SUPREME COURT OF QUEENSLAND

CITATION:	*Knight v Workers' Compensation Regulator & Anor* [2017] QSC 99
PARTIES:	**MEGAN KNIGHT** (applicant) **v** **WORKERS' COMPENSATION REGULATOR** **(**first respondent**)** **MEDICAL ASSESSMENT TRIBUNAL** (second respondent)
FILE NO/S:	No 12571 of 2016
DIVISION:	Trial Division
PROCEEDING:	Civil Application
ORIGINATING COURT:	Medical Assessment Tribunal (Queensland)
DELIVERED ON:	30 May 2017
DELIVERED AT:	Brisbane
HEARING DATE:	18 April 2017
JUDGE:	Boddice J
ORDER:	**The application is refused. I shall hear the parties as to costs.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICAL REVIEW – GROUNDS OF REVIEW – ERROR OF LAW – IMPROPER PURPOSES – where the applicant seeks review of two decisions of the Medical Assessment Tribunal relating to medical injuries sustained in the workplace through exposure to the chemical 'D4' – where the first decision of 24 March 2016 was set aside by consent – where the second decision of 4 October 2016 remains extant – where the second decision found the applicant had suffered no permanent impairment as a consequence of exposure to 'D4' – where the applicant claims the decision in question was infected by an improper exercise of power, error or law, or is otherwise contrary to law – whether the applicant can establish any basis for a successful review of the relevant decision in accordance with the provisions of the *Judicial Review Act* 1991

	Judicial Review Act 1991 (Qld) s 20(2)
	Minister for Immigration and Border Protection v Stretton (2016) 237 FCR 1; [2016] FCAFC 11, applied *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332; [2013] HCA 18, cited
COUNSEL:	M Knight appeared on her own behalf M Hickey for the first and second respondent
SOLICITORS:	No appearance for the applicant Crown Law (Queensland) for the first and second respondent

[1] By originating application, filed 21 December 2016, the applicant sought various orders in respect of a review of two decisions of the Medical Assessment Tribunal in relation to her claim to have suffered medical injuries consequent upon her exposure to a cleaning agent in the course of her employment.

[2] The first decision, dated 24 March 2016, was set aside by consent order dated 30 January 2017. The second decision, dated 4 October 2016, remains extant. In that decision, the second respondent found that the applicant had suffered no permanent impairment as a consequence of her exposure to the cleansing agent.

[3] The applicant seeks to have the second decision set aside. She also seeks declaratory relief and the payment of compensation. The respondents oppose the granting of any of the relief sought by the applicant. The respondents submit that no grounds for a review of the second decision, pursuant to the *Judicial Review Act* 1991 ("the Act"), have been established and no other basis has been established to justify any other relief.

Background

[4] The applicant was born on 28 June 1960. She has a varied occupational history, including conducting her own business retailing health products. At the time she sustained the injury the subject of this proceeding, she was undertaking casual employment as a carer at an aged care facility on the Sunshine Coast. She commenced in that role in or about 2010.

[5] On 14 September 2014, the applicant lodged an accident/incident form with her employer. In that form, she claimed that over one year she had developed hyper-sensitivity to D4. Its active ingredient is the chemical dodecyl dimethyl ammonium chloride. D4 was used as a sanitising agent in the form of a spray by staff members in the kitchen and dining areas of the facility.

[6] The applicant alleged she had discussed, at length, with various members of the aged care facility's staff that they notify her of their intended use of that substance so that she may work elsewhere whilst it was being administered by them. Despite that request, staff had continued to use D4 in her presence. As a consequence, the applicant had developed

significant symptoms, including headaches, sinus pain, stiffness, fogginess of the brain, agitation and constipation. These symptoms had led to fragile emotions, sleeplessness and an inability to complete her shifts.

[7] Upon receipt of the incident report, the applicant's employer took steps to ensure the applicant did not attend her workplace until the undertaking of further investigations and the obtaining of further medical advice. Notwithstanding those steps, the applicant complained of ongoing difficulties and of an inability to complete her employment.

Claim

[8] On 2 March 2015, the applicant made application for compensation from WorkCover Queensland. WorkCover Queensland accepted liability for the development of an allergic reaction to the chemical in the workplace and for a psychological/psychiatric injury. WorkCover Queensland did not accept that the applicant had developed, lung/chest injuries, headaches or associated other injuries as a consequence of that exposure. On 22 April 2015, WorkCover Queensland ceased the claim concluding that the applicant was no longer incapacitated for work because of a work related injury.

[9] On 23 July 2015, the applicant applied for a review of the decision of WorkCover Queensland to cease her claim. On 28 August 2015, the Workers' Compensation Regulator confirmed the earlier decision of WorkCover Queensland to cease the claim.

[10] The applicant's psychological/psychiatric injury was referred to the General Medical Assessment Tribunal – Psychiatric. That Tribunal, convened on 24 March 2016. It concluded the applicant had an impairment, namely chronic adjustment disorder with mixed anxiety and depressed mood and symmetric symptom disorder. It assessed the degree of permanent impairment resulting from that injury at 5% ("the first decision").

[11] Following that assessment WorkCover Queensland issued a Notice of Assessment on 24 June 2016 in which the applicant was determined as having a chronic adjustment disorder with mixed anxiety and depressed mood and symmetric symptom disorder with a 5% impairment and irritant effects secondary to exposure to D4 with a 0% impairment.

[12] The applicant did not accept that assessment. The applicant sought a review. The applicant was referred to the General Medical Assessment Tribunal – Medical. It convened on 30 September 2016. After consideration of all the medical and other evidence, that Tribunal determined that whilst the applicant had been exposed to D4, causing temporary irritant effects, the applicant had not sustained any degree of permanent impairment ("the second decision").

[13] In reaching the second decision, the Tribunal accepted the applicant's temporary symptoms had resolved over time following the applicant having no further exposure to D4 since March 2015. Any ongoing symptoms were not due to exposure to D4.

Applicant's submissions

[14] The applicant submits the Tribunal, in reaching the second decision, incorrectly understood and twisted the factual background. The applicant has been experiencing the same symptoms since her initial exposure to the chemical D4. Her ongoing unwellness is as a consequence of that direct exposure. Notwithstanding those facts, the applicant has been denied treatment. In those circumstances, there was no basis for the Tribunal to conclude the applicant had suffered no permanent impairment. No conclusion could be reached until the applicant received the necessary treatment.

[15] The applicant further submits the various reports considered by the Tribunal contained factual inaccuracies, premised on an incident on one day, rather than exposure over a lengthy period of time. As such, there was a fundamental misconception by the Tribunal that her exposure related to one day, 14 September 2014. In truth, the incident report referred to exposure over a 12 month period.

[16] Finally, the applicant submits her health diary revealed consistent and persistent ongoing symptoms supportive of a conclusion that the applicant continued to suffer the effects of exposure to the chemical D4. That evidence rendered the conclusion of the Tribunal, that any effect from the exposure to the chemical D4 was temporary, an unreasonable finding not consistent with the evidence. There is extensive research material as to the effects of exposure to chemicals on the human body.

Respondents' submissions

[17] The respondents submit the application amounts to no more than an application to review of the decision of the second respondent on its merits. Such a review is impermissible. Further, as the applicant has not otherwise identified a reviewable error, the application should be dismissed.

Applicable principles

[18] The Act provides a procedure for a person, who is aggrieved by a decision to which the Act applies, to apply to the Court for a statutory order of review. The grounds for such review are specified in s 20(2) of the Act. It provides:

> "(2) The application may be made on any 1 or more of the following grounds-
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> (a) that a breach of the rules of natural justice happened in relation to the making of the decision;
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> (b) that procedures that were required by law to be observed in relation to the making of the decision were not observed;
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> (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
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> (d) that the decision was not authorised by the enactment under which it was purported to be made;

(e) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made;

(f) that the decision involved an error of law (whether or not the error appears on the record of the decision);

(g) that the decision was induced or affected by fraud;

(h) that there was no evidence or other material to justify the making of the decision;

(i) that the decision was otherwise contrary to law."

Discussion

[19] An application for statutory order of review is not a merits review. If the applicant is to succeed the applicant must establish one of the grounds of review set out in paragraph 20(2) of the Act.

[20] A consideration of the applicant's extensive material supports a conclusion that the applicant is contending that the decision in question was an improper exercise of the relevant power (s 20(2)(e)), involved an error of law (s 20(2)(f)) or was otherwise contrary to law (s 20(2)(i)).

[21] The improper exercise of power ground is to be properly understood having regard to the extended meaning of that definition set out in s 23 of the Act. That extended meaning includes, within the improper exercise of the power that was so unreasonable no reasonable person could so exercise the power. That ground involves a high bar. It is not satisfied if the Court is of the view a different decision ought to have been reached on the material. A decision reasonably open to a Tribunal on the material is not a decision that is so unreasonable no reasonable person could reach it.

[22] Legal unreasonableness arises if the result, upon the facts, is unreasonable or plainly unjust having regard to the scope and purpose of the relevant statute and its real object.[1] Legal unreasonableness may be found even where reasons have been given if the decision lacks an evident and intelligible justification. However, if the reasons provide an evident and intelligible justification for the decision, legal unreasonableness is unlikely to be established by an applicant.[2]

[23] If, by reference to the scope and purpose of the statute, a decision maker may be regarded as having committed a particular error in reasoning or to have given disproportionate

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1 *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 at 349, [24]; 363-364, [67].

2 *Li* at 367, [76].

weight to some factor or to have reasoned illogically or irrationally, a conclusion is open that the decision maker has been unreasonable in a legal sense.[3]

[24] Legal unreasonableness does not involve a review of the merits of the decision or substitution by a Court of its own view as to the exercise of the discretion. As was observed by Allsop CJ in *Minister for Immigration and Border Protection v Stretton*[4]:

> "This concept of legal unreasonableness is non-amenable to minute and rigidly defined categorisation or a precise textual formulae. … The pluralities discussion of unreasonableness in *Li* should be read as a whole – as a discussion of the sources and lineage of the concept, of the limits of the concept of reasonableness given the supervisory role of the Courts, of the fundamental necessity to look to the scope and purpose of the statute conferring the power to find its limits, of the various ways the concept has been described, of the relationship between unreasonableness derived from a specific error and unreasonableness from a logical or rational reasoning, of the place of proportionality or disproportion in the evaluation, of the guidance capable of being obtained from recognising the close analogy between judicial review of administrative action and appellate review of judicial discretion." (citations omitted)

[25] In the present case the Tribunal reached the second decision after consideration of all of the material. Whilst in doing so the Tribunal referred to the applicant as having "suffered a work related injury on or around 14 September 2014", that is obviously a reference to the incident report. The decision itself expressly referred to the applicant having been exposed to the chemical in the workplace for about 12 months leading up to 14 September 2014. The reasons for decision also detailed the reported and current symptoms.

[26] Having regard to those express references in the decision, it is not reasonably open to conclude from the Tribunal's decision that the Tribunal misled itself or erred in some way in considering the applicant's exposure to the chemical D4 to have been a one-off incident or in failing to have regard to the reported, ongoing symptoms.

[27] There is no substance in a contention that the decision reached by the Tribunal amounted to legal unreasonableness. The Tribunal had before it a body of evidence. Having considered that body of evidence, the Tribunal reached a conclusion which was reasonably open, on a consideration of the whole of that material and having regard to the scope and purpose of the Act establishing that Tribunal.

[28] There is nothing illogical or unintelligible about the decision reached by the Tribunal. There is no obvious failure to have regard to relevant factors. There is no evidence the Tribunal gave undue weight to one factor over another. There is no support for a conclusion the Tribunal reasoned illogically or irrationally.

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3 *Li* at 366, [72].

4 (2016) 237 FCR 1 at 5, [10].

[29] An improper exercise of a power can also arise if the decision maker took into account irrelevant considerations or failed to take into account relevant considerations. However, a consideration of the material does not support a finding that in reaching the decision the Tribunal took into account irrelevant considerations or failed to take into account a relevant consideration. The Tribunal considered the material placed before it. That material was relevant to its determination of the issues in question.

[30] A consideration of the material also does not support a finding that the exercise of the power was for a purpose other than the purpose for which the power was conferred or was exercised in bad faith or in accordance with a rule or policy. The reasons of the Tribunal indicates the Tribunal considered the material placed before it, having regard to its obligations under the Act.

[31] Finally, there is nothing in the material relied upon by the applicant to support a conclusion the second decision involved an error of law or was otherwise contrary to law.

Conclusions

[32] The applicant has not established any basis for a successful review of the second decision in accordance with the provisions of the Act. The applicant's contentions amount to no more than an attempt to undertake a merits review of the second decision.

[33] Once that conclusion is reached, there is no basis for the ordering of any of the other relief sought by the applicant.

Order

[34] The application is refused. I shall hear the parties as to costs.