

WFH set up significantly contributes to right shoulder injury

Heldt and Comcare (Compensation) [2023] AATA 534

Key Points

- The Tribunal was required to consider whether Mr Heldt's claimed right shoulder condition had been significantly contributed to by his employment with the ATO.
- The Tribunal found in favour of Mr Heldt and set aside the reviewable decision.

Background

Mr Heldt was employed full-time with the Australian Tax Office (**ATO**). During COVID-19, Mr Heldt was working from home. On 9 July 2021, Mr Heldt submitted a claim for workers' compensation, which stated, "*I have a right shoulder tear and I am requesting surgery to hopefully fix it...I was working from home when it happened. I was moving the mouse and I started to feel pain in my right shoulder*". Mr Heldt reported that his right shoulder symptoms worsened over a period of several weeks until he saw his general practitioner on 28 August 2020, and he was referred for an orthopaedic review. He was subsequently diagnosed with a "*SLAP labral tear of the superior labrum extending to the anteroinferior quadrant with mild synovitis in the axillary recess*".

Comcare denied liability for Mr Heldt's right shoulder condition on the basis that it was not significantly contributed by his employment with the ATO. Mr Heldt sought review of this decision in the Administrative Appeals Tribunal (**the Tribunal**).

The Law

An injury is defined under section 5A of the SRC Act as an injury arising out of, or in the course of, an employee's employment.

A disease is defined under section 5B of the SRC Act as an ailment, or an aggravation of an ailment, which has been contributed to, to a significant degree, by the employee's employment.

Under section 4 of the SRC Act, an ailment means any physical or mental ailment, disorder, defect or morbid condition.



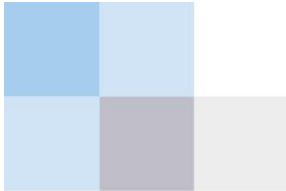
Conclusion

The matter turned on competing expert evidence regarding causation. Mr Heldt relied on the opinions of Dr Peter Pereira (General Practitioner), Mr Soong Chua (Treating Surgeon), Mr Kemble Wang (Treating Surgeon), and Mr Ash Moaveni (Orthopaedic Specialist). In summary, they all agreed that the prolonged position of the arm in a non-ergonomic position for use of computer/mouse could result in shoulder tendon tears/a shoulder overuse injury.

Comcare relied on the opinion of Associate Professor Michael Wren (Orthopaedic Specialist) that it was not reasonable to attribute the type of SLAP tear Mr Heldt suffered to repetitive light use of the shoulder, specifically not due to use of a computer, mouse, or keyboard.

The Tribunal found that the applicant suffered from a “*SLAP labral tear of the superior labrum extending to the anterior-inferior quadrant with mild synovitis in the axillary recess*”. It categorised this as a disease within the meaning of section 5B of the SRC Act. The Tribunal accepted that when compared to the ATO’s office set-up, Mr Heldt’s working from home set up resulted in a prolonged use of his right arm in a somewhat elevated, awkward, or unnatural position for prolonged periods. This was supported by the applicant’s evidence and corroborated by Mr Chua, Mr Wang, and Mr Moaveni. The Tribunal found that the contribution of Mr Heldt’s employment to the development of his right shoulder condition was substantially more than material. In reaching this conclusion, the Tribunal noted the following:

1. Mr Chua, Mr Wang, and Mr Moaveni accepted the injury conformed with the stated cause and posited a clear theory of causation linked to employment.
2. The Tribunal was unpersuaded that the limited literature search undertaken by Mr Wren was determinative of whether atypical presentations like Mr Heldt’s occur. The Tribunal found the evidence of Mr Chua, Mr Moaveni, and Mr Wang to be more persuasive in that regard.
3. The Tribunal noted that Mr Chua, Mr Wang, and Mr Moaveni were Fellows of the Royal Australasian College of Surgeons and Members of ASES with more than 30% of their practice focused on shoulder and elbow surgery. Meanwhile, Mr Wren was a Perth-based orthopaedic surgeon with more general subspecialties in arthroscopic joint surgery.
4. The Tribunal considered the personal examination by Mr Chua, Mr Wang and Mr Moaveni to be a more reliable basis for the conclusions they reached, noting Mr Wren undertook a single interstate consultation with the applicant over telehealth for medicolegal purposes, with the assistance of a physiotherapist.

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5. The Tribunal accepted the evidence of Mr Moaveni that there are no established guidelines regarding the correlation between seat/table differences and the probability of a shoulder injury. The Tribunal noted that while any analysis in this area would be more persuasively established by an occupational physician, the combined weight of Mr Chua, Mr Wang, and Mr Moaveni's evidence was that even relatively small changes in work set-up could cause arm/shoulder conditions of the sort sustained by Mr Heldt.

Accordingly, the Tribunal set aside the reviewable decision and in substitution found that Mr Heldt suffered from a right shoulder ailment, which was significantly contributed to by his employment. Consequently, Comcare was liable to pay compensation pursuant to section 14 of the SRC Act.

Lessons Learnt

There may not always be one specific incident which causes an employee to sustain a workplace injury. A prolonged aggravation of symptoms in an unergonomic working-from-home set up can amount to a compensable injury for the purposes of the SRC Act.

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