Crawford

hba legal.

Mitigating the Abuse of Process within the Tribunal - Dismissing an Application when the matter has been previously dealt with to finality

Kothe and Telstra Corporation Limited (Compensation) [2024] AATA 2412 (9 July 2024)

Key Points

- The Tribunal was asked to review a decision dated 22 December 2023 which declined liability to pay compensation in respect of "*Depression and Post Traumatic stress disorder*" sustained on 28 January 2005.

- The respondent argued that a decision had already made by consent of the parties on 26 October 2009 and the further Application concerned the same claimed condition which had been dealt with to finality. The respondent sought dismissal of the proceeding under section 42B of the *Administrative Appeals Tribunal Act 1975* (Cth) (**the AAT Act**).

- At an interlocutory hearing, the Tribunal agreed with the respondent's submissions and decided to dismiss the Application for Review on the basis that re-litigating a claim that has already been finalised is an abuse of process.

Background

This matter concerned an interlocutory proceeding. The applicant made an Application for review of a reviewable dated 22 December 2023 which declined liability to pay compensation pursuant to section 14 of *the Safety, Rehabilitation and Compensation Act 1988* (Cth) (the SRC Act) in respect of "*Depression and Post Traumatic stress disorder*" sustained on 28 January 2005.

The applicant submitted an initial claim for workers' compensation in 2005 for "*anxiety, depression and insomnia*" as a result of being unfairly treated at work and being placed on a Performance Improvement and Conduct process, which liability was denied for under section 14 of the SRC Act. The applicant lodged an Application for Review to the Tribunal and then withdrew that Application. She made a further Application to the Tribunal on 16 October 2006

seeking to reinstate the prior Application, which the Tribunal refused. The applicant lodged a further workers' compensation claim in 2008 and a permanent impairment claim in respect of "*depression and post-traumatic stress disorder*." These were resolved by consent decision on 26 October 2009, and the decision stated the applicant's condition had resolved by 30 November 2007. The applicant submitted further workers' compensation claims in 2017, 2018 and 2023 for psychiatric conditions. The respondent wrote to the applicant stating that the injuries subject to these claims were resolved by the 2009 decision, and that the applicant did not sustain a further injury that required determination of liability.

The Law

Section 42B(1) of the AAT Act provides that the Tribunal may dismiss an Application for review of a decision if the Tribunal is satisfied that the Application:

a. Is frivolous, vexatious, misconceived or lacking in substance; or

b. Has no reasonable prospect of success; or

c. Is otherwise an abuse of the process of the Tribunal.

Conclusion

The Tribunal concluded that the applicant's Application for compensation for her psychiatric condition had already been dealt with to finality and that a re-litigation of a finalised claim would warrant an abuse of its process.

The applicant argued that her claimed condition in the most recent Application was a different condition to that addressed by the Tribunal's prior decision, and that she was entitled to pursue a claim for compensation.

The respondent submitted that the applicant was seeking to re-open a matter that was already dealt with by the Tribunal and that allowing the applicant to proceed would constitute an abuse of process. The respondent noted if the applicant was dissatisfied with the outcome resulting from the 2009 decision, she should have appealed the decision within 28 days or have taken further legal action at that time. The applicant had also not provided any new medical evidence to demonstrate this claimed condition was different to that which was subject of the 2009 decision.

The Tribunal agreed with the respondent's submissions and noted that the parties agreed in

the consent decision that the applicant had recovered from the compensable condition by 30 November 2007 and that she had not suffered from the injury or any compensable sequalae of the injury thereafter. The Tribunal also noted that the respondent was entitled to consider that the matters subject to a consent decision had been finalised.

The Tribunal considered whether there were any caveats regarding its powers under section 42C of the AAT Act, including if the applicant was induced or overborne at the time to agree to an unreasonable or inappropriate decision. In reaching its decision, the Tribunal noted comments made by Senior Member Illingworth in *Re: Kondylas and Comcare* [2024] AATA 522 and found that the evidence indicated the applicant made an informed forensic decision having received legal advice and understanding the nature and effect of the 2009 consent decision.

Lessons Learnt

Parties should note that once a matter has been dealt with to finality and a decision has been issued with respect to section 42C of the AAT Act, the Tribunal considers its role as a decision-maker to cease. Parties should avoid re-litigating a claim dealt with to finality for the risk of abusing the Tribunal's processes and functions.

Contact

Lavanya Kumar
Solicitor
Direct: +61 458 285 652
lavanya.kumar@hbacrawford.com.au

Claire Tota
Partner
Direct: +61 400 762 987
claire.tota@hbacrawford.com.au

Visit www.hbalegal.com for more case articles and industry news.

Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. For any legal advice please contact us.