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Drenth v Comcare [2012] FCAFC 86 (21 May 2012)

Key Points

- The Full Federal Court has further clarified and refined the application of the reasonable administrative action exclusion found in section 5A(1) of the *Safety, Rehabilitation & Compensation Act 1988* (Cth) (**SRC Act**).
- Fitness for Duty Decision.

Background

Ms Drenth was employed by the ATO and suffered from a number of non-work related health issues including significant psychological stress as a result of which she had been hospitalised following an overdose of medication. Due to these health issues, the ATO referred her for a medical examination. The opinion of the medical examiner was that Ms Drenth was not capable of working. The ATO advised the applicant by letter that she was not to return to work and that she would need to obtain a medical certificate from her GP as to her capacity to return to work. The applicant claimed she was injured as a result of receiving this letter.

The Law

Outline of the relevant sections of the SRC Act – try to avoid reproducing them unless absolutely necessary.

The Law

In concluding that the decision of the ATO (as communicated in its letter to Ms Drenth), was administration action, the Full Federal Court stated:

> *"a decision that an employer is not prepared to allow an employee to return to work because of a medical opinion that the employee is then not fit and to require the employee to provide further evidence that he or she is fit, is quintessentially an action that is directed specifically to the employee. Such a decision does not affect him or her because it is some feature of his or her workplace or environment or is otherwise connected to the employee's employment. Rather, it is a decision about the employment relationship itself."*

Conclusion

The Full Federal Court went on to find that it did not matter that the action taken by the ATO was not pursuant to the Public Service Act. The decision was “clearly administrative action within the meaning of s 5A, whatever its source, because it was directed squarely towards, and taken in respect of, her employment”.

In addition, the Court found that Hart v Comcare (2005) 145 FCR 29 applied so that if any factor that had been excluded as a cause of the injury or aggravation, even though there may have been several other operative causes at work, no compensation was payable at all.

For more information about this article please contact:

Brett Ablong | Partner
brett.ablong@hbalegal.com
Direct line: (08) 9265 6001
Mobile: 0400 263 807