

Death from drug use linked to psychological injury after traumatic workplace incident.

Muir v Department for Correctional Services [2022] SAET 68

In a recent decision the SA Employment Tribunal ("SAETA") concluded that the partner of a man who died after ingesting an illicit drug was entitled to workers compensation benefits as the death was the consequence of a work injury.

The worker, Luke Clothier, who was employed as a correctional officer, had developed PTSD and

severe depression after he had been required to help two inmates — one who had been beaten and sustained severe head injuries, and another who had set himself on fire.

After suffering the psychological injury Mr Clothier had taken time off work and was under the care of a doctor and psychiatrist. He had lodged a workers compensation claim for the psychological injury which was accepted.

During a period of hospitalisation, Mr Clothier displayed self-harming tendencies and was classified as a high suicide risk. After one unsuccessful suicide attempt, he began self-medicating with illicit drugs obtained from the internet. The SAET described this conduct as a "pattern of desperately seeking relief, including chemical relief, from depressive and often suicidal thoughts and his deep unhappiness". He later died after overdosing on acetyl fentanyl, a synthetic opioid. It was unclear whether the overdose was intentional (suicide) or accidental.

Death involving suicide is always a difficult issue for workers compensation insurers to deal with. Often such insurers will argue that the death resulted from a deliberate and wilful act of the worker and, accordingly, should not lead to workers compensation benefits for any family members or dependents. Previous cases involving suicide in this context have determined that workers compensation will be payable to the dependents of the deceased worker if the worker's 'power of volition' was destroyed as a result of the work injury, such that the suicide could not be said to be a deliberate or wilful act.

Consistent with those earlier decisions, in this case, the key issue before the SAET was whether, as a result of his work injury, Mr Clothier's judgment and ability to reason was so impaired when he consumed the toxic substance that it could be said that he was not acting wilfully or deliberately.

Mr Clothier's employer, the Department for Correctional Services, contended that he had probably suffered an accidental overdose of the drug in question. However, the SAET came to the conclusion that Mr Clothier had either intentionally committed suicide when he consumed the drug, or was reckless as to the final outcome. The SAET also concluded that, in any case, Mr Clothier took the acetyl fentanyl at a time when his reason was so overborne by his psychological illness that he was driven to this behaviour. That is, Mr Clothier's power of volition was destroyed by his psychological injury and, consequently, his death was a direct result of his compensable psychological injury. His domestic partner, Ms Muir, was therefore entitled to compensation under the Return to Work Act 2014 (SA).

How Can Andersons Help?

Any death of a worker is tragic. While workers compensation benefits can never ease the grief of the family left behind, they can lessen the financial burden on that family.

It is always worthwhile seeking advice if a loved one dies after suffering a work injury – whether by apparent suicide or other cause – to ascertain whether there is any prospect of a successful workers compensation claim.

Anderson's expert **workers compensation lawyers** have dealt with many workers compensation

claims made by family and dependents of workers who have died at work or after suffering a work injury and are available to advise you if you suffer such a tragic event.

You can reach out to this article's author Special Counsel Margaret Kaukas or call the office on 8238 6666.