



Not the Christmas present she was hoping for

December has arrived which means work Christmas party season is upon us. *State Super Financial Services Australia Limited v McCoy* [2018] NSWCCPD 26 reminds employees to be careful and employers that they can be held liable for injuries before and after the annual festive period bash.

On 5 December 2013 Ms McCoy was walking from her hotel, where she planned to stay that night, to the venue of her work Christmas party. She fell on uneven paving and injured her right ankle which required surgery and caused varying medical complications. Ms McCoy claimed that she fell because she was fatigued after a long day at work and hurrying to get to the party on time.

Journey claims have long been the subject of litigation in the workers compensation realm. Is an employer liable to pay workers compensation for an injury suffered by an employee on their journey to and from work? Section 10 of the *Workers Compensation Act* states compensation is payable for “*the daily or other periodic journeys between the worker's place of abode and place of employment*” if “*there is a real and substantial connection between the employment and the accident or incident out of which the personal injury arose*”.

On the first instance, the Arbitrator found that Ms McCoy’s claim was indeed a journey claim and that there was a real and substantial connection between her injury and her employment.

Ms McCoy’s employer appealed this decision, but the appeal was dismissed. President Keating held that s10 requires a finding that there was a real and substantial connection between the injury sustained and the employment. However, employment does not have to be the only or even the main cause. The employer had not challenged Ms McCoy’s evidence relating to the reasons for her fall and so it was up to the Arbitrator to determine whether there was a real and substantial connection between her injury and her employment – which he duly did. President Keating accepted that the evidence of Ms McCoy was logical and dismissed the appeal.

Ms McCoy was successful and was awarded weekly payments, medical and related treatment expenses and lump sum compensation.