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AAT confirms denial of liability for epicondylitis in call centre worker *Shirreff and Comcare* [2020] AATA 1710 (11 June 2020)

Key Points

- The Tribunal was asked to decide whether an employee developed epicondylitis as a result of repetitive duties at work.
- The Tribunal found in favour of Comcare.

Background

Ms Jenny Shirreff was employed by the Department of Human Services in Victoria, as a customer service officer. Ms Shirreff's work duties included processing claims in the call centre. Ms Shirreff was required to use a keyboard and a mouse in order to complete her work.

Ms Shirreff lodged a workers' compensation claim in respect of arthritis and epicondylitis in her right arm. On 16 November 2017, Comcare denied liability to pay compensation under section 14 of the *Safety, Rehabilitation and Compensation Act* 1988 (Cth) (**the SRC Act**). Liability was denied on the grounds that those conditions were not significantly contributed to by her employment. The decision was affirmed on reconsideration and Ms Shirreff sought further review of that decision at the Administrative Appeals Tribunal.

Ms Shirreff claimed that in the latter half of 2016, she developed pain symptoms in her right arm while using a keyboard and mouse. Ms Shirreff sought treatment from her general practitioner who referred her for a Cortisone injection and physiotherapy treatment.

Ms Shirreff sought further treatment from Mr Rehfisch, orthopaedic surgeon, who operated on her arm on 30 January 2018. Ms Shirreff described having a very good result from surgery and said she had not had any problems since the operation.

At hearing, the parties agreed that liability for the arthritis was not in issue as Ms Shirreff no longer wished to pursue that aspect of her claim. The issue left for the Tribunal to decide was whether the right elbow epicondylitis was compensable under the SRC Act as a matter of causation, considering in particular section 5B(1) of the SRC Act.

"Disease" is defined in section 5B(1) of the SRC Act as an ailment suffered by an employee or the aggravation of such an ailment that was contributed to, by a significant degree, by the employee's employment. The expression "significant degree" is defined as a degree substantially more than material.

Both parties agreed that Ms Shirreff suffered from arthritis and epicondylitis in her right arm. Mr Rehfisch gave evidence at hearing that it was possible that either the epicondylitis or the arthritis was causing the symptoms. He believed that the repetitive work duties had caused epicondylitis to develop, and that on balance, it was that condition that was responsible for the pain. Mr Rehfisch disagreed with Comcare's view that Ms Shirreff's condition was predominately an age related problem. He said that in someone with a history of repetitive use of the limb, it was more likely to be substantially caused by those repetitive work duties.

Comcare relied on the evidence of Associate Professor Evan Romas, consultant rheumatologist. AP Romas gave evidence that duties such as typing and mouse use do not cause epicondylitis. His view was that epicondylitis is a degenerative process rather than a true inflammatory condition.

AP Romas' evidence was that epicondylitis is most likely to occur in cases where workers undertake repetitive activities under load that involve wrist and finger extensions and forceful gripping. In relation to Ms Shirreff, although she was performing repetitive work, she was not performing heavy work with loads greater than 1kg on a repetitive basis. AP Romas gave evidence that while Ms Shirreff did have right repetitive arm pain, that did not mean that the repetitive wrist motion caused the condition. He explained that the occurrence of pain should not be confused with the issue of causation.

Conclusion

The Tribunal noted that Ms Shirreff did not press her claim for rheumatoid arthritis and accordingly, found that Comcare had no liability in respect of that condition.

During final submissions at hearing, it emerged that Ms Shirreff was claiming that her pain was itself, a compensable injury. The Tribunal allowed that claim to be advanced, but ultimately concluded that claim must fail. The Tribunal found that the pain was a clear example of a condition becoming worse, and not being made worse by work. The Tribunal concluded that her pain condition itself was not a compensable injury.

That left the final issue for the Tribunal to decide: liability for epicondylitis. The Tribunal found that while there was a temporal connection between the pain of her condition and her workplace activities, Ms Shirreff suffered an underlying medical condition, being right arm epicondylitis. The Tribunal found that condition was not caused by work, but was constitutional or degenerative. The Tribunal found that while Ms Shirreff's work caused her pain from time to time, her condition was not brought on by work.

The Tribunal affirmed the decision under review.

Lessons Learnt

The Tribunal followed the line of reasoning set out in the Federal Court decision of *Commonwealth v Beattie* [1981], that pain brought on by work duties does not necessarily constitute an aggravation of a pre-existing condition. While work may cause an increase in pain, this does not necessarily mean the underlying condition has been made worse by those work duties.

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