

## *Baird and Comcare [2012] AATA 233* (17 April 2013)

### Key Points

- Whether the applicant's carpal tunnel syndrome should correctly be categorised as an injury, a disease or an aggravation of a disease.
- Whether the carpal tunnel syndrome displayed the requisite connection to the applicant's employment so as to make it compensable.

### Background

Ms Baird was employed by the Department of Human Services as a Customer Services Officer since 2006. Ms Baird's daily duties included keying data into computers, talking to customers, photocopying, filing and stapling documents and using a computer mouse.

From late 2011, Ms Baird's role also involved the Booker Role. This role required extremely quick typing, as Ms Baird would be listening to customers via headset while taking down their enquiries. Around this time, Ms Baird's role also involved batching mail, scanning, sending correspondence and keying in updated customer details.

In 2010, Ms Baird noticed some awkwardness and weakness in her right hand, but did not mention this to her doctor. Around the end of 2011, Ms Baird began to experience pain, numbness and tingling in her right wrist.

In early 2012, Ms Baird went on an overseas holiday and contracted a viral infection, from which she recovered. Ms Baird returned to work in April 2012, and upon her return, noticed pain in her wrist and difficulty gripping with her right hand. The right hand was numb and tingling. She consulted her GP, who sent her for blood tests. When Ms Baird returned to discuss the test results, her GP diagnosed carpal tunnel syndrome.

On 2 May 2012, Ms Baird lodged a workers' compensation claim in respect of carpal tunnel syndrome, which she claimed arose as a result of repetitive typing. Liability for the condition was denied by Comcare, and this decision was affirmed on review. Ms Baird sought review of the decision at the Tribunal.

### The Law

Section 5A of the SRC Act relevantly defines "injury" to mean:

- a) a disease suffered by an employee; or*
- b) an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment; or*
- c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the*

*employee's employment), that is an aggravation that arose out of, or in the course of, that employment.*

Disease is further defined in section 5B as an ailment or aggravation of such ailment that was contributed to, to a significant degree, by the employee's employment.

## Conclusion

The Tribunal was required to consider whether Ms Baird's condition should be categorised as an injury or a disease pursuant to the SRC Act, and also whether it constituted an aggravation of a disease.

Based on the medical evidence, the Tribunal found that the correct diagnosis for Ms Baird's condition was carpal tunnel syndrome. The Tribunal further found that, although Ms Baird had experienced some symptoms of carpal tunnel prior to April 2012, these symptoms had not resulted in any incapacity for work. Accordingly, the date of injury was considered to be the date of diagnosis, which occurred on 18 April 2012.

In deciding whether the condition was an injury or a disease for the purposes of the SRC Act, the Tribunal noted that an injury is generally manifested by sudden physiological change, whereas the term disease covers all other types of injury. On this basis, the Tribunal found that Ms Baird's condition was not a frank injury, and therefore fell within the definition of disease, subject to the requisite connection with her employment.

There was no evidence of any external factors causing Ms Baird's condition. It was noted that the viral infection contracted while she was on holiday appeared to be associated with its onset. Based on the medical evidence, the Tribunal was unable to find that Ms Baird's employment had significantly contributed to the development of the condition.

The final issue for consideration was whether Ms Baird's employment had aggravated the condition to a significant degree. Based on the evidence presented, the Tribunal was not satisfied that aggravation was contributed to, to a significant degree, by Ms Baird's employment. Rather, it found that the viral illness Ms Baird contracted while on holiday was the factor which triggered the deterioration of her carpal tunnel syndrome to the point that she required time off work.

The Tribunal affirmed the decision under review.

## Lessons Learnt

The case provides an excellent outline of the process that should be used by decision-makers when determining whether a claimed condition should be correctly categorised as an injury or a disease pursuant to the SRC Act. It also provides a useful summary of the method that the Tribunal uses to consider issues of contribution

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