

Gun & Davey

Covered



Vol 1, Issue 13 – December 1998

COVERED CASES

VANDERDOES -v- WORKCOVER CORPORATION / VACC
(SEANCO PTY LTD)

Decision of a Single Judge of the Workers Compensation Tribunal
DP Gilchrist

JD68/1998

Catchwords:

Claim for compensation for mental injury based on the conduct of the Corporation in managing the worker's claim.

Facts:

The worker was suffering from an accepted compensable Post Traumatic Stress Disorder. She lodged a claim for aggravation of that condition. She alleged that a lengthy delay by the Corporation in paying her legal costs, disbursements and medical expenses causing her to institute proceedings out of the Adelaide Magistrates Court, when taken in the context of the alleged history of mismanagement of her claim and of unnecessary delays, caused an aggravation.

Issue:

Did the conduct of the Corporation in managing the worker's claim constitute a normal incident of "employment" per Section 30(2)(b)?

Held:

No. Even accepting the worker's allegations as to mismanagement, the Tribunal held that whilst the pursuit of a claim for compensation is generally regarded as a normal incident of employment (Pete -v- Workers Rehabilitation & Compensation Corporation (1996) 66 SASR 474), the connection between the circumstances of the alleged disability and the worker's employment with the employer was too tenuous to satisfy the criteria in Section 30(2)(b).

Furthermore Section 30A and in particular Section 30A(b)(iv), does not indicate that a claim for compensation based upon the conduct of the *Corporation* can be entertained. The Tribunal found that Section 30A(b)(iv) was directed towards the conduct of the *employer* in respect of a worker's claim, not the Corporation.

The Tribunal did highlight that different considerations may arise in the context of an exempt employer. In those circumstances, the employer is in effect wearing two hats, one as employer and one as relevant *compensating authority*. This may mean that conduct undertaken in the employer's capacity as a compensating authority resulting in a disability might more readily be seen as establishing the necessary nexus to employment so as to make the disability compensable.