

COURT FINDS LONG SHIFTS AND NIGHT SHIFTS INCREASED THE RISK OF MOTOR VEHICLE ACCIDENT

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The Full Court of the South Australian Supreme Court found that the injuries suffered by a worker on a journey home had a real and substantial connection to his employment.

IN ISSUE

Whether a causal connection is required to prove there was a 'real and substantial connection' between the worker's injury and his employment pursuant to s30(5) of the *Workers Rehabilitation and Compensation Act 1986*.

BACKGROUND

The worker sustained serious head injuries in a motor vehicle accident after his vehicle drifted off the road and into a tree as he was driving from his work to his accommodation sometime between 2:30am and 3:30am. The worker claimed workers' compensation on the basis that the accident was caused by fatigue and because he was driving during a circadian low (when he would normally be asleep) and that the circumstantial evidence indicated that he had fallen asleep for reasons connected with his employment. In order to be entitled to compensation, the worker was required to show 'a real and substantial connection between the employment and the accident out of which the injury arises'.

THE DECISION AT TRIAL

The trial Judge of the South Australian Employment Tribunal (**SAET**) dismissed the claim on the basis that there was no real and substantial connection between the worker's employment and the accident out of which the injury arose.

THE APPEAL TO THE FULL BENCH OF THE SAET

The worker appealed to the Full Bench of the SAET on the basis that the trial Judge's reasons were inadequate. The Full Bench held that it was open for the trial Judge to reach his conclusion and dismissed the appeal.

APPEAL TO THE FULL COURT OF THE SOUTH AUSTRALIAN SUPREME COURT

The Full Court found that the worker fell asleep due to work related causes. The Full Court considered that the case was a strong circumstantial one based on evidence that was not

substantially disputed: the mechanics of the accident strongly indicated that the worker had fallen asleep; and that the accident happened during a circadian low after the worker had just worked a week of nightshifts.

In considering whether there was 'a real or substantial connection' between the accident and his employment, the Full Court held that the construction of s30(5) of the Act did not require there to be a causal connection. Rather a satisfactory connection may exist where the employment merely increased the risk of the accident that occurred. The Full Court found that the worker's shifts coincided with a circadian low which meant that the worker's employment exposed him to a greater risk of an accident, and this was sufficient to establish a real and substantial connection.

IMPLICATIONS FOR YOU

The Act discussed in this case has now been repealed and instead of requiring the employment be connected to the accident, the new legislation requires there to be a real and substantial connection between the employment and the journey. Had the accident occurred when the new legislation was in force, there would have been little contention as to the worker's entitlement. In any event, this case serves as a reminder that circumstantial evidence may be enough to find that there is a real and substantial connection.

Mills v Return To Work Corp Of South Australia [2020] SASCF 36

This article was co-authored by Zac Bury, Law Clerk, and Demi Peters, Solicitor, in our Insurance & Health Team.

GET IN TOUCH



DEMI PETERS
SOLICITOR

+61 3 6218 8816
demi.peters@bnlaw.com.au