Cameron Hall
COMPENSATION LAWYERS



Case review: Tribunal accepts two injured worker's Comcare claims but rejects a third claim

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Ms Quirk ("**the Applicant**"), who worked as a data processer for Services Australia (Medicare division) ("**the Respondent**"), claimed Comcare workers' compensation for three different injuries - carpal tunnel syndrome (CTS), tennis elbow (epicondylitis) and De Quervain's disease. Compensation for two of the injuries was initially declined by Comcare, and the third injury was initially accepted but subsequently, payments were ceased.

Ms Quick appealed all three decisions to the AAT ("**the Tribunal**"). Ultimately, the AAT determined that two of the injuries were compensable, however, only for a short period of approximately nine months each. The Tribunal determined that the third injury was not compensable. In this blog, we analyse the considerations of the AAT in determining this Comcare claim for each of the three injuries claimed.

Ms Quirk maintained that all three injuries arose from her work as a data processing officer with Services Australia since she started working there on a part-time basis initially and then moved to full-time duties in early 2020. The pain in her right arm (from her wrist to her shoulder) began in March 2020.

The vast majority of appeals to the AAT (which became the Administrative Review Tribunal 'ART' as of Monday, 14 October 2024) involve consideration of whether the Applicant/injured worker sustained an 'injury' as defined in the *Safety, Rehabilitation and Compensation Act 1988* (Cwth) ("**SRC Act**"). This case was no different, although it did involve consideration of three separate injuries by Ms Quirk.

Below, we look at each of the three claimed injuries and the decision of the Tribunal.

Comcare claim due to carpel tunnel syndrome (CTS) accepted by AAT but for a short period of time only

Ms Quirk asked the Tribunal to accept her evidence and submissions that her work duties with Services Australia resulted in her sustaining carpal tunnel syndrome (CTS). She first experienced symptoms in her right hand/wrist area in March 2020, and she continued to experience symptoms as of the date of her hearing in late 2023.

In advancing her claim, the Applicant pointed out that the onset of her symptoms in March 2020 coincided with her moving to full-time employment with the Respondent, which involved a significant increase in the amount of repetitive duties she had to perform. She also asked the Tribunal to accept that she had not experienced symptoms akin to CTS before March 2020.

The Tribunal noted that Ms Quirk had mentioned to one of the doctors who gave evidence for Comcare at the hearing that she had, in fact, experienced symptoms that were akin to CTS, on occasion, before March 2020. The Tribunal, therefore, concluded that Ms Quirk most probably had a pre-existing condition of CTS before March 2020.

More critical for Ms Quirk was the conflicting medical opinions of the various specialists who were called by both sides to give evidence at her hearing. The Applicant called evidence to support the link between her duties at work and the development of CTS, whereas Comcare led evidence from some doctors who said that there was no causal relationship between her work and any CTS in her right forearm.

Of the five or so doctors who gave evidence on this point, the Tribunal accepted the opinion of Dr Khurana, who said that there was ‘no consensus’ in the medical/scientific studies and literature about the link between repetitive duties in the workplace and CTS.

Decision of the Tribunal in relation to the claim for CTS

In the end, the Tribunal accepted that keyboard activity was capable of ‘aggravating’ a pre-existing CTS condition. However, it would not accept the Applicant’s primary submission that her work ‘caused’ the CTS completely.

Rather, the Tribunal said that on balance, her CTS itself was due to ‘constitutional’ issues. So, it was a ‘half win’ for the Applicant in relation to her CTS injury claim. The Tribunal was prepared to say that her work aggravated her pre-existing CTS for about a 9-month period.

Comcare claim for tennis elbow (epicondylitis) accepted by AAT but for a short period of time only

The Tribunal was critical of the Applicant only having raised her tennis elbow injury some two years after she first complained of pain/symptoms in her right arm in March 2020. She didn’t claim for this injury until May 2022 but had ceased work with Services Australia completely in March 2021 (due to her inability to work due to her right arm pain).

The Tribunal noted that the preponderance of specialist opinion did not support that her work duties ‘caused’ her tennis elbow injury. The Tribunal also pointed to some medical expert evidence that it was not possible to even diagnose tennis elbow at all.

Decision of the Tribunal in relation to the claim for tennis elbow

Despite the Tribunal's consideration of the medical evidence, it did note that Comcare made a concession at the outset of the trial, that it would acknowledge that Ms Quirk did suffer a temporary aggravation of an underlying constitutional tennis elbow condition. As with the CTS injury, this aggravation injury was supported for a short time period of approximately 9 months only.

The Tribunal ultimately upheld Comcare's decision that there was a temporary aggravation of the Applicant's tennis elbow for a period of about 9 months.

Comcare claim for De Quervain's Tenosynovitis – AAT upholds the decision of Comcare to cease weekly payments

This claim for this particular injury was, in fact, initially accepted by Comcare as a work injury. However, Comcare subsequently determined to cease payments, and that is the decision that the Applicant was asking the Tribunal to set aside.

The Applicant contended that the Tribunal should set aside Comcare's decision to cease payments for essentially the same reasons as advanced in respect of the other two injuries. That is she had no symptoms before 30 March 2020, and there was some medical opinion to support a link with work duties.

Decision of the Tribunal in relation to the claim for tennis elbow

The Tribunal accepted what was a preponderance of medical opinion led by Comcare that the work duties served only to temporarily aggravate a pre-existing de Quervain's condition of her right thumb region. The Tribunal determined that as Comcare had paid her for that aggravation already, the decision to cease payment of compensation for this particular injury was affirmed by the Tribunal.

Applicant's claim for a lump sum permanent impairment benefit denied

There was one final matter for the Tribunal to consider, which was the Applicant's claim for 'permanent impairment' benefits (a lump sum payment) relative to all three claimed injuries.

Again, on the basis that work only served to temporarily aggravate the Applicant's pre-existing conditions, the Tribunal concluded there could obviously be no 'permanent' work-related aspect to any of the three conditions. Therefore, no permanent impairment benefit was available to this claimant.

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

Injured worker's evidence should be accurate and reliable

The Tribunal was critical of Ms Quirk in how she presented as a witness. It didn't dismiss her evidence out of hand but rather observed that she had a 'tendency towards some level of embellishment or exaggeration and on other occasions reconstruction.' This was mainly in the context of her describing how many claims she would process on any given day.

The Tribunal was able to point to her inconsistent reporting of this important piece of information to various doctors she attended, who gave evidence before the Tribunal.

Injured workers should not exaggerate or embellish facts or injuries

Whilst it is important to give a clear and sufficiently detailed account of the circumstances of your workplace injury, by the same token, it is also important to note that a court (or Tribunal in this case) will be wanting to hear a fairly dispassionate and direct account from you about what you say happened to you.

Judges and ART Tribunal members are not interested in theatrical performances or embellished accounts by injured workers when they give their evidence.

Injured workers should not be combative during proceedings

Courts and Tribunals want to see Applicants be willing to concede certain points when they give their evidence and not appear to be combative when things are put to them by the other side that are reasonable propositions (which they should concede).

The golden rule when it comes to giving evidence in court or the ART is to be clear, concise and as truthful as you can be. Don't try to reconstruct something if you are not able to recall what happened. in response to a question put to you during your evidence. Rather, either accept and note you can't recall or you don't know the answer. If you're unsure but you believe you know the answer, make that clear in your response. For example, you could say something along the lines of, 'It's been so long now, but as best I can recall ….'.

Comcare applicants should listen to the advice of their lawyer

If you've sought legal assistance regarding your Comcare claim, it's important that you listen carefully to that advice.

This includes listening carefully to your lawyer about the risks of proceeding to a hearing/trial versus settling for something that would be considered reasonable. In reference to Ms Quirk's case, whilst it is not stated in the decision of the Tribunal, it would be unlikely that she was successful in recovering some of her legal costs of running her appeal.

> In the end, court and ART hearings/trials are adversarial in nature, and that means the result is always uncertain to varying degrees. A competent and experienced Comcare lawyer will understand the ‘risk vs reward’ associated with taking your matter to the Tribunal. Listen carefully to what your lawyer is telling you. Even though it’s still your case and you make the decisions about what to do, legal cases are very complicated and sometimes a ‘bird in the hand is definitely worth two in the bush’!

Get help from a Comcare workers’ compensation lawyer

The federal Comcare workers’ compensation scheme has many nuances, and understanding your rights and entitlements can be complicated at times. If you’ve lodged a Comcare claim and it’s been rejected or there has been any other adverse response to your claim (for example, your payments are being ceased), it’s important that you seek legal advice early.

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.

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.