

Reinhold and Comcare [2014] AATA 221 (15 April 2014)

Key Points

- Permanent impairment in matters where the applicant has not yet had appropriate treatment.

Background

An Application was lodged in respect of a reviewable decision which denied Ms Reinhold's claim for permanent impairment and non-economic loss under sections 24 and 27 of the SRC Act for her accepted conditions of post-traumatic stress disorder and depression.

The Law

Section 24 of the SRC Act states that, in order to be awarded compensation, an employee must suffer from an injury which results in permanent impairment. Section 4 defines "impairment" as the loss, loss of the use, or the damage or malfunction of any part of the body, bodily system or function or part of such part or such system or function. "Permanent" is defined as likely to continue indefinitely.

In determining whether an impairment is permanent, Comcare must have regard to the factors listed in section 24(2).

Conclusion

The issues that the Tribunal considered important were:

1. Whether Ms Reinhold's current condition arose out of her employment.
2. If so, whether she has an impairment that is permanent and likely to continue.

Comcare contended that Ms Reinhold's condition was not permanent due to the fact that that she suffered from underlying personality traits which, together with family issues and ancillary life events, were responsible for the symptoms she was experiencing. It was further argued that her condition had not stabilised in that she had not yet undertaken appropriate treatment by the time of the hearing.

Dr Jonathan Philips (Psychiatrist) and Dr Yvonne Skinner (Psychiatrist) gave evidence concurrently and expressed the view that where a person has a particular set of personality traits that make them vulnerable to major depressive disorder, a major stressor in that person's life can amplify and aggravate the personality characteristics and make them more prominent. Drs Philips and Skinner agreed that the applicant had a personality trait that made her susceptible to psychological problems and considered that the treatment the applicant had received to date was appropriate.

In relation to the first issue, the Tribunal stated that, given the agreed triggering effect of external events on a vulnerable personality, Ms Reinhold's history of coping well with employment, her

depressive condition, and the “*agreed complexity of the interplay between personality traits and external stressors*” it could not be satisfied that the agreed contribution of work events to Ms Reinhold’s condition were rendered insignificant by non-work events.

In relation to the second issue, the Tribunal considered that based on the expert evidence, the applicant’s condition was permanent in that it was likely to continue indefinitely. Despite Comcare’s submission that Ms Reinhold had not received appropriate treatment, the Tribunal accepted the evidence of Drs Skinner and Phillips, who considered the treatment to date had been appropriate. Dr Phillips considered that further treatment may provide a small improvement in Ms Reinhold’s health, but was not optimistic that it would give rise to substantial improvement. Dr Skinner was more optimistic, but did not consider that Ms Reinhold would even function at “*a superior level*”, even with treatment.

Overall, the decision under review was set aside and the Tribunal instead remitted that the applicant was suffering from permanent impairment as a result of her work injury. Her level of permanent impairment was assessed at 20% pursuant to the *Guide to the Assessment of the Degree of Permanent Impairment, Edition 2.1*.

Lessons Learnt

This decision is useful when considering a matter that includes a claim for psychological injury and where the applicant has background of particular personality traits that make them vulnerable to stressors in the workplace. It illustrates that where this is the case, the employer must consider the applicant’s work history and how they have coped with work-related events in the past and also the appropriateness of their treatment to date.

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