

## Chronic pain condition arising from a previously accepted injury is found to be not compensable

*Keceski and Comcare [2023] AATA 1265*

### Key Points

In 2014, Ms Keceski claimed compensation in relation to an arm injury arising from computer use. Liability was accepted by Comcare but Ms Keceski's entitlements to incapacity payments and medical treatment were ceased in 2020. In the same year, she claimed compensation in relation to a chronic pain condition related to her upper body.

The AAT was tasked to determine the two overlapping claims.

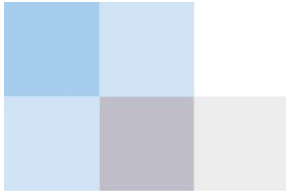
In relation to the first claim, AAT found that Ms Keceski did not continue to suffer from the original arm injury.

In relation to the second claim, the AAT found that Ms Keceski did suffer from a chronic pain condition, but it was not significantly contributed by her employment or the earlier accepted arm injury.

### Background

In 2014, Ms Keceski (**applicant**) claimed compensation for a repetitive strain injury to her elbow, right forearm and right wrist. She claimed she sustained the injury from the change of work into a more computer intensive role and increased workload. Liability was accepted.

In 2020, Comcare issued a no present liability (**NPL**) determination which found that the applicant did not have an entitlement to compensation for incapacity for work or medical treatment. That determination was affirmed on internal review and the applicant applied to the AAT for review. Shortly after, the applicant submitted a further claim for '*Bilateral Chronic Pain, Bilateral RSI*'. The further claim was also denied and the applicant applied to the AAT for review of this decision.



The two claims overlapped and were heard together by the AAT.

For the first claim, the AAT found that it is critical to determine whether the applicant *continued* to suffer from the effect of the accepted arm injuries. For the second claim, the AAT stated the question is essentially one of *causation*, as it was conceded by both parties that the applicant suffered from the chronic pain condition.

## The Law

Section 14(1) of the *Safety, Rehabilitation & Compensation Act 1988* (Cth) (**SRC Act**) provides: subject to this Part, Comcare is liable to pay compensation in accordance with this Act in respect of an injury suffered by an employee if the injury results in death, incapacity for work, or impairment.

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

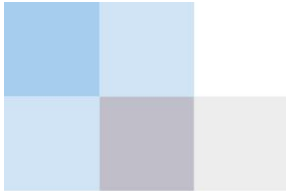
### *On the first claim*

Following a lengthy consideration of the medical opinions, the AAT noted that apart from Dr Ryan (Occupational Physician), five other expert witnesses could not identify any significant pathological or physiological condition.

The AAT concluded that the applicant did not continue to suffer from the original arm injury.

### *On the second claim*

Although the parties had agreed that the applicant suffered from a chronic pain condition, the AAT examined this issue on expert evidence. There were again disparities in the expert evidence. Apart from the expert evidence, the AAT also noted the long duration of employment, the applicant's sense of unfairness about her workload allocations, and the applicant's personality type being vulnerable to anxiety and obsessive behaviour.



Ultimately the AAT accepted Dr Ridhalgh's (Consultant Orthopaedic Surgeon) expert opinion supported by three other experts that the applicant's employment had not contributed, to a significant degree, to her chronic pain condition.

## Lessons Learnt

Despite some dispute around factual issues, the ultimate issues turned on the expert evidence, and this case highlights the importance of collecting competent expert evidence from relevant fields of expertise.

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