



# Comcare worker's compensation claim for psychological injury rejected

**Date: Monday January 1, 2024**

In October 2023, the Administrative Appeals Tribunal ("AAT") determined that a worker's psychological injury was not caused by work, as she claimed. This decision confirmed the employer's decision to reject her application for compensation under the [Comcare scheme](#). The decision highlights some important considerations when it comes to psychological injury under the Comcare worker's compensation scheme.

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.

## Background to the Comcare claim

The Applicant, Ms McNaught, claimed to have sustained psychological injury (essentially an 'adjustment disorder') due to what she described in her claim form to be:

'...extensive workload, a lack of clarity and communication, discrimination, denial of access to work documents, unreasonable work demands, intimidating and belittling conduct and harassing and aggressive conduct'.

The employer denied Ms McNaught's claim on the basis that she did not suffer an 'injury' as defined in the Safety, Rehabilitation and Compensation Act (SRC Act).

In deciding not to accept Ms McNaught's application for compensation, the employer, K & S Freighters Pty Ltd, determined that her claimed psychological injury was not contributed to, to a significant degree, by her employment with the company. To be considered 'a significant degree', the contribution needed to be 'substantially more than material'.

At the AAT appeal, the employer also relied on other provisions of the Act in resisting Ms McNaught's appeal. But in the end, the Tribunal was only interested in deciding for itself whether her claimed psychological injury was 'contributed to, to a significant degree', by her employment with K & S.

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. Nearly without exception, the case law has noted that a psychological injury (mental health illness) is to be considered a 'disease' under the Comcare legislation.

## Why did the AAT side with the employer in denying the Comcare claim?

Both Ms McNaught and K & S Freighters presented evidence before the AAT. As is the case with the vast majority of AAT appeals involving Comcare matters, it was the medical opinion evidence which was the most critical in determining whether Ms McNaught ought to be paid worker's compensation.

But the AAT was also careful in examining those aspects of Ms McNaught's work that she maintained caused her to suffer her psychological injury. The very nature of psychological conditions is that each person reacts differently to what they perceive to be stressful situations. That is, unlike a physical injury, where the link between the event and the personal injury is usually fairly obvious, with psychological injuries, the factors that might have resulted in the person suffering the psychological reaction can be difficult to determine.

The legal issues that apply to psychological injury appeals are complex. Indeed, the majority of decisions of the AAT (and Federal courts) involving appeals from Comcare decisions have to do with psychological injuries. It is, therefore, very important that careful consideration is given to deciding whether to proceed with an appeal to the AAT from a decision to reject a psychological injury application.

We would strongly recommend seeking legal advice before appealing an adverse Comcare decision.

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In Ms McNaught's case, the AAT ultimately decided that having considered all the (mostly medical) evidence led by both sides, it was not satisfied that her psychological injury was contributed to, to a significant degree, by her employment. In so deciding, the AAT noted that the various medical records disclosed by her treating doctors failed to make any references to issues at work as being a cause of her claimed condition(s).

It also noted that Ms McNaught had complained to her GP about her psychological condition(s) before the events at work, which she claimed had, in fact, caused her injuries. The AAT also referred to a number of instances in the medical records where the Claimant noted to her treating doctors that there were various other non-work-related stressors in her life (including issues related to 'family' and 'financial' problems).

But when addressing what she maintained were the work-related stressors, which she said significantly contributed to her psychological condition(s), the AAT accepted the employer's submission that it was more a case of Ms McNaught's 'inaccurate or

unreliable' perception of what occurred in the workplace, rather than the reality of what happened.

Finally, the AAT noted that the expert medical evidence led by Ms McNaught was essentially not able to be relied upon, as the psychiatrist who gave the expert medical evidence had not been given a full history of her (extensive) psychological treatment history. On the other hand, the employer's expert had been given this information, which allowed him to conclude that the Claimant's psychological condition was not contributed to, to a significant degree, by the work events the subject of her application for compensation.

## Get help from a worker's compensation lawyer

Worker's compensation claims, whether under the Federal Comcare scheme or State-based schemes, rely heavily on medical evidence. Amongst other requirements of a strong claim, it is crucial that injured workers have suitable and sufficient medical evidence to support their claim.

Although worker's compensation claims may seem, in the first instance, quite straightforward, as you can see from this particular case, they can unravel quite quickly. Seeking advice from a lawyer experienced in worker's compensation, including the Comcare scheme, is highly advised.

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