

## *JQWK v Comcare* [2013] AATA 830 (22 November 2013)

### Key Points

- The Tribunal was required to consider whether an injury was an aggravation or merely a continuation of a previous injury. The decision is a good illustration of the thought process for dealing with whether an injury relates to employment.

### Background

JQWK worked for a Commonwealth government department. She had previously had a claim before the Tribunal. In March 2010, the Tribunal affirmed a decision concerning a workplace injury said to have arisen as a result of bullying and harassment in March 2008. In that matter, the Tribunal found that JQWK suffered from a personality disorder, rather than a psychological condition.

In this matter, the Tribunal was required to consider three new claims by JQWK –a rejected claim in respect of an aggravation of a previous injury, a permanent impairment claim in relation to that aggravation, and a claim for medical treatment expenses arising out of the aggravation.

In respect of her present claims, JQWK cited a particular event as being a major trigger for the aggravation of her medical condition, specifically, her inspection of her employing agency's human resources file which confirmed that her employer had passed on certain information to Comcare in relation to her earlier claim despite her request to management that she wished to vet what was being sent.

In determining the current claims, the Tribunal was required to consider whether the claimed injury was truly an aggravation under the SRC Act, or merely a continuation of a previous injury.

### The Law

Section 5A and 5B of the SRC Act provide definitions of injury and disease. Relevantly, a disease is defined as being an ailment or aggravation of an ailment that was contributed to, to a significant degree, by an employee's employment. A significant degree is stated to mean a degree that is substantially more than material.

Section 14 of the SRC Act provides that Comcare is liable to pay compensation in respect of an injury which results in death, incapacity for work, or impairment.

Sections 70 and 71 set out the powers of Comcare when it undertakes its functions, including its ability to require documents and other information to be provided to it by employing agencies upon request.

### Conclusion

In making its decision, the Tribunal had to differentiate between the injury the subject of JQWK's previous claim, and the aggravation the subject of her current claims.

Based on the medical evidence, the Tribunal was satisfied that the discovery of the privacy breaches had a negative impact on JQWK's already fragile mental state. The medical specialists agreed that JQWK suffered from major depressive disorder, precipitated by the March 2008 incident the subject of her original claim. The specialists agreed that JQWK's condition was further impacted by disputes with her employer following the Tribunal's original decision in 2010. On this basis, the Tribunal was satisfied that the 2008 incident triggered JQWK's depressive episode, notwithstanding that in 2010, a differently constituted Tribunal had found that JQWK suffered from a personality disorder, rather than a psychological condition.

The Tribunal found that it was unable to revisit the decision of the differently constituted Tribunal in March 2010 notwithstanding that it now had opinions from a number of psychiatrists that JQWK suffered from a depressive disorder as a result of the 2008 incident. As the Tribunal was satisfied that JQWK had suffered from a disease as defined by the SRC Act, it then needed to be satisfied that JQWK's ailment or aggravation of an ailment was contributed to, to a significant degree, by her employment.

JQWK gave evidence that in September 2008, her manager had authorised her to use some work time to manage her workers' compensation claim. JQWK submitted that as she discovered the privacy breaches and an email written by the HR manager she considered derogatory while looking at the agency's files during work time, this therefore constituted part of her employment. Comcare disagreed with her view.

Comcare submitted that what triggered JQWK's condition was JQWK's earlier claim and the request pursuant to section 71 of the SRC Act for the agency to provide relevant information to Comcare.

The Tribunal found that the employing agency providing its documents to Comcare was reasonable in the circumstances, and therefore accepted Comcare's argument that the aggravation of JQWK's depressive condition which arose out of inspection of the workers' compensation documents was caused by repercussions of her earlier workers' compensation claim rather than her employment.

In relation to the remainder of JQWK's complaints, the Tribunal found that, based on the medical evidence, the other incidents referred to were not significant contributing factors to her condition.

As the Tribunal did not find in JQWK's favour in relation to the aggravation, the claims for permanent impairment and medical treatment also failed.

## Lessons Learnt

The decision is a good illustration of the thought process for dealing with whether an injury relates to employment. In this instance, the claimed condition was a continuation of a previous condition, for which liability had already been denied.

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