

Tribunal finds lower back injury not caused by prolonged sitting/standing
at government department
Salehi and Comcare [2021] AATA 3294

Key Points

- The Tribunal was asked to determine liability for a lower back injury claimed to have been sustained due to prolonged sitting and standing in the workplace.
- The Tribunal accepted that the employee suffered from a lower back condition but found no evidence that the condition was contributed to, to a significant degree by employment.

Background

Mr Salehi commenced employment with the Department of Human Services (DHS) on 15 March 2016, following his successful completion of a pre-employment medical assessment. In April 2016, Mr Salehi submitted an injury report regarding neck and shoulder pain which he attributed to frequent bending during the course of his work duties. Mr Salehi submitted a further injury report in June 2016, this time regarding left knee pain which he considered was caused by standing at work.

DHS organised for Mr Salehi to undergo an ergonomic assessment, which recommended he alternate between sitting and standing until the left knee pain resolved. Mr Salehi decided not to pursue a workers' compensation claim in respect of his left knee condition.

On 9 January 2017, Mr Salehi was re-deployed to a computer-based role on 9 January 2017. By April 2017, Mr Salehi complained of back and hip pain which he attributed to sitting for extended periods at work.

On 8 June 2017, Mr Salehi lodged a further injury report in respect of his back pain, attributing it to a lower back disc bulge rather than "*knee issues*". He submitted a claim for workers' compensation on 12 June 2017 in respect of "*lower back injury and anxiety due to injury*". Mr Salehi claimed that his injury was caused by his employer's failure to provide an adjustable desk, which meant he experienced back pain from "*sitting all day*".

On 4 August 2017 a determination was issued which denied liability for "low back pain related to degenerative change in the lumbar spine with probable radicular symptoms" and "adjustment disorder with depressed and anxious mood", pursuant to section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) (the SRC Act). This was affirmed on reconsideration and Mr Salehi applied for further review by the Administrative Appeals Tribunal.

Mr Salehi abandoned his claim for a psychological condition but continued to pursue his claim in respect of the lower back condition. The Tribunal was required to consider whether Mr Salehi suffered



from a lower back condition and if so, whether Mr Salehi's lower back condition had been contributed to, to a significant degree by his employment.

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 subsection 5A(1) of the SRC Act to mean:

- (a) a disease suffered by an employee; or

"*Disease*" is defined in section 5B(1) of the SRC Act as an ailment suffered by an employee 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 found that Mr Salehi suffered from a lower back condition, as diagnosed by Dr Simon Journeaux, Orthopaedic Surgeon, as "*single-level degenerative disc disease presenting with an L5/S1 disc prolapse with evidence of left S1 neural impingement*". Although Dr Journeaux acknowledged that prolonged sitting or standing could adversely affect a person's back, he considered Mr Salehi's condition was unrelated to his employment because it was constitutional and degenerative in nature. The Tribunal found that Mr Salehi's condition was not significantly contributed to by his employment because there was no medical evidence supporting his argument that significant periods of sitting, standing or bending at work had contributed to or aggravated his back condition.

The Tribunal accepted the evidence of Dr Nicholas Burke, Occupational Physician, who considered Mr Salehi's back condition would have occurred at this stage of his life irrespective of his employment. The Tribunal also rejected the argument that prolonged periods of standing at work had resulted in Mr Salehi's knee injury which had altered his gait causing an injury to his back. In doing so, the Tribunal referred to Mr Salehi's soccer injury and generic arthritic conditions, which had apparently persuaded him to not proceed with a workers' compensation claim in 2016 for this condition.

The Tribunal found in favour of Comcare and affirmed the reviewable decision.



Lessons Learnt

When assessing whether work duties have contributed to a medical condition, or to the aggravation of a pre-existing condition, the Tribunal will look for medical evidence that the employment duties, such as prolonged sitting or standing, actually contributed to the development of, or the aggravation of, the condition. In the absence of such evidence, the Tribunal is unlikely to find that the threshold test for liability has been met.

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