



HIGH COURT OF AUSTRALIA

11 May 2016

MILITARY REHABILITATION AND COMPENSATION COMMISSION v
BENJAMIN JAMES EDWARD MAY

[2016] HCA 19

Today the High Court unanimously allowed an appeal from the Full Court of the Federal Court of Australia. The High Court held that the respondent, Mr May, did not suffer an "injury" as defined in s 4(1) of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) ("the Act"). He was therefore not entitled to compensation under s 14 of the Act.

Mr May enlisted in the Royal Australian Air Force ("the RAAF"). At the time he enlisted, he was healthy and fit. In the course of his employment with the RAAF, Mr May was required to undergo a series of vaccinations. He said that he suffered a series of adverse reactions to these vaccinations. Mr May subsequently applied under s 14 of the Act for compensation in respect of "low immunity, fatigue, illnesses, dizziness – immune system/whole body", which, he maintained, he sustained as a result of the vaccinations he received while he was employed with the RAAF.

A delegate of the Military Rehabilitation and Compensation Commission ("the MRCC") denied Mr May's claim. The MRCC later reconsidered but affirmed the determination. Mr May then applied to the Administrative Appeals Tribunal ("the Tribunal") for a review of that second decision. The Tribunal accepted that Mr May was (and became shortly after joining the RAAF) "significantly disabled" by his condition, which it "loosely described" as "vertigo". However, the Tribunal concluded that Mr May had failed to establish his case: he had not demonstrated that he had suffered a physical injury amounting to a "sudden or identifiable physiological change" in the normal functioning of the body or its organs attributable to the vaccinations received while serving in the RAAF. Therefore, Mr May had not suffered an "injury (other than a disease)" for the purposes of par (b) of the definition of "injury" in s 4(1) of the Act. The Tribunal also held that he had not suffered a "disease" within par (a) of the definition of "injury" in s 4(1) of the Act.

The Federal Court of Australia dismissed an appeal by Mr May, but the Full Court of the Federal Court allowed an appeal. By grant of special leave, the MRCC appealed to the High Court.

In the High Court, Mr May did not challenge the Tribunal's conclusion that he did not have a "disease". Rather, Mr May contended that he suffered an "injury (other than a disease)" within par (b) of the definition of "injury" in s 4(1) of the Act. The Court held that Mr May did not suffer an "injury (other than a disease)" because the evidence did not establish the nature and incidents of any physiological or psychiatric change.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*