

## Tribunal: actions to address underperformance were reasonable

*YYHQ and Comcare [2021] AATA 3809*

### Key Points

- The Tribunal was asked to consider liability for a psychological condition, claimed to have been caused by bullying and harassment at the Department of Home Affairs.
- The Tribunal found that the psychological condition did not meet the definition of Injury as it was suffered as a result of reasonable administrative action, being the actions taken by the employer to address underperformance.
- The Tribunal found in favour of Comcare and the decision under review was affirmed.

### Background

YYHQ commenced employment with the Department of Home Affairs in Sydney in 2000. YYHQ submitted a claim for workers' compensation in respect of a psychological condition caused by bullying and harassment from his Team Leader, while he was working in Canberra from September 2019 to March 2021.

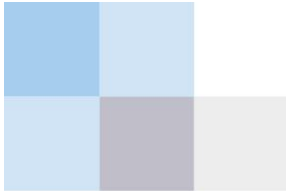
Comcare accepted that the psychological condition was contributed to, to a significant degree by YYHQ's employment, but denied liability to pay compensation, pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth (the SRC Act)), on the basis that the condition was suffered as a result of reasonable administrative action, taken in a reasonable manner, in respect of his employment, within the meaning of section 5A(1) of the SRC Act. The determination was affirmed on reconsideration and YYHQ sought further review at the Administrative Appeals Tribunal.

### The Law

Section 5A(1) of the SRC Act provides as follows:

"injury" means:

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

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- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment), that is an aggravation that arose out of, or in the course of, that employment;

but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

Section 5A(2) of the SRC Act provides as follows:

reasonable administrative action is taken to include the following:

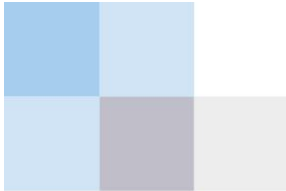
- (a) a reasonable appraisal of the employee's performance;
- (b) a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment;
- (c) a reasonable suspension action in respect of the employee's employment;
- (d) a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment;
- (e) anything reasonable done in connection with an action mentioned in paragraph (a), (b), (c) or (d);
- (f) anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

## Conclusion

YYHQ made a number of allegations against his Team Leader, including that she made unfounded personal accusations against him, she imposed unrealistic standards in terms of the quality of work expected of him and meeting deadlines.

YYHQ's Team Leader gave evidence that he underperformed in his role and she set out the steps she took to address that underperformance. Those actions consisted of providing feedback, arranging training, enlisting colleagues to assist YYHQ, discussing his underperformance in consultation with Human Resources and eventually to directing YYHQ to return to APS4 Level instead of APS5 (which YYHQ had described as too difficult for him).

The Tribunal did not accept the evidence from YYHQ and found the Team Leader to be an honest and reliable witness. The Tribunal found the Team Leader to have provided positive feedback when appropriate and to have acted in a reasonable manner in her dealings with YYHQ.



The Tribunal found that YYHQ's psychological condition did not meet the definition of Injury under the SRC Act, as it was suffered as a result of reasonable administrative action, being the actions taken by the Team Leader to address YYHQ's underperformance.

## Lessons Learnt

This decision highlights the importance of keeping detailed contemporaneous notes and records in circumstances where there are issues with an employee's performance. The Tribunal will look to those records to consider claims made by employees of bullying and harassment in the workplace. This evidence can show that actions taken by employers were reasonable and necessary management actions in the circumstances.

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