

WORKERS COMPENSATION COMMISSION

STATEMENT OF REASONS FOR DECISION OF THE APPEAL PANEL IN RELATION TO A MEDICAL DISPUTE

Matter Number:	M1-006551/17
Appellant:	NSW Police Force
Respondent:	Anthony Morley
Date of Decision:	2 May 2018
Citation:	[2018] NSWWCCMA 42

Appeal Panel:	
Arbitrator:	Grahame Edwards
Approved Medical Specialist:	Dr Nicholas Glozier
Approved Medical Specialist:	Dr Julian Parmegiani

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 14 March 2018 appellant lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Wayne Mason, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 22 February 2018.
2. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):
 - the assessment was made on the basis of incorrect criteria, and
 - the MAC contains a demonstrable error.
3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.
4. The WorkCover Medical Assessment Guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the WorkCover Medical Assessment Guidelines.
5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment*, 4th ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment*, 5th ed (AMA 5).

RELEVANT FACTUAL BACKGROUND

6. Mr Anthony Morley (the respondent) was a member of the NSW Police Force from 15 February 1995 until he was medically retired on 15 June 2017 as a result of psychological injury suffered during the course of his employment with the injury deemed to have happened on 3 January 2016.
7. Mr Morley suffers with the psychiatric condition of Post-Traumatic Stress Disorder caused by the accumulative effects of multiple traumatic events he was exposed to during his service as a police officer.

8. Mr Morley's psychological injury was assessed by the AMS on 9 February 2018, and his Medical Assessment Certificate was issued on 22 February 2018.
9. The AMS assessed Mr Morley to be suffering with 19% whole person impairment after determining the Psychiatric Impairment Rating Scale (PIRS) for each category under Table 1.1 of Chapter 11 of the Guidelines, as a result of his psychological injury.
10. The appellant's grounds of appeal relate to the AMS's assessment of the PIRS categories of "self-care and personal hygiene" and "social functioning".

PRELIMINARY REVIEW

11. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the WorkCover Medical Assessment Guidelines.
12. As a result of that preliminary review, the Appeal Panel determined that it was not necessary for the worker to undergo a further medical examination because it was satisfied the appeal could be determined on the documentary evidence and written submissions of the parties.

EVIDENCE

Documentary evidence

13. The Appeal Panel has before it all the documents that were sent to the AMS for the original medical assessment and has taken them into account in making this determination.
14. The whole of the medical certificate issued by the AMS is relevant to the appeal, but the relevant parts of the MAC in respect of the PIRS categories, the subject of the appeal, are set out as follows:

"Self-Care and Personal Hygiene:

Mr Morley said he showers every second or third day. He said his partner picks up his clothes and does his washing. He only very occasionally will cook a meal. He said he never contributes to the cleaning of the house and he has to be reminded to shave and get his hair cut."

Social and Recreational Activities:

Mr Morley said attending university is as social as he gets. He said a lecture may consist of thirty people and a tutorial may consist of twelve people. He does not see any friends and if his partner goes out to see her friends he does not accompany her. He said he will not go to the supermarket alone because of panic attacks. He said on a very rare occasion his partner may force him to go out for coffee. He has only mate who lives in Taree and he is lucky to see him once a year."

15. The AMS set out his reasons for rating Class 3 for the PIRS categories as follows:

"PIRS Category	Class	Reasons for Decision
Self-Care and personal hygiene	3	Mr Morley said he showers every second or third day. He said his partner picks up his clothes and does his washing. He only very occasionally will cook a meal. He said he never contributes to the cleaning of the house and he has to be reminded to shave and get his hair cut.

...

Mr Morley has separated from his wife and maintains contact with only his younger daughter. His older daughter refuses to seek him. His relationship with his first partner, Jodie, broke up because of his symptoms. His mother and his half siblings refuse to speak to him and he said while his father contacts him infrequently he is cool towards him. He said his libido remains diminished and his partner complains of his lack of interest. He said he has lost all of his friends, especially those from the police, except for one mate in Taree who he sees irregularly.

...

SUBMISSIONS

16. Both parties made written submissions. They are not repeated in full, but have been considered by the Appeal Panel.
17. In summary, the appellant submits that the MAC contains a demonstrable error because the assessment of the PIRS categories of “self-care and personal hygiene” and “social functioning” were made on the basis of incorrect criteria.
18. In respect of the PIRS category of “self-care and personal hygiene”, the appellant submits the AMS should have assessed it as Class 1, or at worst, Class 2 on the basis of the Guidelines for reasons summarised as follows:
 - (a) No evidence of domestic violence.
 - (b) The arrangement of the respondent’s children living with their mother is not uncommon.
 - (c) No evidence of the older daughter refusing to see the respondent.
 - (d) The breakdown of his relationship with his former partner may have been the “normal reaction for someone charged with a criminal offence”.
 - (e) The respondent lived independently for a period of about six months after the relationship with his former partner broke down and the commencement of his present relationship.
 - (f) Any problems with the current relationship is not abnormal behaviour.
 - (g) Dr Smith [independent medical expert] reported that the respondent had a strained relationship with his 13 year old daughter who is reluctant to visit him, but he has a better relationship with his 9 year old daughter.
 - (h) The respondent reported to Dr Smith that he has a good relationship with his parents, which is inconsistent with the history given to the AMS.
19. In respect of the PIRS category of “social functioning”, the appellant submits the AMS should have assessed it as Class 1, or at worst, Class 2 on the basis of the Guidelines for reasons summarised as follows:

- (a) Dr Snowdon [independent medical expert] reported that it was difficult to assign a rating in this category because while his marriage and first relationship ended as a result of his psychological issues, his current partner is supportive, who has read up on post-traumatic stress disorder to better understand him, and their relationship is “going alright” with tension between them being resolved.
- (b) Dr Snowdon assessed Class 2 for this category.

20. In reply, the respondent submits that the MAC does not contain a demonstrable error because the assessment was not made on the basis of incorrect criteria.

FINDINGS AND REASONS

- 21. The procedures on appeal are contained in s 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.
- 22. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.
- 23. The Panel is of the view that the AMS took a very comprehensive history from the respondent and provided more than adequate reasons for his determination of the PIRS categories.
- 24. While the appellant refers to the reports of Drs Smith and Snowdon in its submission, assessing permanent impairment involves clinical assessment of the respondent as he presented on the day of assessment taking account of the relevant medical history and all available relevant medical information to determine, amongst other matters, the degree of permanent impairment that results from the injury.¹
- 25. The Panel notes the AMS reviewed and commented upon the reports of nominated treating doctors and the independent medical examiners.
- 26. The AMS made these observations of the opinions expressed by the nominated treating doctors and the independent medical examiners:

“I am largely in agreement with the opinions expressed by Dr Smith, Dr Raggatt and Ms Mason. The report by Dr Cox from 2009 is consistent with the consequent development of Post-Traumatic Stress Disorder. I agree with the conclusions reached by Dr Peter Snowdon, who also diagnosed post-traumatic stress disorder with comorbid depression. However, from the history I obtained Mr Morley is more significantly impaired than was described by Dr Snowdon.”
- 27. The Panel is satisfied that the AMS read and considered the opinions of the nominated treating doctors and the independent medical examiners when determining the PIRS categories to assess the degree of permanent impairment as a result of the psychological injury.
- 28. The Panel is of the view that the AMS correctly assessed Class 3 for the PIRS categories, the subject of appeal.

¹ Guidelines – Chapter 1.6 – page 3

29. The Panel notes there is no evidence as to how the respondent lived during the six month period between the breakup of the relationship with his former partner and the commencement of his current relationship.
30. The deterioration of the respondent's relationship with his former wife, former partner, eldest daughter, his half siblings, his parents and the strain in his current relationship with his partner and his lack of self-care and personal hygiene have been comprehensively detailed by the AMS in the MAC.
31. The evidence establishes that the respondent cannot live independently without support, needs prompting to shower and to wear clean clothes, does not prepare his own meals, and that previously established relationships are severely strained evidenced by periods of separation.
32. The relationship with his former wife and first partner broke down because of his psychiatric condition; his eldest daughter will not speak to him; his half siblings and mother refuse to speak to him, and whilst his father speaks to him occasionally, he is cool towards him. The relationship with his current partner is strained evidenced by the lack of intimacy, refusing to accompany her to visit her friends, showering every second or third day, not picking up his clothes or doing the washing, having to be reminded to shave and to get his hair cut, not contributing to the cleaning of the house, only occasional cooking, and withdrawing from the relationship when there is tension between them by leaving and visiting a male friend at Taree for a week at a time.
33. The pre-eminence of the clinical observations of the AMS cannot be underrated and that more than a mere difference of opinion on a subject about which reasonable minds may differ is required to establish error when the assessment is to be made on the behavioural consequences of a psychiatric condition or disorder², remembering that the role of descriptors in Table 11.1 of Chapter 11 of the Guidelines are examples.
34. The Panel finds that there was material before the AMS, in the exercise of his clinical skill, medical knowledge and judgement, to support a Class 3 rating for the PIRS categories, the subject grounds of the appeal.
35. The Panel has not identified error on the part of the AMS or that he made his assessment based upon incorrect criteria to determine the ratings for each of the PIRS categories.
36. For these reasons, the Appeal Panel has determined that the MAC issued on 22 February 2018 should be confirmed.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE REASONS FOR DECISION OF THE APPEAL PANEL CONSTITUTED PURSUANT TO SECTION 328 OF THE *WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998*.

Jenni Burdekin
Dispute Services Officer
By delegation of the Registrar

² *Ferguson v State of NSW* [2017] NSWSC 887