

CANUTE v COMCARE (S154/2006)

Court appealed from: Full Court of the Federal Court of Australia

Date of judgment: 16 December 2005

Date of grant of special leave to appeal: 19 May 2006

This appeal raises a question of statutory construction. The appellant, who was a civilian employee of the Department of Defence, suffered a back injury on 7 September 1998. On 9 February 2000 he was awarded permanent impairment compensation under ss 24 and 27 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) ("the Act") for a 12% whole person impairment arising from physical restrictions of the spine and legs. In August 2001 he developed depression and made a claim for further psychiatric permanent impairment in July 2002. The respondent denied the claim for psychological impairment on the basis that any increase in the whole person impairment did not amount to 10% or more, said to be required by s 25(4) of the Act. The appellant sought review in the AAT.

The AAT found that the appellant suffered from an adjustment disorder arising out of the 1998 physical injury and that this disorder represented an increased impairment flowing from that injury of less than 10% over the impairment for which he had been compensated. The AAT refused his application, also applying s 25(4) of the Act.

The appellant appealed to the Federal Court. Hill J set aside the AAT's decision on the basis that it had erred in law in failing to consider whether the adjustment disorder, though flowing from the 1998 injury, represented a distinct compensable injury rather than a mere increase in the level of impairment caused by the initial injury.

Comcare appealed to the Full Federal Court. French and Stone JJ found that a proper application of the law by the AAT would have led to the result which it reached. The adjustment disorder fell within the definition of impairment even though it was also an injury. It was an impairment caused by the initial injury and therefore an increase in the impairment attributable to that injury. On a proper examination of the Act, the constraints imposed by s 25(4) applied to it. The AAT decision should not have been set aside.

Gyles J, dissenting, said that Hill J was correct in finding that the AAT erred in failing to look at the question of whether the psychological injury was a separate injury and then treatable separately.

The grounds of appeal are:-

- The majority of the Full Court erred in construing the Act so as to permit the accepted mental "injury" suffered by the appellant consequential to his back injury to be categorised also as an "impairment" resulting from the back injury.

- The majority of the Full Court erred in construing the SRC Act so as to conclude that the permanent impairment resulting from the appellant's mental injury was properly regarded as an "increase in the degree of permanent impairment" resulting from the back injury which was caught by sub-section 25(4) of the Act and Table 14.1 of the **Guide to the Assessment of the Degree of Permanent Impairment**.