

## *Davies v Australian Postal Corporation* [2014] AATA 578 (20 August 2014)

### Key Points

- The Tribunal was required to consider whether Ms Davies' condition should correctly be categorised as an injury, a disease or an aggravation of a disease.
- The Tribunal was then required to consider whether the injury arose out of, or in the course of, Ms Davies' reemployment or, alternatively, whether her employment contributed to, to a significant degree, her disease.

### Background

Ms Davies commenced her employment at Australia Post in 1996, firstly as an administrative officer and then a mail sorter.

On 7 September 2009, Ms Davies noted pain in her right forearm. She subsequently lodged a workers' compensation claim in respect of a right forearm strain, which was accepted by Australia Post on 23 September 2009.

In July 2010, Ms Davies complained of pain in her left forearm. Subsequent nerve conduction studies identified bilateral carpal tunnel compression of the median nerve.

On 4 October 2012, Ms Davies lodged a workers' compensation claim in respect of recurrent carpal tunnel syndrome in both wrists. Liability for the condition was denied by Australia Post, and this decision was affirmed on review. Ms Davies sought review of the decision at the Administrative Appeals 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;*

*but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's 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

Based on the medical evidence, the Tribunal accepted that the correct diagnosis for Ms Davies' condition was carpal tunnel syndrome, with a median nerve compression in the carpal tunnel being an ailment and therefore a disease under section 5B of the SRC Act.

In determining whether Ms Davies' employment was a significant contributing factor to her condition, the Tribunal gave regard to the Second Reading Speech of the SRC Act on 30 November 2006, in which the Minister stated:

*"...the courts have read down the expression 'in a material degree' to emphasise the causal connection between the employment and the condition complained of rather than the extent of the contribution itself. The Bill therefore includes an amendment to restore the initial legislative intent by requiring that an employee's employment must have contributed in a significant way to the contraction or aggravation of the employee's ailment."*

The medical evidence referred to the well-publicised and accepted risk factors for carpal tunnel syndrome, namely age, female gender, cigarette smoking and hypothyroid states.

Based entirely on the facts of the matter, the Tribunal held that Ms Davies' employment was definitely a contributing factor in 2010 when she was placed in restrictive work duties and directed not to use her right hand. Her sorting of mail using her left hand only did produce a degree of overuse.

However, noting the multitude of contributing factors to Ms Davies' condition such as the overall risk factors, her complex medical history and her failure to follow instructions in respect of investigations, the regular consultations with her endocrinologist and her modification of her prescribed dosages of replacement hormonal therapy, the Tribunal found that the contribution made by Ms Davies' work duties to carpal tunnel syndrome in both wrists was material but not of a significant degree.

The Tribunal affirmed the decision under review.

## Lessons Learnt

The case reiterates the importance that an employee's disease must have been contributed to, to a significant degree, by the employee's employment. It is not enough that the contribution be material only.

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