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Wayne Lee v Transpacific Industries Pty Ltd [2012] AATA 553

Key Points

- Injury not in course of employment.
- Deputy President Hotop has taken a literal approach in finding that an employee's injury did not arise out of or in the course of his employment and did not arise as a result of medical treatment.

Background

Mr Lee was employed as a supervisor with Transpacific Industries Pty Ltd. He submitted a claim for workers' compensation in respect of an ankle injury which he claimed to have sustained as a result of slipping on a patch of oil or water at a petrol station. When he sustained the injury, Mr Lee was on his way home from a medical appointment for a previously accepted knee injury. Mr Lee claimed that, at the time of sustaining the ankle injury, he was using a crutch, which was made necessary because of his existing knee condition.

Transpacific agreed that Mr Lee had suffered an injury, but contended that it was not compensable. Accordingly, liability was denied for Mr Lee's claim.

The Law

The key issues for consideration by the Tribunal were:

1. whether Mr Lee's ankle injury was compensable pursuant to the journey provisions in section 6 of the *Safety, Rehabilitation and Compensation Act* 1988 (Cth (**the SRC Act**);

2. whether Mr Lee's ankle injury *"arose out of or in the course of his employment"*, pursuant to section 5A(1)(b) of the SRC Act;

3. whether Mr Lee's injury *"arose as a result of medical treatment"*, pursuant to section 4(3) of the SRC Act.

The relevant provisions for consideration in respect of the first issue were sections 6(1)(d),(f) and (g), and 6(2). The Tribunal took a literal approach to these sections, and found that none were applicable.

Conclusion

Relevantly, it was determined that, although Mr Lee had been performing light duties from time to time from his home, this was not the case at the time of the incident and his home did not therefore constitute his *"place of work"* as required by section 6(1)(g).

Further, the Tribunal found that, although Mr Lee's medical appointment was arranged by his return to work coordinator, there was no evidence to suggest that Mr Lee was travelling *"at the direction or request"* of his employer, as required by section 6(1)(d).

The Tribunal also found in favour of the employer in relation to the second issue: whether Mr Lee's right ankle injury *"arose out of or in the course of his employment"*. It was found that there was an insufficient causal and temporal relationship between Mr Lee's employment and his ankle injury. This was in part due to the injury being sustained during an interval between two discrete periods of work.

The final issue for consideration was whether Mr Lee's injury was suffered *"as a result of medical treatment of an injury"*. Mr Lee had been using a crutch to help him get around following his knee injury. He asserted that he was using this crutch at the time of his fall. Transpacific adduced evidence which suggested that Mr Lee was not, in fact, using his crutch when the incident occurred.

The Tribunal found it unnecessary to come to a conclusion in respect of this conflicting evidence. Instead, it was was not satisfied that the crutch, whether or not it was used, could be properly said to have caused the injury and resulted in the fall.

Lessons Learnt

The decision of the Tribunal was in line with previous decisions. It is beneficial to employers and licensees, as it confirms that liability will be limited in circumstances where there is an insufficient connection between the worker's employment and his injury.

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