensation for medical treatment and incapacity for work pursuant to sections 16 and 19 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**). Following a request for reconsideration, Comcare affirmed the determination on the basis that Ms Woodhouse's condition was "*due to [her] pre-existing psychological condition*" and her employment was no longer a "*material contributing factor*" to her incapacity. Ms Woodhouse sought review of Comcare's decision in the Administrative Appeals Tribunal (**the Tribunal**).

The Tribunal found that given the extent and significance of non-employment factors and their impact on Ms Woodhouse, her condition could no longer be said to be "*contributed to a material degree by her employment with the QO over 15 years ago*". Those factors had "*crowded out*" the employment factors which originally gave rise to her accepted conditions. The decision under review was affirmed and Ms Woodhouse appealed the Tribunal's decision to the Full Federal Court.

Ms Woodhouse's notice of appeal identified four questions of law to be answered:

1. Did the Tribunal err by construing sections 4, 16, and 19 of the SRC Act as meaning that compensation was only payable if Ms Woodhouse's previous employment by the Commonwealth continued to be a material contributing factor to her ailment?
2. In the alternative to (1), did the Tribunal err by failing to ask whether the "injury" from which it found Ms Woodhouse had in fact suffered, resulted in any current incapacity for the purposes of section 19(1) of the SRC Act?
3. Did the Tribunal err by construing section 7(6) of the SRC Act as being applicable only where an employee continues to suffer from the originally compensable "injury"?
4. Did the Tribunal err by failing to consider the application of sections 7(6)(b) or (c) of the SRC Act to the facts and evidence before the Tribunal?

The Law

Section 14 of the SRC Act provides that the employer 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.

A disease is defined under section 5B of the SRC Act as an ailment, or an aggravation of an ailment, which has been contributed to, to a significant degree, by the employee's employment.

Under section 4 of the SRC Act, an ailment is defined as any physical or mental ailment, disorder, defect or morbid condition.

Pursuant to section 16 of the SRC Act, where an employee suffers an injury, an insurer is liable to pay for the cost of medical treatment obtained in relation to the injury, being treatment that was reasonable to obtain in the circumstances.

Section 19 of the SRC Act provides that where an employee is incapacitated for work as a result of an injury, the employer is liable to pay compensation for incapacity for work.

Conclusion

Question 1:

Ms Woodhouse's submission was that there was no basis in section 14 of the SRC Act for construing the definition of "disease" as requiring employment to continue to contribute to the condition. Rather, the use of the past tense "was" in that definition should be given effect such that an ailment or an aggravation thereof is a "disease" if it was ever contributed to, in a material degree, by employment. The Full Court dismissed this ground of appeal on the basis that it had not been raised in the Tribunal proceedings, but nonetheless went on to consider it.

The Full Court stated that Comcare has no liability under section 14 of the SRC Act in relation to an

ailment, the continued existence of which can no longer be said to have the necessary causal connection to the employee's employment. The mere fact that the ailment suffered may once have had the necessary connection is irrelevant. Even where the ailment continues unabated, if it ceases to have the characteristic of being one which was relevantly contributed to by the employee's employment, Comcare's liability ceases. Accordingly, the result was that even if Ms Woodhouse had been granted leave to raise the new point of construction on appeal, it would have failed.

Question 2:

Ms Woodhouse contended that, on the proper construction of section 19 of the SRC Act, the reference to an "injury" was not confined to one that currently existed but also included an "injury" that had now resolved. Ms Woodhouse submitted that the Tribunal erred by failing to consider whether her current incapacity for work was "as a result of" the "injury" that it found Ms Woodhouse had previously, but no longer suffered. Comcare submitted that once an "injury" ceases to be such, it is unnecessary to consider sections 16 and 19 of the SRC Act.

The Full Court found that in the absence of a present "injury" and a consequent entitlement pursuant to section 14, there cannot be liability to pay compensation for incapacity for work that occurs "as a result of" an injury pursuant to section 19 of the SRC Act. Accordingly, it was open to the Tribunal to conclude that Ms Woodhouse's previous episode of MDD had resolved and the current episode was consequent upon her underlying conditions. Question two was answered in the negative.

Questions 3 & 4:

Ms Woodhouse contended that the Tribunal erred in its constructions of section 7(6) as there was nothing in the language of that sub-section which required a disease to exist at the relevant time for it to apply. The Full Court found that it was pointless to consider whether section 7(6) can deem incapacity, which exists at a particular time, to be the result of a "disease" which has previously resolved for the purposes of the SRC Act. The Full Court stated that Ms Woodhouse's proposed construction undermined the whole structure of the SRC Act in the sense that it was inconsistent with the central importance given to the concept of an "injury" in the SRC Act. The absence of an express limitation of the operation of section 7(6) to a disease which exists contemporaneously with the incapacity for work or impairment that it is said to cause does not compel the conclusion that the sub-section should not be read as being subject to such a limitation. For those reasons, Question three was answered in the negative and it was considered unnecessary to consider Question four.

The appeal was dismissed with costs.

Lessons Learnt

The Full Court rejected the proposition that compensation remains payable merely because the commencement or onset of the ailment or aggravation was materially contributed to by the employment at one stage. The Full Court's decision confirms that it is open to Comcare to cease liability to pay compensation when the compensable condition is no longer sufficiently connected to employment.

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