

Assessing psychological conditions – when does the effect of employment stop?

Weatherburn v Comcare (Compensation) [2019] AATA 4196

Key Points

- The Tribunal was asked to decide whether Miss Weatherburn's former employment with the Commonwealth Government remained a significant contributing factor to her psychological condition.
- The Tribunal found in favour of Ms Weatherburn.

Background

Miss Weatherburn commenced employment with the (then) Department of Immigration and Citizenship in 1984. In 2005 she joined the Settlement Planning and Information Section, an area that prepared information for new immigrants to Australia.

In 2012, Miss Weatherburn worked in a team that was responsible for developing an online resource for immigrants. On 27 August 2012, Miss Weatherburn claimed that she discovered a significant mistake in a document which made her director upset and she subsequently became distressed. Miss Weatherburn reported feeling suicidal as a result of this incident.

Ms Weatherburn submitted a claim for workers' compensation in which she claimed to have suffered a psychological condition as a result of bullying and an increasingly heavy workload. In August 2012, she ceased working and was medically retired a year later. Comcare accepted liability on 9 January 2013 for "major depressive disorder recurrent episode".

Ms Weatherburn continued to receive compensation up until 22 February 2017, when Comcare issued a decision which ceased liability to pay compensation for Miss Weatherburn's condition. The issue before the Tribunal was whether Ms Weatherburn's former employment continued to contribute to her psychological condition, to a significant degree.

At hearing, both parties agreed that Ms Weatherburn continued to suffer from a depressive condition. Evidence was presented which showed that Ms Weatherburn had a significant history of psychological problems, including treatment at a psychiatric hospital and taking anti-depressant medication.

Comcare argued that given the applicant's well established and entrenched pattern of mental health problems, it was inevitable that serious episodes of mental illness would have occurred in the period since 2012, with or without the events of that year. The applicant's main argument that she put to the Tribunal was that the departments' mismanagement of her workload issues and the unfair treatment she received caused her to continue to feel angry and devalued, preventing her from recovering from her psychological condition.



Conclusion

The Tribunal noted it was difficult to reach a conclusion as to whether Miss Weatherburn's condition was still related to the incident in August 2012 as plausible and persuasive evidence was presented during the hearing to answer that question both yes and no. The Tribunal had particular difficulty coming to a decision as the psychiatric opinion in Miss Weatherburn's case was divided down the middle with no clear consensus among the experts. The Tribunal commented on an ongoing concern that it faces in psychiatric illnesses where there are no definitive tests to determine whether the conditions were contributed to by employment and thus, their decision relied solely on the medical experts application of their experience and judgment.

The Tribunal referred to the authority in *Comcare v Power* [2015] FCA 1502 which found that Comcare would have to persuade the Tribunal of the circumstances which justify a finding that compensation payments should no longer be made. That is, that the onus is on Comcare to convince the Tribunal that the applicant is no longer suffering from the effects of the compensable injury.

The Tribunal found that Comcare had not discharged its onus to persuade the Tribunal that Ms Weatherburn no longer suffered from the effects of the compensable psychological condition. The Tribunal relied on the authority of *Power* and set aside the reviewable decision, deciding Miss Weatherburn was entitled to ongoing compensation.

Lessons Learnt

The decision highlights the difficulties that an authority faces when determining whether an applicant's employment continues to contribute to a psychological condition. The Tribunal's reliance on the authority of *Power* is a reminder that the onus lies with the decision maker to persuade the Tribunal that the applicant is no longer suffering from the compensable condition. If that onus is not discharged, liability will be ongoing.

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