

## *Kaur v Comcare* [2014] AATA 127 (10 March 2014)

### Key Points

- The issue for the Tribunal was whether the applicant continues to suffer the effects of the injury to her back sustained in April 2011, or whether her current symptoms are the result of degenerative change.

### Background

The applicant, Ms Kaur, a 51 year old female, was employed by the Department of Human Services (the Department) as a Customer Service Officer (CSO), since June 2006 but last worked in about September 2012. Since that time, she has been on leave without pay.

In late 2008 or early 2009, the applicant began to experience neck and shoulder pain. In 2010, she also began to experience stiffness in her back. In late March 2011, she was transferred to the Job Capacity Network (JCN) where her duties primarily involved conducting telephone interviews and computer work. Shortly after commencing work in the JCN, the applicant experienced neck, shoulder and back pain.

On 30 May 2011, Comcare (the 'respondent') accepted liability for injuries suffered by the applicant in April 2011, namely: neck sprain (right), sprain of the right shoulder and upper right arm and a lumbar sprain (left).

Associate Professor Nigel Hope, orthopaedic surgeon, assessed the applicant and opined that the injury to the applicant's cervical and lumbar spine had ceased and current symptoms were due to age-related degenerative change.

On 10 September 2012, a delegate of the respondent declined any further liability to pay compensation to the applicant on the ground that she was no longer suffering from the effects of the injuries for which liability was accepted in May 2011. On 28 November 2012, an Authorised Review Officer (ARO) affirmed this decision and on 14 January 2013, the applicant applied to the Tribunal for a further review.

Section 14 of the SRC Act provides that the respondent is liable to pay compensation under the Act for an injury (as defined in section 5A) suffered by an employee which results in an incapacity for work. Liability under section 14 to pay compensation for neck sprain, sprain of the right shoulder and upper right arm, and lumbar sprain was accepted by the respondent on 30 May 2011 and is not in issue.

Pursuant to section 16 and 19 of the SRC Act, the respondent had paid compensation for medical treatment and incapacity for work in respect of those injuries.

The issue for the Tribunal was whether the applicant continued to suffer the effects of the injury to her back sustained in April 2011, or whether her current symptoms were the result of degenerative change.

## The Law

### Medical Evidence

Orthopaedic surgeons, Dr James Bodel and Associate Professor Nigel Hope along with Dr James Bentivoglio, neurosurgeon and Dr Blum provided reports to the tribunal.

Dr Bodel and Professor Hope agreed that the MRI report revealed a pathological abnormality. Dr Bodel stated it was *'unlikely that such a significant change occurred as a result of the applicant's work practices'* and further added that the *'changes in the MRI report could be consistent with degenerative change in the applicant's lumbar spine'*.

Dr Bodel stated that a change in work practices *'will not, of itself, cause substantial structural change.'* He stated a disc becoming desiccated is part of the gradual aging process which takes place over many years. The description of the L3/4 disc in the MRI report is that of a degenerative disc.

Professor Hope opined there was no causal link between the change in her work practices and the changes to L3/4.

Professor Hope noted that the applicant's condition is unlikely to be related to whatever happened on the day that her work practices changed. Professor Hope further noted the history of soft tissue injuries on 4 April 2011 *"which have long since resolved"* and said that *"continuing symptoms are due to age-related degenerative change"*.

Dr Bentivoglio and Dr Blum were in agreement that the results of the MRI were indicative of degenerative disease. Dr Bentivoglio stated a change in sedentary work practices of the kind described by the applicant, not involving any specific event, would not result in an annular tear.

Dr Bentivoglio and Dr Blum agreed that the result of the CT scans of June 2010 and October 2011 were consistent in showing no evidence of a frank injury. Accordingly, the doctors agreed the annular tear probably occurred after October 2011.

Dr Blum opined that he does not consider that the applicant's current condition is related to her employment, but rather is a *"general degenerative state which is normal in people of her age group"*.

Accordingly, at issue, was whether the respondent is liable to pay compensation to the applicant under section 16(1) "in respect of the cost of medical treatment obtained in relation to the injury" and whether pursuant to section 19, the respondent is liable to pay compensation to the applicant. The relevant injury, for which the respondent accepted liability under section 14 on 30 May 2011, was described as "lumbar sprain (left)".

## Conclusion

The Tribunal noted that from the expert evidence, prolonged sitting of the kind that was involved in the applicant's work was unlikely to have caused any structural change to the applicant's lumbar spine and in particular, a disc prolapse at L3/4. The Tribunal was not satisfied that the applicant suffered a frank injury on 4 April 2011.

It was held that it was likely that the injury she suffered at that time was, as accepted by the respondent, "lumbar sprain (left)".

As noted in the medical evidence, Dr Bentivoglio and Dr Blum considered that a significant force would be required to give rise to the annular tear in the L3/4 disc identified in the MRI report dated 31 July 2012 and there was no evidence of this occurring during the course of the applicant's employment.

Dr Bodel and Professor Hope agreed that the injury on the date had long since resolved and that "*continuing symptoms are due to age-related degenerative change*".

The Tribunal was satisfied from the expert medical evidence that any medical treatment obtained by the applicant from September 2012 was not obtained in relation to the injury and that the respondent was therefore not liable to pay compensation to the applicant for such medical treatment under section 16(1) of the SRC Act.

Turning to section 19, the Tribunal was satisfied that, whilst the evidence of the occupational physicians, Dr Christian and Dr Dias, who assessed the applicant at the request of the Department, was that the applicant continued to be incapacitated for work and was unlikely ever to work again; her current symptoms referable to her lumbar spine were not, on the balance of probabilities, the result of the injury suffered by the applicant in April 2011.

Accordingly, the Tribunal was satisfied that the respondent is not liable to pay compensation to the applicant for incapacity to work from September 2012.

## Lessons Learnt

On review of the matter, it is evident that consideration of initial causation of current symptoms especially in light of any degenerative conditions is paramount and that the medical experts who are instructed to provide an opinion must be asked to advise in relation to whether any ongoing symptoms are attributable to the alleged incident.

For more information on this article, please contact:

Nathan Hepple  
Partner  
Email: [nathan.hepple@hbalegal.com](mailto:nathan.hepple@hbalegal.com)  
Direct Line: (02) 9376 1188

Kate Richman  
Solicitor  
Email: [kate.richman@hbalegal.com](mailto:kate.richman@hbalegal.com)  
Direct Line: (02) 9376 1102

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