

Ongoing symptoms were due to old Army injury not  
compensable condition  
*Di Carlo and Linfox Australia (Operations) Pty Ltd [2021] AATA 5086*

## Key Points

- The Tribunal was asked to consider ongoing liability to pay compensation to a Linfox Australia employee in respect of a left elbow condition.
- The Tribunal accepted that the employee had suffered a previous left arm injury while serving in the Army and ultimately found that the employee no longer suffered from a condition attributable to his employment.
- The Tribunal affirmed the decision under review.

## Background

Mr Di Carlo was employed by Linfox Australia (Operations) Pty Ltd as a warehouse operator. He submitted a claim for workers' compensation on 6 April 2018, for a condition described as a "*partial tear of the left common extensor tendon (tennis elbow)*". This was sustained as a result of removing plastic wrap from a pallet on 22 March 2018.

By determination dated 30 April 2018, Linfox accepted liability to pay compensation pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the **SRC Act**), in respect of "*minor aggravation of lateral epicondylitis of the left elbow*".

Mr Di Carlo received compensation for medical treatment expenses and incapacity to work, pursuant to sections 16 and 19 of the SRC Act. On 20 July 2018, Mr Di Carlo ceased employment with Linfox and has not worked in any capacity since that time.

By determination dated 23 July 2018, Linfox found there was no present liability to pay compensation for medical treatment expenses and incapacity to work, pursuant to sections 16 and 19 of the SRC Act. The determination was affirmed on reconsideration and Mr Di Carlo sought further review at the Administrative Appeals Tribunal.

The Tribunal was required to consider whether Mr Di Carlo continued to suffer from the effects of the compensable condition. If so, the Tribunal was also required to consider whether he was entitled to compensation for medical treatment and incapacity to work in respect of that condition.



## The Law

Pursuant to section 16 of the SRC Act, where an employee suffers an injury, Linfox 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 Linfox is liable to pay compensation for each week during which the employee is incapacitated for work as a result of an injury.

## Conclusion

Mr Di Carlo argued that he continued to suffer from the effects of the compensable condition and it resulted in a requirement for medical treatment. Mr Di Carlo did not claim to be incapacitated for work in respect of the compensable condition. Linfox contended that Mr Di Carlo no longer suffered from the effects of the compensable condition.

Dr Tony Kostos, Rheumatologist, gave evidence that prior to working at Linfox, Mr Di Carlo had served in the Army and suffered a specific injury to his left forearm. Dr Kostos concluded that although the incident from 2018 might have resulted in minor left lateral epicondylitis, this was not the cause of his ongoing problems which were largely related to his left proximal forearm.

Associate Professor Peter Steadman, Orthopaedic Surgeon, considered that the problem with the elbow was consistent with a long-standing pre-existing left arm problem relating to the injury sustained in the Army.

Mr Di Carlo relied on the evidence of Orthopaedic Surgeons Mr John O'Brien and Professor Mino Patel. The Tribunal preferred the evidence of Associate Professor Steadman and Dr Kostos on the basis that Professor Patel did not make any observations regarding work-related causation and Mr O'Brien's evidence was not only against the weight of the other available medical evidence but also did not have proper regard to Mr Di Carlo's earlier Army injury.

The Tribunal was satisfied that, at the time of the March 2018 incident, Mr Di Carlo was suffering from an underlying condition in respect of his left forearm due to the prior Army injury and that his ongoing symptoms in relation to his left arm were a consequence of that pre-existing underlying condition and not the compensable condition. Further, the Tribunal was satisfied the compensable condition had fully resolved by 23 July 2018 and found that Mr Di Carlo was no longer suffering from a condition attributable to his employment such as to give rise to a liability to pay compensation for medical treatment expenses and incapacity to work, pursuant to sections 16 and 19 of the SRC Act.

Accordingly, the reviewable decision was affirmed.





## Lessons Learnt

Employers may not be liable to pay compensation for medical expenses and incapacity payments pursuant to sections 16 and 19 of the SRC Act if it is found, based on expert medical evidence, that the compensable condition has resolved, or is the result of a pre-existing underlying condition.

It is prudent to investigate prior employment and medical history for information relating to previous injuries.

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