

Awad v TNT Australia Pty Ltd [2014] AATA 331 (28 May 2014)

Key Points

- Whether the applicant's perception of events actually occurred.
- Whether the applicant was able to rely on his perception of events as a significant contributing factor to the onset of his condition.

Background

Mr Awad was employed by TNT Australia (TNT) and claimed compensation for “*depression and anxiety state*” as a result of an incident at work on 10 August 2012. TNT issued a determination denying liability, which was affirmed by reviewable decision. Mr Awad sought review of the decision with the Tribunal.

Mr Awad did not give evidence at the hearing, however he provide a written statement. Briefly, Mr Awad considered that his manager had been “spying” on employees. The incident in question occurred between Mr Awad and his manager on 10 August 2012, and involved a confrontation between them. It was common ground that there had been some tension between the two prior to 10 August 2012. The incident between the two men was captured on CCTV footage, which was made available to the Tribunal at the hearing. From the evidence presented, it was clear that Mr Awad's perception of the confrontation was significantly different to the evidence shown on the CCTV footage, and the oral evidence provided by Mr Awad's manager.

The Law

The Tribunal was to decide whether Mr Awad suffered a disease to which his employment contributed to a significant degree.

It was also required to consider whether Mr Awad could rely on the incident of 10 August 2012 as having been a contributing factor to the onset of his condition, given the difference in his perception of the incident, as compared to the other evidence of how the confrontation played out.

In *Wiegand v Comcare* [2002] FCA 1464; (2002) 72 ALD 795, von Doussa J said that, in determining whether an incident or state of affairs contributed to an ailment to the required degree:

... there is no requirement at law that the interpretation placed on the incident or state of affairs by the employee, or the employee's perception of it, is one which passes some qualitative test based on an objective measure of reasonableness. If the incident or state of affairs actually occurred, and created a perception in the mind of the employee (whether reasonable or unreasonable in the thinking of others) and the perception contributed in a material degree to an aggravation of the employee's ailment, the requirements of the definition of disease are fulfilled.

Conclusion

Dr Grace initially diagnosed Mr Awad as developing an Adjustment Disorder with Depressed and Anxious Mood. Dr Grace stated that Mr Awad's condition was *"unusual in its presentation"* and diagnosed *"non-psychotic Chronic Major Depressive Disorder associated with a paralyzing level of Anxiety"*.

Doctors George, Robertson and Champion (Psychologists) gave oral evidence concurrently to the Tribunal and agreed that Mr Awad's presentation was highly unusual. On review of the CCTV footage of the incident, the doctors all stated that the incident had the potential to lead to a psychiatric response in the nature of an Adjustment Disorder. Mr Awad's response was therefore out of all proportion to the incident observed on the CCTV footage.

Taking into account all of the evidence, the Tribunal was satisfied that an incident had occurred in which Mr Awad was publicly taken to task by his manager. The Tribunal was satisfied that Mr Awad perceived this as a public humiliation and that it triggered a psychiatric reaction. The Tribunal noted the medical evidence, and that all of the doctors had agreed that what they saw on the DVD was the sort of incident that could cause a person to feel under attack and lead to a response by way of some kind of stress reaction. The Tribunal was satisfied that there was more than a temporal connection between Mr Awad's condition and his employment, and that he had a reaction of a psychiatric nature as a result of the incident. The fact that his reaction was not proportionate to the incident shown on the CCTV footage was of no relevance.

Accordingly, the decision under review was set aside.

Lessons Learnt

The case demonstrates that it is not enough to argue that an applicant's perception of an event could not have caused the psychological condition claimed. What needs to be considered is whether the event occurred and whether the perception of events from the applicant's point of view could have caused or contributed to the condition.

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