

Symptoms of anxiety and stress do not amount to a psychological condition

Fittock and Comcare [2022] AATA 72

Key Points

- The Tribunal was asked to make a decision about liability on a claim for an aggravation of a psychological condition suffered by an employee of Services Australia.
- The employee claimed she experienced stress and anxiety as a result of the conduct of her team leader, after she was not transferred to an alternate team upon request.
- The Tribunal applied *Comcare v Mooi* [1996] FCA 1587 and *Richardson and Comcare* [2010] AATA 245 in concluding that she did not suffer from a psychological condition.
- The Tribunal affirmed Comcare's decision, denying liability for the claim.

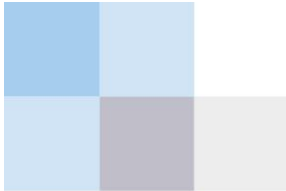
Background

Ms Fittock was employed by Services Australia as a customer service officer in Queensland. Ms Fittock had an accepted claim for workers' compensation regarding "*aggravation of an adjustment disorder*", sustained on 21 April 2017.

On 25 June 2020, she submitted a further claim for workers' compensation in relation to an aggravation of her adjustment disorder, with mixed anxiety and depressive symptoms, which she first noticed on 30 May 2020. Ms Fittock claimed that her condition was caused by the conduct of her team leader, because she was not transferred to an alternate team when she requested it and due to the workers' compensation claims and litigation processes.

Psychiatrist Dr Derek Lovell, reviewed Ms Fittock and provided a report dated 20 August 2020, in which he noted Ms Fittock was stressed and angered that her request for a change of team leader was not approved. He also concluded that she was stressed about interpersonal difficulties with management and having to read documents in relation to her workers' compensation claims. Dr Lovell concluded Ms Fittock suffered from symptoms of stress, but did not suffer from a psychological condition.

On 24 August 2020, Comcare determined there was no liability to pay compensation for Ms Fittock's 2020 claim pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC**



Act). The determination was affirmed by reconsideration dated 29 September 2020 and Ms Fittock sought further review at the Tribunal on 11 October 2020.

Dr Lovell provided a supplementary report dated 23 June 2021 in which he noted Ms Fittock's heightened interpersonal sensitivity and her tendency to project her medical difficulties onto the workplace. He concluded Ms Fittock exhibited a repetitive behaviour pattern, rather than a recognised psychiatric disorder. Dr Lovell's opinion was that Ms Fittock's personality style and inability to accept feedback were the '*major issues*'. He noted Ms Fittock needed to learn how to interact with team leaders appropriately.

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 disease suffered by an employee.

"*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.

In *Comcare v Mooi* (1996) 69 FCR 439, the Federal Court stated that it was essential for a worker to demonstrate they suffered from a condition which was outside the boundaries of normal mental functioning and behaviour, in order to satisfy section 5B of the SRC Act.

In *Richardson and Comcare* [2010] AATA 245, the Tribunal observed that there could be circumstances in which a work environment could generate debilitating stress without giving rise to a "*disease*" within the meaning of section 5B of the SRC Act.

Conclusion

While the Tribunal acknowledged Ms Fittock felt stressed and anxious as a result of her employment, it referred to *Richardson* in concluding that even "*debilitating stress*" could be present without giving rise to a "*disease*" within the meaning of section 5B of the SRC Act.

The Tribunal applied *Mooi* and found Ms Fittock did not suffer from a psychological condition, or the aggravation of a psychological condition, in 2020 which was outside the boundaries of normal mental functioning and behaviour. In reaching this conclusion, the Tribunal accepted Dr Lovell's opinion that Ms Fittock did not suffer from a diagnosable psychiatric disorder and that she instead exhibited a



repetitive behavioural pattern.

The Tribunal was not satisfied Ms Fittock suffered from a disease pursuant to section 5B of the SRC Act. Because of its findings on the disease issue, the Tribunal was not required to consider whether Ms Fittock's condition was attributable to her employment, or whether it was excluded as a result of the reasonable administrative action provisions.

Accordingly, the reviewable decision dated 29 September 2020 was affirmed.

Lessons Learnt

Work-related stress, even of a debilitating nature, will not be compensable under the SRC Act unless it can be demonstrated that it amounts to a condition which was outside the boundaries of normal mental functioning and behaviour.

Contact:

Daniel Iminjan
Solicitor
Direct: 0452 063 369

daniel.iminjan@hbalegal.com

Kate Watson
Partner
Direct: 0409 578 461

kate.watson@hbalegal.com

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