

Jablonka and Comcare [2012] AATA 627 (19 September 2012)

Key Points

- Decision not to pay worker at a higher level is RAA.
- Senior Member Friedman found that a decision by the Australian Taxation Office (the **ATO**) to decline to pay the Applicant retrospectively for duties she claimed to have performed at a higher level than her actual classification of APS4, was reasonable administrative action.

Background

On 15 December 2009, the Applicant submitted a claim for workers' compensation for a psychological condition which she said she suffered as a result of a meeting with her Director on 10 July 2009, to discuss issues concerning her employment, including a restructure within the ATO and a change in her duties. The claim was denied on the basis that the condition was a result of the remuneration decision and a failure to obtain a transfer within the ATO, which both constituted reasonable administrative action.

There was no dispute that the Applicant suffered from a psychological condition which was described as “*aggravation of major depressive disorder, recurrent episode*”, and both parties agreed that this condition was contributed to, to a significant degree, by her employment with the ATO. The question for the Tribunal to decide was whether the Applicant's condition was suffered as a result of the remuneration decision, and if so, can the remuneration decision be classified as reasonable administrative action?

The Law

The Tribunal found that the remuneration decision constituted reasonable administrative action, more specifically, it was found to be anything reasonable done in connection with the employee's failure to obtain a benefit, pursuant to section 5A (2)(f) of the SRC Act. Further, it was found that there was no mechanism available for the payment within the ATO and in all circumstances, the action was taken in a reasonable manner in respect of the Applicant's employment.

The Tribunal then turned to the issue of whether there were any other factors that contributed to the Applicant's psychological condition, such as the failure of the Applicant to obtain a transfer within the ATO. It was found that provided that a disease is suffered as a result of any of the exclusionary provisions in the definition of injury in the SRC Act, then that disease is not an injury, as per *Hart v Comcare [2005] FCAFC 16*. Accordingly, it was not necessary to consider whether the failure to obtain a transfer was a cause of the Applicant's condition.

Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.