

## Prain and Comcare [2014] AATA 593 (22 August 2014)

### Key Points

- The Tribunal was required to consider whether Ms Prain's injury arose out of or in the course of her employment.

### Background

Ms Prain was employed as a Senior Officer by ACT Health. She had an accepted workers' compensation claim in respect of "aggravation of fibromyalgia" sustained on 15 April 2011. In April 2011, Ms Prain ceased work.

On 7 May 2013, Comcare accepted liability to meet the cost of Ms Prain undergoing multi-disciplinary pain management program (**ADAPT program**) pursuant to section 16 of the SRC Act. On 20 May 2013, Ms Prain commenced the ADAPT program.

On 28 May 2013, Ms Prain injured her right knee when she fell while travelling on a train to attend the ADAPT program at Royal North Shore Hospital.

Ms Prain submitted a further workers' compensation claim on 30 July 2013, in respect of "dislocated knee cap – Rt, Bakers cyst – MRI shows osteochondral lesion medial femoral condyle, complex medical meniscal tear, patella chondromalacia" sustained on 28 May 2013. On 22 August 2013, Comcare denied liability for the right knee injury, and this decision was affirmed on review. Ms Prain sought review of the decision at the Administrative Appeals Tribunal.

### The Law

Section 5A of the SRC Act relevantly defines "injury" to include "an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment..."

Section 6 further states:

- (1) *Without limiting the circumstances in which an injury to an employee may be treated as having arisen out of, or in the course of, his or her employment, an injury shall, for the purposes of this Act, be treated as having so arisen if it was sustained:*
  - (c) *"while the employee was temporarily absent from the employee's place of work undertaking an activity:*
    - (i) *associated with the employee's employment;*
  - or
  - (f) *while the employee was at a place for the purpose of:*
    - (ii) *receiving medical treatment for an injury;*
  - (g) *while the employee was travelling between the employee's place of work and another place for the purpose of:*
    - (ii) *receiving medical treatment for an injury."*

## Conclusion

The Tribunal was required to consider whether Ms Prain's condition arose out of or in the course of her employment for the purposes of the SRC Act, taking into account the provisions of section 6.

In respect of section 6(1)(c)(i), the Tribunal had to determine whether Ms Prain was temporarily absent from her place of work undertaking an activity associated with her employment. Since the worker had not worked since April 2011, the Tribunal considered that she was not "temporarily" away from her workplace and therefore did not satisfy section 6(1)(c)(i) of the SRC Act.

Since Ms Prain had ceased work and was not travelling from her place of work, the Tribunal found that Ms Prain did not fall within section 6(1)(g)(ii) of the SRC Act the SRC Act.

Ms Prain contended that she was "at a place" namely, on a train, for the purposes of receiving medical treatment. The Tribunal considered that "at" when allied with "place" referred to having occupied, having reached, or being at the specified place, which in this case would be the Royal North Shore Hospital. Noting the decision in *Re Thymianos and Comcare* (2009) (unreported, AATA 09/0082, 9 February 2009), which concluded that "at a place" indicates "*a particular location and not, as when a person is travelling, location between places*", the Tribunal held that Ms Prain was on a train and was not at a place for the purposes of receiving medical treatment and therefore did not fall within section 6(1)(f)(ii) of the SRC Act.

Finally, the Tribunal had to consider whether the injury arose out of or in the course of Ms Prain's employment. Since there was no suggestion that the injuries occurred during the employment, only "arising out of" was to be considered as a question of fact.

The Tribunal gave regard to the decision in *Roncevich v Repatriation Commission* [2005] HCA 40, which considered that "out of employment" covered "*whatever is incidental to the performance of the work.*" The Tribunal noted that Ms Prain was no longer employed by ACT Health, that ACT Health had not arranged her presence on the train, and that the travel was not a reasonable medical expense that Comcare was funding. Accordingly, the Tribunal considered that, in the circumstances, it was not satisfied that Ms Prain's injuries on the train on her way to the Royal North Shore Hospital were injuries which "arose out of" her employment.

## Lessons Learnt

The case reiterates the importance of establishing a causal relationship between the employment and the injury. In this case, the fact that the applicant was no longer employed at the time of the injury and that travel was not funded by Comcare supported that the injury did not arise out of the employment.

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