

Weight loss surgery not related to psychological condition *Fittock and Comcare* [2021] AATA 3628

Key Points

- The Tribunal was asked to consider liability for weight loss surgery obtained by a customer service officer working at Services Australia.
- The employee claimed that the surgery was necessary to treat her accepted psychological condition.
- The Tribunal applied *Howes v Comcare* [2016] FCA 1521 and found there was insufficient evidence that the surgery related to her accepted psychological condition.

Background

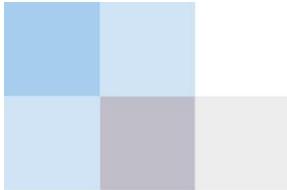
Ms Fittock was employed by Services Australia as a customer service officer in Queensland. In July 2018, Ms Fittock submitted a claim for workers' compensation in respect of a psychological condition. Liability to pay compensation was accepted, pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**), in respect of an aggravation of an adjustment disorder, sustained on 21 April 2017 (the **accepted psychological condition**).

Ms Fittock underwent gastric sleeve surgery (the **surgery**) on 16 March 2018. Ms Fittock requested reimbursement for the cost of the surgery on the basis that the accepted psychological condition caused her blood sugar to rise to a dangerous level, resulting in a requirement for the surgery. On 10 December 2020, Comcare denied liability to pay compensation for the surgery pursuant to section 16 of the SRC Act, on the basis that it was treatment for weight loss and was not considered to be recognised medical treatment for the accepted psychological condition. That determination was affirmed on reconsideration and Ms Fittock sought review at the Administrative Appeals Tribunal.

The Law

Section 16 of the SRC Act requires Comcare to pay compensation in respect of the cost of medical treatment obtained in relation to the injury (being treatment that it was reasonable for the employee to obtain in the circumstances).

Section 4 of the SRC Act defines '*medical treatment*' as including surgical treatment by, or under the



supervision of, a legally qualified medical practitioner.

In *Howes v Comcare* [2016] FCA 1521, the Federal Court stated that the subjective views of an applicant or their medical advisors were not determinative of whether claimed medical treatment related to their compensable condition.

Conclusion

At hearing, Ms Fittock conceded that the surgery was not treatment for the accepted psychological condition but was undertaken to alleviate her diabetes. She contended that her accepted psychological condition made her diabetes worse.

Comcare contended that:

1. the surgery did not meet the definition of “*medical treatment*” as defined in section 4 of the SRC Act; and
2. the surgery was not obtained “*in relation to*” the accepted psychological condition for the purposes of section 16 of the SRC Act.

The Tribunal found that the surgery was ‘*medical treatment*’ for the purposes of the SRC Act.

The Tribunal applied the authority of *Howes v Comcare* [2016] FCA 1521, which stated that the subjective views of an applicant or their medical advisors were not determinative in the consideration of whether claimed medical expenses were “*in relation to*” an applicant’s compensable condition.

The Tribunal noted that Ms Fittock’s own evidence suggested the surgery was required to treat her diabetes rather than the accepted psychological condition. However, she contended that her accepted psychological condition had caused a deterioration of her diabetes and that the surgery should be compensable on this basis.

The Tribunal considered its jurisdiction in the circumstances was limited to the determination of whether the surgery related to the accepted psychological condition, rather than a decision in respect of liability under section 14 of the SRC Act in relation to Ms Fittock’s diabetes or obesity conditions.

The Tribunal found that there was insufficient medical evidence to establish a connection between the surgery and Ms Fittock’s accepted psychological condition. Accordingly, the Tribunal affirmed the decision under review on the basis that the surgery was not obtained “*in relation to*” the accepted psychological condition.



Lessons Learnt

In order for liability to exist for medical treatment expenses, it must be demonstrated that the treatment meets the definition of '*medical treatment*', as defined under section 4 of the SRC Act and that the treatment was obtained "*in relation to*" the condition for which liability has been accepted.

Contact:

Daniel Iminjan

Solicitor

Direct: +61 (02) 9376 1100

daniel.iminjan@hbalegal.com

Kate Watson

Partner

Direct: 0409 578 461

kate.watson@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.