

## Slips and Falls and Underlying Degenerative Conditions: a case insight on the limits of liability

*Singh and Comcare (Compensation) [2023] AATA 720*

### Key Points

- The Tribunal was asked to consider two related applications relating to injuries sustained from two separate falls.
- The Tribunal had to consider whether either of those falls contributed to, or aggravated, Ms Singh's pre-existing osteoarthritis condition.
- The Tribunal found in favour of Comcare.

### Background

Ms Singh has worked for the Department of Human Services (now Services Australia) since 1990. She had a previously accepted claim in respect of an “*aggravation of right calf strain*” as a result of a fall in July 2016 (**the accepted condition**).

On 17 November 2020, Ms Singh lodged a claim for workers' compensation in relation to a right hip injury sustained as a result of tripping over a cord while walking away from her desk at work on 29 July 2016 (**the July 2016 Fall**). On 19 January 2021, Comcare declined liability to pay compensation pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**) for “*osteoarthritis of the [right] hip with a geode in the femoral head*”. The decision was affirmed on reconsideration and Ms Singh sought further review at the Administrative Appeals Tribunal (**the Tribunal**) (**the First Reviewable Decision**).

On 6 July 2021, Ms Singh lodged a further claim for workers' compensation in relation to a right hip injury claimed to have been sustained as a result of falling over at a shopping mall during her work lunch break on 18 January 2016 (**the January 2016 Fall**). On 2 September 2021, Comcare declined liability to pay compensation under section 14 of the SRC Act for “*leg pain (right hip and leg) or aggravation thereof*”. The decision was affirmed on reconsideration and Ms Singh sought further review at the Tribunal (**the Second Reviewable Decision**).



## 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.

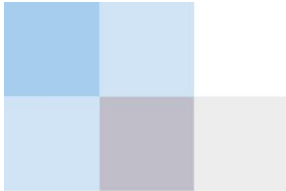
A disease is defined under section 5B of the SRC Act as an ailment, or an aggravation of an ailment, which has been contributed to, to a significant degree, by the employee's employment.

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

## Conclusion

The Tribunal found no basis for Ms Singh's argument that the accepted condition included an acceptance of liability for any right hip injury. The Tribunal stated that on review of the evidence it was clear Comcare had not accepted liability for any hip condition suffered by Ms Singh with respect to the two falls in 2016. In any event, the Tribunal noted it was not bound to reach the same conclusion as Comcare in relation to the accepted condition on review of the reviewable decision. In this regard, the Tribunal pointed to the Full Federal Court decision of *Telstra Corporation Ltd v Hannaford* [2006] FCAFC 87 where it was decided that after Comcare has made a decision as to its liability under section 14 of the SRC Act, later decision-makers can reach different conclusions regarding whether the condition is and was ever a compensable injury.

Ms Singh argued that the trauma or acute exacerbation of her hip injury that she sustained in the January 2016 Fall and/or the July 2016 Fall was "*an aggravation of an injury other than a disease*" for the purposes of section 5A(1) of the SRC Act. In considering whether Ms Singh's osteoarthritis is properly characterised as an "ailment", the Tribunal took into account the manner in which Dr Ridhalgh, orthopaedic surgeon, and Associate Professor McGill, rheumatologist, described Ms Singh's osteoarthritis condition. Dr Ridhalgh referred to the condition as a "*disease process*", a "*degenerative condition*", and a "*degenerative disease*". Associate Professor McGill described osteoarthritis as an "*underlying process*". The Tribunal noted that their evidence was in accordance with the AMA Guides to Evolution of Disease and Injury Causation which states under the heading '*Hip Osteoarthritis*', "*[t]he progressive and irreversible nature of this disease leads to an increased prevalence with age*". The Tribunal concluded that after having regard to the definition of "ailment" and the expert medical



evidence, particularly, the observation that osteoarthritis is a constitutional and degenerative condition, it was satisfied that Ms Singh's condition was an "ailment" rather than an "injury (other than a disease)."

The Tribunal was satisfied that Ms Singh was already suffering from significant pain from her right hip before the January 2016 Fall. Further, following the July 2016 Fall, Ms Singh complained of pain in her ankle or foot but not any new or increased hip pain. The Tribunal acknowledged that Ms Singh began to experience pain in her right thigh and hip in or around April and May 2016 when she visited India, noting this was some months after the January 2016 Fall and before the July 2016 Fall. The Tribunal was satisfied that the pain in Ms Singh's thigh and hip in or around April and May 2016 was most likely due to the natural progression of her osteoarthritis condition. Accordingly, the Tribunal found that neither of the falls caused an aggravation of Ms Singh's ailment, nor did they contribute to her ailment, to a significant degree.

Accordingly, the Tribunal affirmed the reviewable decisions.

## Lessons Learnt

This decision confirms that in circumstances where an applicant has an underlying degenerative condition, it is inevitable that this condition will progressively deteriorate, and liability ceases in circumstances where the compensable condition resolves.

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