

## Konstandopoulos v Comcare [2014] AATA 741 (14 October 2014)

### Key Points

- What constitutes “*reasonable administrative action taken in a reasonable manner*”
- The worker’s perception of an event is sufficient if the event actually occurred, even if the perception is unreasonable

### Background

Ms Konstandopoulos was employed by Centrelink as a Customer Services Representative. She made a claim for compensation for an “*adjustment disorder*” around about June 2012.

It was agreed that Ms Kostandopoulos’ condition was contributed to a significant degree by her employment. However, the issue in dispute was whether her condition arose a result of reasonable administrative action taken in a reasonable manner and was therefore excluded pursuant to section 5A(2) of the SRC Act.

Comcare submitted that the relevant administrative actions to be considered were:

1. the decision not to appoint Ms Konstandopoulos to the position of acting team leader (**the promotion decision**);
2. the decision not to award Ms Konstandopoulos a higher “pay point” (**the pay point decision**); and
3. the refusal of Ms Konstandopoulos’s request to take six weeks annual leave in December 2011 (**the annual leave decision**)

The Tribunal was required to consider whether the above decisions *constituted reasonable administrative action* for the purposes of the SRC Act.

### The Law

Section 5B(1) defines “*disease*” to mean an ailment or aggravation of such ailment which was contributed to, to a significant degree, by the employee’s employment. Section 5A confirms that the definition of disease “*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*”.

Section 5A(2) provides a non-exhaustive list of actions which are considered to be reasonable administrative action for the purposes of section 5A(1).

## Conclusion

Ms Kostandopoulos submitted that her condition was not a result of any of the decisions, but was instead a result of her being unfairly treated by one of her managers.

Comcare submitted that there was no reasonable basis for Ms Kostandopoulos' belief that she had been unfairly treated by her manager and argued that the evidence revealed her manager to be kind, caring and committed to assisting Ms Kostandopoulos.

However, due to the inconsistent and unsupported accounts of Ms Kostandopoulos' relationship with her manager, the Tribunal stated that it was unable to reach a concluded view as to whether the reported events did occur. Notwithstanding this, the Tribunal stated that it was clear that Ms Kostandopoulos worked under the close supervision of her manager for four months and perceived she was treated unfairly throughout that period.

The Tribunal held that whether there was a reasonable basis for that perception was irrelevant and reaffirmed the decision of *Wiegand v Comcare* [2002] FCA 1464; (2002) 72 ALD 795 where it was held that an employee's flawed perception of events or state of affairs will give rise to an entitlement to compensation under section 14 of the SRC Act providing that the alleged event or state of affairs actually occurred. There is no test as to the reasonableness of the perception. If the perception contributed in a material degree to the employee's ailment, then the requirements of the definition of disease are fulfilled.

The Tribunal accepted that there were inconsistencies in Ms Kostandopoulos' evidence. However, it accepted that the medical evidence provided that vulnerability together with Kostandopoulos' perception that she was subjected to unfair treatment and workload pressures, were significant contributing factors to Ms Kostandopoulos' adjustment disorder.

The Tribunal was not satisfied on the balance of probabilities that any of the decisions were a significant contributing factor or an operative cause of Ms Kostandopoulos' condition and for that reason, set aside the decision to refuse her claim for compensation.

## Lessons Learnt

This decision confirms that there is no test for whether a perception of a state of affairs or event is reasonable and it is enough that the state of affairs or event actually occurred.

It also confirms that the standard required to establish that a condition was "*suffered as a result of*" any administrative actions is on the balance of probabilities.

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