

**Attention is drawn to the order
prohibiting publication of certain
information in this determination.**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2021] NZERA 395
3097972

BETWEEN XIAOYA DING
Applicant

AND UNICOM NEW ZEALAND
LIMITED
First Respondent

AND LINSHAM JIANG
Second Respondent

Member of Authority: Rachel Larmer

Representatives: Royal Reed and Mark Tan, counsel for Applicant
Helen McDermott, counsel for Respondent

Investigation Meeting: By telephone conference on 3 September 2021

Date of Determination: 8 September 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Authority's discretion to grant a non-publication order is contained in clause 10 of the Second Schedule of the Employment Relations Act 2000 (the Act).

[2] Clause 10(1) of the Second Schedule of the Act states:

The Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[3] The discretion is to be exercised on a principled basis.

[4] The applicant has filed bundles of documents for use during the Authority's investigation meeting that include the applicant's personal and sensitive medical information. The applicant is entitled to have this material protected from public publication.

[5] There is no public interest in this matter in having the applicant's private and confidential medical information being put into the public domain. To do so would undermine the overall interest of justice.

[6] The Authority has therefore issued an order that the applicant's medical information that has been filed in this matter, and any additional medical information that may be filed by the applicant in future, is subject to a non-publication order.

[7] This non-publication order includes, but is not limited to, the report dated 29 January 2021 contained at page 297 of the bundle of documents that was filed with the Authority on 30 April 2021.

[8] This non-publication order is subject to the condition that it does not relate to publications to, or from, government agencies/organisations/institutions, including but not limited to, the employment institutions, the New Zealand Police, and WorkSafe.

[9] For the avoidance of doubt, it shall not be a breach of this non-publication order for the parties and witnesses to refer to the medical information in their witness statements, in the course of giving evidence, or for counsel to refer to it during the questioning of witnesses and/or submissions.

[10] The parties have leave to apply to the Authority for a variation of this non-publication order if necessary.

Costs

[11] Costs are reserved pending the outcome of the substantive matter.

Rachel Larmer
Member of the Employment Relations Authority