



## Rejected Comcare Claim After Ankle Injury - Case Review

**Date: Monday October 14, 2024**

In this Comcare case review, we look at a decision of the AAT to uphold a decision by Australia Post Corporation (a self-insurer for worker's compensation) to reject her application for [Comcare worker's compensation](#). Inconsistencies in statements made by the injured worker, along with contradictory evidence provided during her appeal to the AAT, contributed significantly to the Comcare claim being denied.

As with all AAT appeals which involve Comcare claims, the AAT had to consider the relevant provisions of the Safety, Rehabilitation and Compensation Act ('the Act') and any evidence and submissions of the legal representatives for the Applicant (the injured worker) and Australia Post.

In the AAT appeal of [Tran and Australian Postal Corporation \(Compensation\) \[2024\] AATA 3571](#) (in October 2024), the Applicant, Ms Tran, claimed that:

she suffered a work injury to her ankle when she was struck by a trolley on 5 January 2022 (the date is important, as will be revealed below); and

the injury she says she suffered was a 'partial thickness tear of the distal Achilles tendon in the left ankle'.

Ms Tran was 68 years of age at the time of the alleged workplace injury.

## Worker appeals Australia Post decision to the AAT

The worker appealed the decision of Australia Post to deny her Comcare claim to the AAT. In a nutshell, the AAT was not satisfied that Ms Tran suffered an 'injury' on 5 January 2022 and upheld the original decision of Australia Post (i.e., to deny the claim).

## Why did the AAT dismiss the claim?

In dismissing the claim, the Member sitting in the AAT, Mr Maryniak KC (a senior barrister in his spare time), determined that the personal injury was not as a result of the circumstances of an incident of 5 January 2022.

The Member noted that Ms Tran was somewhat inconsistent with various versions of what happened on 5 January 2022. Importantly, he noted the inconsistent nature of Ms Tran's evidence about where exactly her feet were at the time of the accident, i.e. whether they were resting on the lower shelf of a Kingfisher trolley and subsequently knocked off the shelf, supposedly resulting in her sustaining a 'dorsiflexion' of her left ankle.

The Member was critical of the fact that Ms Tran had not included this description of what occurred in any accident report or to the various doctors she attended in relation to her injury until her solicitors produced her statement (lodged as part of the AAT appeal process) two years later, on 1 March 2024.

The Member also noted that Ms Tran had not made any mention of the workplace incident or (probably more critically for her claim) any mention of pain/problems with her left ankle to her GP during a telehealth consultation the day after the alleged work injury. Neither has she raised the incident with her GP in a subsequent appointment only 7 days after the alleged work injury, on 12 January 2022.

The Member further notes that the fact that Ms Tran had not mentioned any pain in her left ankle to any medical providers was consistent with the fact that she was able to continue to work immediately following the alleged incident on 5 January, and indeed, for the next 7 days.

Further inconsistencies in the applicant's version of what happened to her on 5 January involved suggestion on occasion that there were multiple trolleys involved in the incident, but she was not able to reconcile these inconsistencies at the hearing of her matter.

Whilst acknowledging English was the applicant's second language, and was not used to give evidence, the Member found Ms Tran to be an unsatisfactory witness overall.

Other aspects of the applicant's case, which the Member found concerning, included her failure to disclose previous problems with ankle pain and discomfort to her treating doctors and those who provided reports, etc. Evidence submitted at the hearing showed that she had attended a GP and underwent imaging in late 2021 (only a matter of weeks before the alleged work injury) for pain in her leg and a swollen and painful ankle.

In this regard, the Member noted (at paragraph 12 of his reasons):

*...her testimony evolved on several points regarding the sequence of events comprising the accident... This combined with the timing of the first mention of her feet resting on the*

*shelf and being knocked to the ground, results in the Tribunal giving greater weight to contemporaneous documentary accounts of the accident, rather than later accounts provided by the Applicant.*

## AAT finds the injured worker to be an unsatisfactory witness, leading to a failed appeal

The assessment by the Member of the Applicant as a witness proved fatal in every respect of her Comcare case. The Member could not be suitably confident about the opinions of the medical experts the Applicant called in support of her application, given her 'propensity to fine-tune' at best or craft her evidence in ways that would favour a successful outcome to her claim (at paragraph 13 of the decision).

Also, the Member preferred the expert evidence of Dr Saxby, an orthopaedic surgeon who had a special interest in ankle/foot injuries, called by Australia Post. This, coupled with the Member's inability to accept the applicant's account of what happened to her on 5 January, meant he was not satisfied of a 'causal or temporal connection' between the alleged incident and Ms Tran's claimed resultant personal injury.

## What are the 'take-aways' from this Comcare case for injured workers?

**Ensure your evidence about what happened is accurate and consistent**

Without doubt, a worker injured at work has to ensure that any record of a workplace incident and subsequent injury is factually consistent. This includes when you give an account to a doctor or any allied health practitioner.

**If you're unsure, don't guess or enhance**

If you can't recall a specific aspect of what happened, then say so! Sometimes, a worker will have a reasonable recollection, but it's not a complete and clear one. It's OK to make that clear when answering the question either in writing or personally. But do not (ever) note that something 'definitely' happened in a particular way when you cannot be confident of your recollection.

**Make contemporaneous notes as soon as possible after the accident**

If injured at work, send an email or text message to someone (a colleague, family member or friend) soon after the event to note what happened to you. It should include the circumstances of the accident and what you think your injuries were. This can be what lawyers call a 'contemporary' account of the particulars of the incident and your injury, which can be very helpful if a dispute arises down the track regarding what happened on

the day.

## Keep your doctor fully updated - from the beginning and throughout your claim

Finally, take the time to ensure you give the same basic account of what happened to you and what you think your injuries were whenever you speak to a doctor!

This is very important, as medical records are gone over with a fine tooth comb if there is a dispute with the compensation provider about your claim.

It's OK to ask your doctor to show you what they have written in their notes when you see them about your work injury. This way, you can clarify any inconsistencies or misinterpretations early. Better to be safe than sorry is our motto!

## Get help from a Comcare lawyer

For many injured workers covered by the federal Comcare worker's compensation scheme, a claim will be lodged and accepted, and benefits will commence. However, there are claims which are denied (or other adverse decisions are made), for a variety of reasons.

At CHCL, we have significant experience in all aspects of Comcare compensation claims. We have the knowledge and expertise to assess your claim if it has been rejected, and assist you with any options available to appeal any adverse decision.

## Further reading – Comcare worker's compensation

- [AAT decides Australia Post must pay worker's compensation to bullied employee](#)
- [What to do if Comcare ceases your worker's compensation claim](#)
- [Loss of wages in Comcare claims - how are they calculated?](#)

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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.*