

Comcare worker’s compensation win after appealing rejected claim

Date: Sunday February 25, 2024

On 17 January 2024, the Administration Appeals Tribunal (‘AAT’) reversed Comcare’s decision to reject a worker’s ‘arm, wrist, hand’ injury, declaring that the Applicant, Ms Jaudzems’ injury was caused by her work duties when she was working with the Bureau of Statistics (‘BOS’). This decision highlights some important issues when it comes to overuse type injuries under the Comcare worker’s compensation scheme. Her injuries were variously described by a number of doctors as ‘synovitis, tenosynovitis, and tendonitis’.

Comcare is the Federal government agency that deals with the national worker’s compensation scheme. Employees covered by Comcare include those working for Australian Government agencies and statutory authorities and employees of organisations who have a licence to self-insure for the purposes of worker’s compensation. Visit our Comcare worker's compensation page to learn more about who is covered and how the scheme works.

Background to the Comcare claim

The Applicant, Ms Jaudzems, claimed to have sustained an injury to her ‘arm, wrist, hand’ on 9 March 2021, which she said was due to:

> *‘…prolonged sustained work on a computer, either on the keyboard or using a mouse…which cannot be avoided in her usual duties at BOS.’*

Comcare denied Ms Jaudzems’ worker’s compensation claim essentially on the basis that her symptoms/problems were due entirely to a ‘congenital deformity’, which was therefore not due to any aspect of her job at BOS, and therefore could not be considered to be an ‘injury’ as defined in the Safety, Rehabilitation and Compensation Act (SRC Act).

Comcare relied on the expert medical opinion of a Dr Pope in maintaining its position that the claim should be rejected.

Significant injury assessment

To be an accepted claim under the SRC Act, Comcare noted that Ms Jaudzems' claimed injury had to be 'contributed to, to a significant degree' by her employment with BOS. To be considered to be a 'significant degree', the contribution needed to be 'substantially more than material'.

It's worth noting that this threshold of 'contributed to, to a significant degree' is only applied to the category of injury defined as 'diseases' under the Act.

It was agreed, between the Applicant and Comcare's legal representatives at the outset of the case, that the Applicant's claim involved an injury which was a 'disease' (as opposed to an 'injury simpliciter', a term used by the Court to describe an injury which results from a more immediate external insult to the body).

The basis for dispute in Comcare claims is often around whether or not the injury has met the threshold of 'contributed to, to a significant degree'. If your Comcare claim is being disputed for this reason, or in fact any other basis you believe to be incorrect or unreasonable, you should seek legal advice.

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AAT hearing

Both sides presented evidence before the AAT.

As is the case with nearly all appeals to the AAT, which involve claims for worker's compensation benefits, it was the medical opinion evidence that was the most critical in determining whether Ms Jaudzems was entitled to be paid worker's compensation for her arm, wrist, and hand injury.

There was no dispute that the worker had a pre-existing medical condition

This case is a fairly important one for injured workers, not just in respect of claims under the Comcare scheme, but generally, as it deals with the important concept of a work caused 'aggravation' or 'acceleration' of a previous condition/injury, where such previous condition/injury was not itself caused by anything to do with the injured worker's work duties/environment.

Here, there was no dispute between the Applicant and Comcare that the Applicant had a developmental condition in both of her wrists known as a 'Madelung deformity'.

There was also no dispute between the parties that Ms Jaudzems had experienced similar pain in her wrist and hand whilst at BOS which was also the subject of two previous

successful claims for worker's compensation benefits (in 2006 and again in 2008).

These successful previous claims were also due to excessive use of computer keyboard and/or mouse. The Applicant's evidence that she, however, never had similar symptoms before she began work at BOS was accepted by the Tribunal.

The employer made various adjustments to her work environment following the previous compensation claims.

Applicant was considered a credible witness

The Applicant's evidence that she would observe significant relief from her right wrist pain when she had time off work (for annual leave for example) was accepted by the AAT.

Indeed, the Tribunal Member generally observed the Applicant to give her evidence in a 'forthright manner…', was essentially consistent with the histories she had given to medical practitioners (who prepared reports relating to her claim).

How the Tribunal views the Applicant as a witness (that is, whether his or her evidence can be accepted as accurate and reliable) is often a critical aspect of the basis upon which the Tribunal will decide any particular appeal before it. Logically, if the Tribunal does not feel it can rely on the evidence of an injured worker during the hearing, then it will have significant difficulty deciding the appeal in the Applicant's favour.

AAT rejects Comcare's expert medical evidence

In the end, the Tribunal Member found it difficult to accept the expert evidence of Comcare's medical specialist Dr Pope.

In doing so, the Tribunal noted the evidence of the Applicant (which it accepted) in describing a significant increase in her pain in her right wrist/hand when she attended to her work duties. In other words, the Tribunal was satisfied that whenever the Applicant performed her employment duties operating a keyboard and/or mouse, her previous condition was aggravated to the point that she was not able to continue with her work.

The AAT overturns Comcare's decision to reject the claim

In deciding that Comcare was wrong to reject the Applicant's worker's compensation claim, the AAT concluded that the work duties the Applicant described she was required to perform, and caused her significant increases in pain, were to be accepted as a contribution that was 'significant':

> *'… her computer use caused the pain response. The contribution from work was substantially more than material, and this was demonstrated by the improvement on holiday and the onset of severe symptoms on her return to work.'*

The Tribunal Member determined that the Comcare decision under review (to reject the claim), was to be set aside and in substitution it decided that the Applicant's claim satisfied the relevant sections of the SRC Act.

Get help from a Comcare worker's compensation lawyer

Comcare claims can be tricky to navigate. Our lawyers have significant experience in worker's compensation claims both for Comcare and state-based claims.

Contact us for a free initial consultation. It costs you nothing to find out where you stand and to ensure everything is done to maximise the prospects of a successful claim.

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