

CASES AND TRIBUNAL DECISIONS

Longitudinal evidence from a treating medical practitioner preferred

Hellessey v Metlife Insurance Limited [2017] NSWSC 1284

[Link to decision](#)

Background

The plaintiff was a member of the NSW police force. During the course of her employment, she was subjected to a number of traumatic incidences. As a result of the incidences, the plaintiff claimed to have developed Post Traumatic Stress Disorder ('PTSD'), Major Depressive Disorder and Anxiety and subsequently ceased work due to her symptoms.

The plaintiff was a member of the First State Superannuation Scheme. The trustee of the Scheme, FSS Trustee Corporation, held two policies of group life insurance with the insurer, being the 'Blue Ribbon' Group Life Insurance Policy and the 'MetLife Insurance' Group Life Insurance Policy. The plaintiff made a claim for Total and Permanent Disablement ('TPD') under both policies. MetLife first received the claim documents in January 2012. It provided procedural fairness in respect of the claim on 17 April 2014. MetLife proceeded to decline the claim on 22 December 2014, and two times thereafter, on the basis that the plaintiff did not satisfy the relevant TPD definition.

Decision

Justice Robb conducted a thorough consideration of the evidence as well as the insurer's procedural fairness and decline letters. He observed the insurer's focus on medical opinions which were expressed on about, or shortly after, the relevant assessment date.

His Honour noted that:

'... where there are prospects of the claimant recovering from the incapacity in a manner that will defeat the satisfaction of the ETE clause, the evidence available as at the assessment date may be an unsound basis for determining whether the TPD clause has been satisfied, and the consequences of later and particularly longitudinal evidence may be a more reliable guide to the true nature of the claimant's incapacity as at the assessment date.'

In this regard, Justice Robb found the reports of the plaintiff's treating psychiatrist, Dr Durrell, to be informative. Dr Durrell had started treating the plaintiff on 5 October 2010 and was still treating her at the time of the hearing, some six years later. Justice Robb found that 'Dr Durrell had far more exposure to Ms Hellessey's psychological injuries in a longitudinal sense than any of the other medical professionals'.

Justice Robb ultimately found that:

'... the evidence establishes that Ms Hellessey has suffered from serious PTSD and depression... for at least about six years and possibly longer. This is an important consideration in determining whether or not, as at the assessment date of 1 March 2012, the incapacity caused by Ms Hellessey's psychological injury was of such an extent as to render her unlikely ever to engage in any gainful profession, trade or occupation for which she was

reasonably qualified by reason of her education, training or experience’.

He noted that MetLife had correctly pleaded that, at the assessment date, the plaintiff had a further 31 years of her nominal working life ahead of her. However, at least six of the projected 31 years had expired by the date of the hearing without the plaintiff recovering the capacity to undertake any employment.

Justice Robb found that the evidence in this particular case did not establish that there was a ‘real chance’ the plaintiff would return to relevant work.

Implications

Justice Robb’s judgment is a reminder that longitudinal evidence from a treating medical practitioner may be insightful and persuasive in determining whether an insured has a ‘real chance’ of returning to relevant work (even if this evidence does not specifically address the insured’s capacity at the relevant time for assessment) because it can be informative as to the prospect of the insured’s future recovery.