



COVERED CASES

Case Snippet

Williamson v State of South Australia in right of SA Police

SAWCT [2000] 195

Here, His Honour Deputy President Judge Cawthorne held that a worker does not have an unfettered right to choose their rehabilitation provider.

Having found a refusal of the exempt employer to establish a Rehabilitation and Return to Work Plan (RRTW) was a reviewable decision pursuant to Section 28B(i)(a) of the Act, he found the only ground for review was unreasonableness. The onus then fell upon the worker to show that to establish or not a plan was unreasonable.

In finding that the worker does not have an unfettered right of choice of rehabilitation provider, His Honour was mindful of the law that:

- The RRTW plan is binding on the worker and the employer and a balance must therefore be struck between the interests of both.
- Both worker and employer must be consulted.
- There is a positive requirement on the part of the compensating authority to establish the plan for an incapacitated worker meeting Section 28A(ii) criteria.
- The compensating authority is obliged to prepare a plan and is the driver of such.

His Honour noted that in Williamson, the exempt employer had refused to establish a RRTW plan with the worker's preferred choice of rehabilitation provider. The employer did provide the worker with a new rehabilitation provider. This provider was on SAPOL's panel of providers. The worker failed to prove the decision was unreasonable in that:

- The rehabilitation provider chosen by the employer was chosen due to its familiarity with SAPOL's operations.
- Costs are costs of approved rehabilitation as defined by Section 32(8).
- Section 32(8) provides that "approved rehabilitation" is only provided by those with an agreement for such provision with the Corporation.
- The Corporation reference in Section 32(8) refers also to an exempt employer.

In this case, as the provider of the rehabilitation service did not have an agreement with SAPOL for provision of those services, the exempt employer did not have to meet the worker's claims for costs of such.