

Martinez and Comcare [2012] AATA 795 (14 November 2012)

Key Points

- Weekly meetings to improve performance not Reasonable Administrative Action.
- Senior Member Creyke found that weekly meetings with a view to improving Ms Martinez's work performance were not reasonable administrative action.

Background

Ms Maria Martinez began working at the Department of Education, Employment and Workplace Relations, in the National Indigenous Cadet Project Program, on 6 October 2005 (the **Department**). Mr Martinez made a claim for workers' compensation in respect of "*adjustment reaction with depressive reaction*". Comcare denied liability to pay compensation pursuant to Section 14 of the *Safety, Rehabilitation and Compensation Act 1988 (Cth)* (the **SRC Act**) on the basis that the condition resulted from reasonable administrative action, taken in a reasonable manner.

On 7 December 2009, Ms Martinez moved to the employment section of the Department in Canberra and her supervisor was Ms Debra Ward. Ms Ward commenced weekly meetings with Ms Martinez in March 2010 with a view to improving her work performance. On 21 June 2010, Ms Ward implemented a more formal work improvement process. The two met in a spare office or meeting room and Ms Ward kept notes of the meetings and the outcomes expected. On 30 August 2010, Ms Martinez attended her General Practitioner who diagnosed her with "*adjustment disorder with depressed mood*".

The Law

On 6 September 2010, after a meeting with Ms Ward, Ms Martinez left work and has not returned. Comcare argued that Ms Martinez's psychological condition was contributed to by personal issues including domestic violence, rather than by her employment with the Department. The Tribunal found that based on the medical evidence, the events in the workplace were the main triggers for Ms Martinez's psychological condition. The Tribunal found that the actions of Ms Martinez's supervisors, in relation to her performance in the workplace, was administrative action and that those actions made a contribution to Ms Martinez's adjustment disorder. More specifically, the Tribunal found that the actions fell into the informal counselling referred to in the non-exhaustive examples of administrative actions in Section 5 A (2) (a) to (e) of the SRC Act.

The Tribunal then considered whether the administrative actions taken were reasonable. The Tribunal found that the weekly meetings instituted by Ms Ward in March 2010 were reasonable administrative action. However when that process did not result in sufficient improvement, Ms Ward's implementation in June 2010, of the more formal process of a weekly meeting in a separate

room were unreasonable. The Tribunal concluded that conducting meetings in a separate room had the effect of humiliating, offending and distressing Ms Martinez and amounted to bullying. The Tribunal found that to bully someone, is to not conduct administrative action in a reasonable manner.

Conclusion

The Tribunal found that the administrative actions taken to address Ms Martinez's performance should have been undertaken without humiliating her by the more formal meetings in a separate room, given the knowledge that Ms Martinez had personal and professional issues, poor self-esteem and that management instituted actions had so far been ineffective. The Tribunal found that there were alternative options that could have been taken to address the performance issues. The Tribunal set aside the decision under review and remitted the matter to Comcare with a direction that liability for Ms Martinez's adjustment disorder was not excluded by administrative actions which were not taken in a reasonable manner.

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