

# Workers' compensation – a pilot with obsessive compulsive disorder

*Griffin v Qantas Airways Ltd* [2010] NSWCCPD 22 (8 March 2010)

By Patrick Coetsee

**A**n ex-Qantas pilot has been awarded 20 years' worth of compensation payments by the Workers' Compensation Commission of NSW, which found that his compulsion to crash planes was 'profoundly' linked to a stressful point in his career.

## THE FACTS

Mr Griffin began working with Qantas Airways as a pilot in 1966. In August 1979, he was due for his six-month licence renewal as a first officer on a Boeing 747 aircraft. The renewal involved a 'check captain', Captain Anstee, conducting an in-flight check of certain safety procedures. The check was conducted on a flight from Singapore to Perth without incident on 29 August 1979.

On the return journey the same day, Mr Griffin rehearsed 'Phase 1' emergency procedures in his head, as pilots are required to know Phase 1 off by heart in order to respond appropriately in case of an emergency.

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One of the emergency procedures Mr Griffin rehearsed was loss of all generators, which requires shutting down the engines by turning the start lever to the off position to turn off the fuel to the engine.

While Mr Griffin was going over this procedure in his head, his left hand involuntarily moved towards the start levers. Mr Griffin stated that he 'struggled with the uncontrollable limb as though it wasn't mine'. He became 'terrified' by the 'struggle' with his 'uncontrollable limb' and left the flight deck, returning only when he felt calm. A similar incident occurred on another flight, when Mr Griffin again had an urge to move the start levers to the off position. On this occasion, he told the captain and was given permission to leave the flight deck. After the flight landed in Sydney, Qantas arranged for Mr Griffin to see a doctor and he was referred for a number of consultations with psychiatrists. Mr Griffin was subsequently cleared by the doctors to return to flying.

On 19 July 1980, on a flight to Bahrain, Mr Griffin informed Captain Gillies of his compulsions and he was immediately ordered from the flight deck. When the flight arrived in Bahrain, Captain Gillies conducted a conference call with the Qantas doctor and two senior pilots. During the call, Captain Gillies was told that Mr Griffin's illness was 'no more serious than a sore toe' and that Mr Griffin was to continue flying as first officer.

In November 1981, Mr Griffin phoned Qantas operations and said he was having 'reoccurring mental problems'. Dr Howell, Deputy Director

of Medical Service with Qantas, concluded on 2 March 1982 that 'Griffin is not at present the same individual that I knew several years ago.' Mr Griffin resigned from Qantas in 1982, having experienced increasing levels of anxiety, an increasing urge to shut off the plane engines and poorer performance. He never flew commercial aircraft again.

## APPLICATION FOR COMPENSATION

By the time of the conciliation and arbitration meeting on 30 January 2009, Mr Griffin had not obtained legal representation. The arbitrator delivered a decision on 4 March 2009, finding that while Mr Griffin suffered from constitutionally based obsessive compulsive disorder (OCD) this was not caused or contributed to by his employment. The arbitrator made an award in favour of Qantas, with no order as to costs. Mr Griffin filed an appeal on 1 April 2009. Deputy President Roche (DP Roche) indicated that, due to the unusual circumstances of the matter, it was necessary to conduct the hearing *de novo*. This meant that both parties could file additional evidence in the matter. At this point, Mr Griffin obtained the assistance of counsel.

## SUBMISSIONS

Counsel for Mr Griffin submitted that the emergence of the florid obsessive compulsive symptoms on 29 August 1979 had a causal nexus with Mr Griffin's work duties at the time. Further, the events in the cockpit on 29 August 1979 – that is, practising emergency safety procedures in his

head – were a necessary and obvious point in the development of the OCD so as to constitute an aggravation or acceleration or exacerbation of Mr Griffin's condition.

Qantas argued that Mr Griffin had an established obsessive compulsive disorder before August 1979 and the incident in the cockpit on 29 August 1979 was a manifestation of that condition unrelated to his employment with Qantas. In the alternative, Qantas argued that the true cause of his OCD came in 1973, when Mr Griffin was struck on the head with a hammer while constructing a swimming pool at his home. It was contended that Mr Griffin's employment caused no more than a temporary aggravation of a pre-existing condition and, from 20 September 1982, at the latest, any aggravation had ceased. Further, Qantas argued that Mr Griffin was unable to bring his claim since s261 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) (the WIM Act) stipulates that a claim must be made within either six months or three years of injury or death.

## OUTCOME

DP Roche accepted that 'the contemporaneous evidence and the logic of events provide compelling reasons for accepting the connection between Mr Griffin's employment duties and the manifestation of his symptoms on 29 August 1979'. Further, DP Roche found that the duties Mr Griffin was performing – that is, rehearsing emergency procedures in his head, were a necessary and integral part of his employment and, therefore, a causal nexus existed with the duties and florid obsessive compulsive symptoms. It was held that by continuing to fly for Qantas between November 1979 and November 1981, Mr Griffin's psychological condition was aggravated and exacerbated.

Regarding the delay in bringing the claim and whether compensation could be awarded, DP Roche looked to Mr Griffin's statement which set out the reasons for the delay. It was not until November 1999 that Griffin had received his file from the

Commonwealth Aviation Authority and did not know prior to this that there may have been a connection between his work at Qantas and his illness. Mr Griffin obtained legal advice in 2000, which advised him that his claim could not succeed as all those involved 'were probably dead'. However, Mr Griffin received advice from a barrister in November 2002 that he could make a claim for weekly compensation from the date of incapacity. DP Roche accepted Mr Griffin's evidence that he was unaware that he had received an injury until he received the advice in November 2002.

In order to successfully make a workers' compensation claim lodged out of time, Mr Griffin needed to establish that his injury resulted in serious and permanent disablement, and that the reason for the delay in lodging the claim was 'occasioned by ignorance, mistake, absence from the state or other reasonable cause'.<sup>1</sup>

DP Roche accepted Dr Phillips' conclusion in his report of 21 August 2009 that Mr Griffin was 'substantially incapacitated for employment following the time of his resignation from Qantas and he remains incapacitated to undertake employment in the competitive open workforce at the present time'. DP Roche found that Mr Griffin's injury was serious and had resulted in

permanent disablement. DP Roche also found that the reason for the delay in lodging the claim was due to Mr Griffin's ignorance. Accordingly, Mr Griffin was able to claim weekly compensation. DP Roche revoked the arbitrator's initial determination and awarded weekly compensation for the period 10 September 1979 to 6 November 1979 at the rate of \$961.50 per week. From 19 May 1982 to 6 September 1999, Mr Griffin was awarded weekly compensation payments on the basis of partial incapacity under s11 of the *Workers Compensation Act 1926*, plus s60 expenses and costs.

This case demonstrates that a worker who lodges a claim for compensation out of time may still be successful if the injury is work-related, the delay is due to 'ignorance, mistake, absence from the state or other reasonable cause' and if the injury resulted in serious and permanent disablement, even if the employer would have difficulty in investigating an injury that occurred many years previously. ■

**Note:** 1 s261(4) of the WIM Act.

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