

IN THE VICTIMS COMPENSATION TRIBUNAL

IN SYDNEY

IN THE APPEAL OF

BXA

FILE: 73140.

DATE: 16 October 2002.

This matter comes before the Tribunal by way of an appeal from the determination of an Assessor. The appeal has been lodged within time.

I have read the file in this matter and am satisfied that the appeal can properly be determined without a hearing. Nothing to the contrary has been put to the Tribunal.

The grounds of appeal are as follows:

1. That the assessor erred in finding no act of violence.
2. That the Assessor erred in not making an award for compensation.

The Assessor dismissed the Appellant's claim on the basis that he was not satisfied on the balance of probabilities that an act of violence was established.

The assessor in coming to this conclusion had considered all the evidence on file and in reaching his decision states that he had particular regard to the following:

- The delay and circumstances of the disclosure
- The inconclusive forensic evidence particularly in light of the allegations of repeated acts of prolonged sexual intercourse.
- The lack of any admissions by the accused.
- The denial by the accused's wife that she had been present during several of the occasions when Ms BXA claimed she had been sexually assaulted.
- The lack of credibility of the applicant in relation to certain aspects of her evidence-the presence of the wife during the assaults and the accused having a drink during one of the acts of intercourse.

I also note the evidence of the Appellant's Aunt in relation to corroboration of one of the incidents. However as the Assessor noted the Aunt was only two years older than the Appellant. In addition to this I have also taken into account the fact the Judge in summing up to the Jury states in relation to the aunt's evidence that:

"In determining that you should consider that the account of [REDACTED]'s in relation to it and the circumstances of it is different to the account given by the complainant."

Cases such as these are very difficult when the allegations are not disclosed to some time after the event. The medical evidence suggests that there has been no sexual interference with the Appellant of the type described by her in this matter and the alleged offender's wife denies that she was present when the Appellant alleges that she was.

Having considered all the evidence before the Tribunal I am unable to find that on the balance of probabilities the Appellant was the subject of acts of violence as alleged.

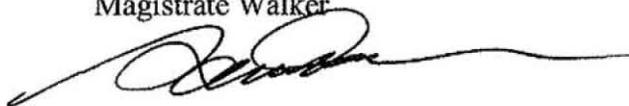
The appeal is dismissed.

I allow costs of the appeal in the sum of \$825.00.

Magistrate Walker

Member, Victims Compensation Tribunal

Magistrate Walker

A handwritten signature in black ink, appearing to be 'R. Walker', written over a horizontal line.

Member, Victims Compensation Tribunal