

## *Azary v National Australia Bank Limited [2014] AATA 222 (16 April 2014)*

### **Key Points**

- The Tribunal was presented with compelling surveillance evidence which showed the applicant behaving in a manner that was clearly inconsistent with his claimed psychological condition.
- The Tribunal found that, in light of the surveillance evidence and the various medical opinions, it could not be satisfied that the applicant suffered from any psychological condition.

### **Background**

Mr Azary began his employment with National Australia Bank (**NAB**) in July 2007. Over the years, he was awarded various promotions, and at the time of his claimed injury, he was employed in a senior banking advisor position.

Mr Azary claimed that, despite meeting his performance targets, his manager bullied and intimidated him until, at a meeting on 20 April 2012, he was given an ultimatum to accept a lower level position or be subject to “micro-management” with the threat of termination if his results did not improve. Mr Azary has not worked since that meeting.

On 16 May 2012, Mr Azary lodged a claim for compensation in respect of “*Acute Anxiety Attacks/Depression*”. Liability for the claim was denied by NAB on the basis that Mr Azary’s condition (if in fact he did suffer from a condition) was not significantly contributed to by his employment. Alternatively, NAB contended that if the condition was significantly contributed to by his employment, then liability was excluded as a result of the reasonable administrative action provisions in section 5A(2).

### **The Law**

Section 14 of the SRC Act provides that an employer will be liable to pay compensation for an injury that results in incapacity for work. Injury is defined in section 5A, and disease is defined in section 5B.

It is not disputed that Mr Azary’s claimed condition would fall under the disease provisions.

Section 5A(1) provides that an injury is not compensable where it is suffered as a result of reasonable administrative action taken in a reasonable manner in respect of an employee’s employment. Section 5A(2) provides a list of actions which are considered to constitute reasonable administrative action for the purposes of the SRC Act.

## Conclusion

The Tribunal was required to consider the following issues:

1. whether Mr Azary suffered from a psychological condition;
2. if so, whether his employment contributed to a significant degree;
3. if his employment did contribute to a significant degree, whether the condition arose as a result of reasonable administrative action taken in a reasonable manner.

Mr Azary attended the hearing and gave evidence. The Tribunal noted his appearance throughout the hearing, which included him walking stooped with his hands clasped in front of him, rocking continually, avoiding eye contact and speaking in a child-like voice. Mr Azary gave evidence that these symptoms started within one or two days of the meeting on 20 April 2012 and had continued since that time. Despite this, the Tribunal noted that Mr Azary had no apparent difficulty answering questions and recalling details of events regarding his claim.

NAB presented the Tribunal with surveillance of Mr Azary. The surveillance was carried out over a total of 13 days, in three different periods. The Tribunal noted that "*At all times when filmed, Mr Azary's presentation bore no resemblance to how he presented at the hearing*". The Tribunal did not accept the evidence of Mr Azary and his wife who attempted to explain the difference in his behaviour at the hearing and his behaviour shown in the surveillance, as their evidence was unconvincing.

The discrepancies in Mr Azary's presentation were further demonstrated when the medical experts were called. Significantly, Mr Azary had been involved in a motor vehicle accident in 2012. The notes from the doctors who assessed Mr Azary for the purposes of the motor vehicle accident made no record of any psychological condition or behaviours similar to those shown by Mr Azary at the hearing.

A number of the independent medical experts gave evidence concurrently. After being shown the surveillance footage, those doctors who had previously considered Mr Azary suffered from a psychological condition changed their opinion in this regard.

On the evidence presented, the Tribunal was not satisfied that Mr Azary had suffered from any psychological disorder. In the event that they were wrong, the Tribunal concluded that liability was excluded in any event as a result of reasonable administrative action provisions.

Accordingly, the decision under review was affirmed.

## Lessons Learnt

The case is an excellent example of the effect that good surveillance can have on a Tribunal's decision. The ability of surveillance to highlight inconsistencies in an applicant's presentation can be integral to obtaining a favourable decision at hearing.

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