Cameron Hall
COMPENSATION LAWYERS



Case review: Comcare ordered to pay for massage treatment for injured worker

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In this Comcare workers' compensation case, we look at a decision of the Administrative Review Tribunal (ART) to set aside a decision of Comcare Australia to cease payments to the injured worker, Dr Kumar, for continued massage therapy. Dr Kumar asked the ART to review Comcare's decision to stop paying for her therapy because she found massage therapy to be the most effective treatment to help relieve her symptoms and allow her to continue to work.

If Comcare has ceased any of your benefits (including weekly payments and medical expenses), you should seek legal advice early, to protect your entitlements.

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Case reference: you can read the Administrative Review Tribunal decision in Kumar and Comcare (Compensation) [2025] ARTA 112 (19 February 2025) here.

Injury that led to a Comcare claim

Dr Kumar suffered a workplace injury in July 2009 after a fall on stairs at work.

Her work injury is described as 'thoracic sprain (right); neck sprain (right); sprain of unspecified site of shoulder and upper arm (right); sprain of unspecified site of elbow and forearm (right) and hand sprain (right)'.

A Comcare claim was lodged in May 2010. The claim was accepted by Comcare. Dr Kumar required no time off work but did require ongoing medical treatment; in particular massage therapy.

Importantly, Dr Kumar argued that her continued level of capacity to work was contingent on her being able to access the massage

therapy, as without it the symptoms she would experience impacted adversely on her ability to concentrate on her job as a medical doctor.

Comcare had been paying for massage therapy as part of the accepted claim, but on 13 June 2023, a decision was made to cease paying for that therapy.

Why did Comcare stop paying the injured worker's massage therapy?

When determining to cease payment of massage therapy, Comcare basically concluded:

> Dr Kumar had, up to the date of the reviewable decision, 'over 400 massage therapy sessions and that such treatment continued more or less on a weekly basis'.
>
> Dr Kumar provided medical reports by her treating medical service providers to Comcare to confirm that, in their opinion, '…the reported symptomatic relief demonstrates the effectiveness of that treatment'.
>
> The Comcare decision-maker concluded that 'the treatment did not support that the massage therapy is providing you with a measurable benefit or improving your condition'.
>
> The Comcare decision-maker also noted that Dr Kumar's medical service providers had not noted '...any goals, nor SMART (specific, measurable, achievable, relevant and timed) goals', and finally noted also that the massage therapy didn't '…allow you to become fully independent in the self-management of your compensable conditions'.

Dr Kumar disagreed with Comcare's decision to cease payment for massage therapy and appealed that decision to the ART.

Why did the ART decide the appeal in the injured worker's favour?

Comcare claims are governed by a very complicated piece of legislation called the 'Safety, Rehabilitation and Compensation Act' (the Act). The liability for Comcare to pay for any particular medical treatment (or allied health type like massage therapy) is decided by looking at the relevant section(s) of the Act.

The relevant sections essentially provide the following test:

- Is the identified treatment (in this case, massage therapy) to do with the claim that Comcare has accepted?

> The decision-maker (in this case, that is now the ART) then needs to form a view as to whether the effects of the injury (which is part of an accepted Comcare claim) continue in a relevant way to justify the benefit/payment sought.

In Dr Kumar's case, the ART considered the medical evidence (medical reports and records) which were contained in the bundle of material submitted by the parties.

Like many cases involving decisions by Comcare, the more important evidence to be considered by the ART is that provided by medical doctors. This case was no different.

The Tribunal proceeded to summarise the relevant medical evidence presented by the parties. As is common in these types of cases, the parties will often rely on the opinions of medical specialists who provide reports purely for the purposes of the case. These are known in the law as 'medico-legal reports'.

Comcare obtained a medico-legal report from Dr Peter Lugg, an orthopaedic surgeon (the most appropriate specialty given the nature of Dr Kumar's accepted injuries). In a nutshell, Dr Lugg was of the view that:

> The relevant incident (fall at work) did result in Dr Kumar experiencing both an 'aggravation of degenerative conditions in her spine', but also resulted in an 'increase in the pathology' (of the injured areas)' which was a 'small contribution' to the claimant's accepted injuries'.
>
> This 'small contribution', he told the Tribunal, 'does not go away' (with time).

The medical evidence that Dr Kumar relied on were reports by her treating medical service providers, who also noted the fall at work resulted in an 'increase to the pathology' of the relevant injuries.

What is the relevance of the phrase 'increase in the pathology'?

'Increase in the pathology' is basically a medical term to note that there has been an observable worsening of the area of the body which has been supposedly injured.

This is contrasted with a medical assessment that the work injury 'exacerbated' or 'aggravated' an already existing damaged part of the injured worker's body (in the vast majority of instances, this is described by the doctors as 'degeneration' of the particular part of the body, which we all experience, as we age.

The reason why the above is important is that the Act has different criteria to apply, depending on whether the claimed condition is considered an 'injury' or a 'disease'.

Under the Comcare scheme, it is 'easier' for an injured worker to claim they have

sustained an ‘injury’ rather than a ‘disease’ due to their work.

Did Dr Kumar suffer an ‘injury’ or a ‘disease’ from the workplace fall back in July 2009?

In this case, the ART determined that Dr Kumar sustained a clear ‘injury’ from the fall she had at work in July 2009.

In a nutshell, if an injury (whether physical or mental, for example, PTSD) resulted from a single event (such as what happened in Dr Kumar’s case with a fall down stairs), then the impact on the claimant should be considered an ‘injury’.

If it occurred over a period of time (e.g. sustained bullying in the workplace causing depression), then the impact on the claimant will be considered a ‘disease’ for the purposes of the Act.

This has implications for injured workers, as the Act applies additional criteria to be satisfied if the impact on the injured worker is to be classified as a ‘disease’.

Suffice to say, if Comcare is saying that the impact on you as a claimant should be considered/classified as a ‘disease’ and you don’t think that’s right, then say so. If they reject your application because they say it’s a ‘disease’ and that you didn’t satisfy the additional criteria, then you need to speak to a Comcare lawyer about your rights to review/appeal.

Why did Dr Kumar win her ART appeal?

In a nutshell, it is because the Member (the ‘judge’) who heard the appeal was persuaded by what the doctors said about the efficacy of the treatment for Dr Kumar.

A significant component of the medical evidence was that the treatment was allowing Dr Kumar to continue to work (and not rely on Comcare weekly payments due to lost income). In our experience, courts/Tribunals will do their best to ensure that the status quo of treatment, which is keeping an injured worker working, continues (as long as the medical evidence confirms that is indeed the case).

Get help from a Comcare workers’ compensation lawyer

If you’ve got any concerns about your Comcare claim, including issues related to:

- weekly benefits;
- medical expense;
- eligibility for lump sum compensation;

rejected claims;

benefits reduced or ceased,

get in touch for some free initial advice.

More reading on Comcare claims

- Loss of wages in Comcare claims - how are they calculated?
- What to do if Comcare ceases your worker's compensation claim
- Psychological injury claims under the Comcare workers' compensation scheme

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This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.