

# WORKERS COMPENSATION COMMISSION

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

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<b>Matter Number:</b>	<b>M1-5465/19</b>
<b>Appellant:</b>	<b>Chimene Gordon</b>
<b>Respondent:</b>	<b>State of NSW (NSW Police Force)</b>
<b>Date of Decision:</b>	<b>22 June 2020</b>
<b>Citation:</b>	<b>[2020] NSWCCMA 110</b>

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<b>Appeal Panel:</b>	
<b>Arbitrator:</b>	<b>Catherine McDonald</b>
<b>Approved Medical Specialist:</b>	<b>Prof Nicholas Glozier</b>
<b>Approved Medical Specialist:</b>	<b>Dr Patrick Morris</b>

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### BACKGROUND TO THE APPLICATION TO APPEAL

1. On 27 March 2020 Chimene Gordon lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Michael Hong, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 10 March 2020.
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,
  - 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, being that in s 327(3)(d). The Appeal Panel has conducted a review of the original medical assessment but limited to the grounds of appeal on which the appeal is made.
4. The Workers compensation medical dispute 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 Workers compensation medical dispute assessment guidelines.
5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4<sup>th</sup> ed* 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> ed* (AMA 5).

### RELEVANT FACTUAL BACKGROUND

6. Ms Gordon suffered psychological injury as a result of the traumatic events she was exposed to in the course of her employment as a police officer between 2008 and 2018. She was medically discharged in December 2018.

7. The AMS assessed 8% whole person impairment (WPI) as a result of his assessment. Ms Gordon submits that he misapplied the assessment criteria under the Psychiatric Impairment Rating Scale (PIRS) in the Guidelines in respect of Social and Recreational Activities, Social Functioning and Concentration, Persistence and Pace.

## **PRELIMINARY REVIEW**

8. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the Workers compensation medical dispute assessment guidelines.
9. 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 the opinion of the AMS does not disclose an error and there is sufficient information in the file to consider the appeal. In the absence of an error, re-examination was inappropriate.<sup>1</sup>
10. There was no formal application to admit fresh evidence and the additional matters sought to be relied on by Ms Gordon in submissions will be dealt with below.

## **EVIDENCE**

11. 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.
12. The parts of the medical certificate given by the AMS that are relevant to the appeal are set out, where relevant, in the body of this decision.

## **SUBMISSIONS**

13. Both parties made written submissions. They are not repeated in full, but have been considered by the Appeal Panel.
14. In summary, Ms Gordon, in submissions signed by her solicitor, Mr Brown, said that the MAC was silent about who was present at the time of the examination and said that her partner was present and contributed to the answers provided.
15. The submission that the MAC is silent about who was present is incorrect and can be disposed of shortly. The AMS said at page 1 of the MAC that Ms Gordon's partner attended the examination with her. When commenting on the material in the file on the eighth page of the MAC, the AMS recorded that Ms Gordon said that she often starts a project and does not finish and said "Ms Gordon's partner provided a similar observation." Similarly, the AMS recorded that "[h]er partner says she is a great cook when she is able to cook." The submission that the MAC is silent as to who was present at the examination is incorrect.
16. Ms Gordon also submitted that the AMS was incorrect to say that "there is consensus in Self-care, Travel and social functioning and Employability." That submission is also inaccurate and will be dealt with below.
17. Ms Gordon submitted that the AMS misapplied the assessment criteria in three categories.

In respect of Social and Recreational Activities, the submissions set out the "criteria" for each of Classes 2 and 3 and noted that the AMS said Ms Gordon took part in photo shoots, art work creation and trips with her family, relying on the frequency and nature of her involvement to assess her in class 2. Ms Gordon said that the nature of each of the activities was at home or in privacy and that the frequency was rare. With respect to art work creation, Ms Gordon submitted that the Fairy Garden was a "one off incident which the evidence shows was not the sole creation

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<sup>1</sup> *Mercy Connect Limited v Kiely* [2018] NSWSC 1421.

of the Applicant but rather a collaboration with her family. In respect of the paintings, the evidence is that over 2 years (730 days) she completed 10 paintings of unknown size or quality. With an average of 73 days ( over two months) per painting, it is submitted that this does not show a dedication to the task.”

18. With respect to trips undertaken with her family, Ms Gordon submitted that the trips were undertaken with people whom she trusts and who are aware of her injury and that the frequency was not “excessive or out of the ordinary” for her injury. She submitted that the “evidence” supported a Class 3 assessment.
19. Similarly, Ms Gordon submitted that the “evidence” supported an assessment in Class 3. She submitted that she had reduced her social reliance to effectively one person and that her tolerance is reduced which “would create tension and distance” in her relationships. She said she is no longer close to her father, that “living in a caravan on a property shows social isolation” and that “failure to have any concern for her appearance is evidence of social isolation.”
20. Ms Gordon submitted that the AMS did not explain why he assessed Class 2 for Social Functioning and submitted that a Class 3 assessment was appropriate. She said:

“Again referring to page 8 of the MAC Dr Hong states ‘**there is consensus in Self Care, Travel and Social functioning and Employability**’.

He then proceeds to give a Class 2.

It appears Dr HONG is confused.

He either agrees with the Class 3 assessment in CONSENSUS with the other assessments and assesses Class 3 and the entry on his Table 11.8; PIRS Rating Form is incorrect.

Or

There is NO CONSENSUS and he is mistaken when stating that there is.

Which of these is correct.

It is not evident from the MAC.”

21. With respect to Concentration, Persistence and Pace, Ms Gordon submitted that the AMS “disregarded her history of cognitive difficulties and made the assessment based on the tests he performed.” She submitted that her partner contributed and assisted during the examination and that assessment in Class 3 was appropriate on the evidence. She submitted that the appropriate assessment totalled 22% WPI.
22. It must be said that the submissions prepared on behalf of Ms Gordon are argumentative and less careful and measured than would be expected from an experienced practitioner in this area of the law. A good example is the material set out at [21] above, which is neither measured nor accurate.
23. In reply, the State submitted that Ms Gordon sought to introduce additional evidence in her submissions with respect to photo shoots, art work and trips without fulfilling the criteria for the admission of fresh evidence in s 328(3) of the 1998 Act.
24. The State submitted that a difference of opinion as to which class was appropriate was not a demonstrable error and that there was no error on the face of the MAC. It submitted that Ms Gordon’s submissions misconstrued the task of the AMS and the task of the Appeal Panel. It noted that the ASMS is entitled to rely on his own assessment of the material and to form his own conclusions based on the material and his examination of the worker. It submitted that:

“the primary inquiry to be made is not as to whether or not the AMS’ assessments were in accordance with the material that was before him, but rather whether, following his clinical interview of the Appellant and review of the documentation, his assessment of the Appellant’s psychological condition correctly accords with the relevant ratings according to the PIRS categories indicated within the MAC.”

25. The State reviewed the submissions in each of the impugned categories and submitted that, while there may be aspects of Ms Gordon’s condition which might suggest a Class 3 rating, it cannot be said that the AMS erred in making the assessments that he did.
26. The State submitted that an allowance for the effect of treatment should be removed if error is otherwise found. That submission is also inaccurate (and used the wrong gender pronoun) and does not need to be considered. The AMS did not make an allowance for the effect of treatment.

## **FINDINGS AND REASONS**

27. 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.
28. In *Campbelltown City Council v Vegan*<sup>2</sup> 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.

## **Application of the PIRS**

29. The submissions filed for both parties suggest a misunderstanding of the Guidelines and of the PIRS and the way it is applied so that it is relevant to set out some general principles.
30. Paragraph 1.6 of the Guidelines provides:
  - “a. Assessing permanent impairment involves clinical assessment of the claimant as they present on the day of assessment taking account the claimant’s relevant medical history and all available relevant medical information to determine:
    - whether the condition has reached Maximum Medical Improvement (MMI)
    - whether the claimant’s compensable injury/condition has resulted in an impairment
    - whether the resultant impairment is permanent
    - the degree of permanent impairment that results from the injury
    - the proportion of permanent impairment due to any previous injury, pre-existing condition or abnormality, if any, in accordance with diagnostic and other objective criteria as outlined in these Guidelines.

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<sup>2</sup> [2006] NSWCA 284.

- b. Assessors are required to exercise their clinical judgement in determining a diagnosis when assessing permanent impairment and making deductions for pre-existing injuries/conditions.”

31. Chapter 11 describes the PIRS scales Paragraph 11.12 says:

“Impairment in each area is rated using class descriptors. Classes range from 1 to 5, in accordance with severity. The standard form must be used when scoring the PIRS. The examples of activities are examples only.”

32. The table for each rateable area is divided into five classes – “no deficit or minor deficit attributable to the normal variation in the general population”, mild impairment, moderate impairment, severe impairment and totally impaired. Examples are given in each class. The standard form requires the AMS to give reasons for the reason for adopting each class.
33. The submissions of both parties set out the examples in the PIRS Table as though they were criteria which the AMS was required to apply. That is not an appropriate application of the PIRS.
34. In *Jenkins v Ambulance Service of NSW*<sup>3</sup> Garling J said:

“The submission of the plaintiff that, in assigning a class of impairment to each scale, the AMS is restricted only to the examples of activities listed in the tables or, alternatively, to those activities as a minimum, cannot be accepted.

There are a number of reasons for this. First, the submission pays no heed to the importance, to which I have referred, of clinical assessment and judgment, both of which are required in formulating an opinion.

Secondly, as clause 11.7 of the WorkCover Guides records, there is an expectation that the psychiatrist will provide a rationale for the rating which is assigned. That rating is said to be: ‘... based on the injured worker’s psychiatric symptoms’.

But the activities (or perhaps lack of them) listed in the various tables go beyond symptoms. Those examples attempt to explore the ways in which a psychiatric condition impacts upon the activities of daily living of an individual, and their capacity to function in the areas described.

Next, the submission pays insufficient attention to the words in clause 11.13 of the WorkCover Guides. The words require the AMS to use the standard form when scoring the PIRS. It specifically then provides that the examples of activities are ‘examples only’. It then enjoins the AMS to take account of a person’s cultural background and to consider the individual’s activities that are usual ‘... for the person’s age, sex and cultural norms’.

...

In my opinion, it is to misread the WorkCover Guides to require, as the plaintiff’s submissions would, that the AMS can only proceed either by using the examples in the tables solely as the basis for a rating, or as the minimum basis for a rating.

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<sup>3</sup> [2015] NSWSC 633, at [57]-[65].

I am satisfied that the descriptions of the activities which give rise to a conclusion by an AMS of the extent of a disability of an individual by reference to each table in the PIRS, are simply, in my view, examples of activities which would indicate an assessable level of disability. Those examples, on their face, are not necessary to be found in each case, but may, in any particular case, be sufficient to support a conclusion as to the level of disability.”

35. The task of the AMS is to assess a worker on the day that he or she presents for examination. A difference of opinion between the AMS and other examiners or the appeal panel does not, of itself, constitute an error.
36. With respect to the evidence in the file, Campbell J said in *State of New South Wales v Kaur*<sup>4</sup> (*Kaur*):

“In *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43; 252 CLR 480, the High Court of Australia dealt with the nature of the jurisdiction exercised by a medical panel under cognate Victorian legislation. The legislation is not entirely the same but it is broadly similar in purpose. Allowing for some differences, the High Court said at page 498 [47]:

‘The material supplied to a medical panel may include the opinions of other medical practitioners, and submissions to the Medical Panel may seek to persuade the Medical Panel to adopt reasoning or conclusions expressed in those opinions. The Medical Panel may choose in a particular case to place weight on the medical opinion supplied to it in forming and giving its own opinion. It goes too far, however, to conceive of the functions of the panel as being either to decide a dispute or to make up its mind by reference to completing contentions or competing medical opinions. The function of a medical panel is neither arbitral or adjudicative: It is neither to choose between competing arguments nor to opine on the correctness of other opinions on that medical question. The function is in every case to perform and to give its own opinion on the medical question referred to it by applying its own medical experience and its own medical expertise.’

Not all of this, as I have said, is apposite in the context of the New South Wales legislation. In particular it is obvious that approved medical specialists are required to decide disputes referred to them by the process of medical assessment. Even so, it is not necessary that approved medical specialists should sit as decisionmakers choosing between the competing medical opinions put forward by the parties. Essentially, the function is the same as that described by the High Court in *Wingfoot Australia*. That is to say, their function is in every case to form and give his or her own opinion on the medical question referred by applying his or her own medical experience and his or her own medical expertise...”

37. The submission that the AMS was in error because his assessment did not accord with the evidence cannot be accepted. He was required to assess Ms Gordon and provide his own opinion of his impairment on the date of the examination.
38. In *Parker v Select Civil Pty Ltd*<sup>5</sup> (*Parker*) Harrison AsJ said<sup>6</sup>:

“To find an error in the statutory sense, the Appeal Panel’s task was to determine whether the AMS had incorrectly applied the relevant Guidelines including the PIRS Guidelines issued by WorkCover. Even though the descriptors in Class 3 are examples not intended to be exclusive and are subject to variables outlined earlier, the AMS applied Class 3. The Appeal Panel determined that the AMS had

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<sup>4</sup> [2016] NSWSC 346, at [25]-26].

<sup>5</sup> [2018] NSWSC 140.

<sup>6</sup> At [70]-[71].

erred in assessing Class 3 because the proper application of the Class 2 mild impairment is the more appropriate one on the history taken by the AMS and the available evidence.

The AMS took the history from Mr Parker and conducted a medical assessment, the significance or otherwise of matters raised in the consultation is very much a matter for his assessment. It is my view that whether the findings fell into Class 2 or Class 3 is a difference of opinion about which reasonable minds may differ. Whether Class 2 in the Appeal Panel's opinion is more appropriate does not suggest that the AMS applied incorrect criteria contained in Class 3 of the PIRS. Nor does the AMS's reasons disclose a demonstrable error. The material before the AMS, and his findings supports his determination that Mr Parker has a Class 3 rating assessment for impairment for self-care and hygiene, that is to say, a moderate impairment of self-care and hygiene..."

## The MAC

39. The AMS prepared a clear and detailed MAC which disclosed his reasoning process. He set out a summary of the events leading to Ms Gordon's injury and the treatment she has undergone. He set out her present symptoms in detail:

"Although Ms Gordon has been having treatment, she stated that in the last six months she has not substantially improved and in some ways, she has felt worse and she has become more reliant on her partner. She does not know why she is worse.

One of Ms Gordon's main problems is having a short fuse. She gets angry with everybody including her parents, partner and her children. Ms Gordon over-reacts with people in shops. Recently she went to a Coles supermarket and one of the workers there said something, and she reacted by dropping all her items and stormed out of the supermarket.

Ms Gordon reported that she constantly picks her feet until they bleed, which she thought was a stress response.

On specific enquiry, Ms Gordon reported experiencing the following symptoms:

- Depressed variable mood.
- Reduced enjoyment in most activities and a loss of motivation. She continues to enjoy art.
- Having poor concentration and difficulties with her memory.
- Appetite and weight problem since the subject injury, she had gained 12 kg and in the past 6 months, no weight changes.
- Disrupted sleep, typically only 3 hours.
- Feeling tense and difficult to relax, and often fidgety.
- Being irritable. No physical aggression.
- She avoids social situations due to her anxieties."

40. The AMS set out a detailed history of Ms Gordon's social activities and activities of daily living which included:

"Ms Gordon is living with her partner who runs her own business and is studying law. They have been together for about two years. Ms Gordon has two children aged three and five. She lives with her children and her partner in a caravan, and the parents live on the same 40-acre property in a house.

...

Ms Gordon has regular contact with two friends. One of them is her best friend, who is also a photographer, Casey. Her friends visit her regularly. Ms Gordon will go with Casey to do photoshoots, for example at the beach or on their own farm. Ms Gordon might be involved with a photoshoot once every few weeks. She said she goes because she is an artist.

Ms Gordon is constantly invited to play basketball but she does not go. She does not belong to any clubs.

...

I asked Ms Gordon about the fairy garden and she reported that this is a tropical garden with birds of paradise, and she has used expanding foam to create mushrooms. She did not create everything and that her family helped her to put it together.

Ms Gordon is the primary carer for her younger child when at home. Sometimes they will do a painting together and sometimes she will take her to the park."

41. The AMS described his findings on examination. He said:

"Ms Gordon gave a coherent history. She recalled a reasonable amount of detail. She was consistently focused during the assessment and had no impairment in shifting topics. She demonstrated reasonable processing speed."

42. The set out the results of his cognitive assessment. He summarised the injuries and his diagnoses:

"I confirmed a diagnosis of Post-Traumatic Stress Disorder and Major depressive disorder as a result of her police career. Ms Gordon has not experienced previous psychological difficulties. She described stressors related to her family and the issue with her ex-husband has resolved. Her father has dementia and this affects her psychologically, however I do not believe it caused an additional psychological injury or additional psychological impairment.

I have been requested to assess Ms Gordon's WPI and I discussed my finding in section 10c. There was no adjustment for treatment effects, as there has been no subjective benefit from treatment. Ms Gordon felt she has deteriorated in some way over time."

43. The AMS said that his assessment was set out in his PIRS calculation sheet. Reference must therefore be had to that document before further considering the body of the MAC.

44. In respect of Self-care and Personal Hygiene, the AMS assessed Ms Gordon in Class 2 and said:

"Ms Gordon showers regularly. Ms Gordon skips meals at times. Ms Gordon cooks 1-2 times a week. Ms Gordon has reduced self-care and her weight is stable in the past 6 months. She is capable of independent living with a degree of self-neglect."

45. In respect of Social and Recreational Activities, the AMS assessed Ms Gordon in Class 2 and said:

"Ms Gordon participates in significantly fewer social activities as a result of her social anxieties. Ms Gordon continues to take part in photo shoots, art work creation, and various trips with her family. The frequently [sic] and nature of her involvement in these activities, is consistent with 2."



46. The AMS assessed Ms Gordon in Class 2 for Travel and explained his reasons:
- “Ms Gordon does not like leaving her home, due to her anxieties. Ms Gordon described independent mobility for short distances outside her home.”
47. The AMS assessed Ms Gordon in Class 2 for Social Functioning and said:
- “Ms Gordon's marriage ended, and she has a new and stable partnership in the past 2 years. She has fewer friends as a result of social anxiety.”
48. With respect to Concentration, Persistence and Pace, the AMS assessed Ms Gordon in Class 2 and said:
- “Ms Gordon reported reduced concentration. Her cognitive assessment is consistent with 2. She was assessed over 55 minutes.”
49. The AMS assessed Ms Gordon in Class 5 for Employability and Adaptation and said:
- “Ms Gordon is severely dysfunctional due to her psychiatric symptoms and her level of adaptation is poor.”
50. His total assessment was 8% WPI.
51. Returning to the body of the MAC, the AMS was required to comment on the other material in the file and state where his opinion differed. In that context, the AMS reviewed Ms Gordon's statement, her claim form and the reports from her treating practitioners. He did not consider that the breakdown of her marriage had an impact on her condition.
52. The AMS reviewed the reports of Dr J Bertucen, qualified for Ms Gordon, and Dr Prior, qualified by the State. He considered the Procure investigation report dated 22 November 2019 and records that he asked Ms Gordon about the matters raised in it. He considered Ms Gordon's statement prepared in response to the report. He obtained further information from her, including:
- “Ms Gordon initially reported that she has completed three paintings in the last two years, but later estimated she had completed ten paintings in the last two years. She reported that the number differed because some of these were very small paintings. Ms Gordon reported that it takes a long time to complete a painting and that she often starts a project and does not finish it. Ms Gordon's partner provided a similar observation.”
53. The AMS summarised Ms Gordon's supplementary statement and said:
- “I note Ms Gordon derives positive emotion from undertaking these creative and social activities.”
54. In the context of the findings set out in the PIRS assessment the AMS said:
- “In terms of Ms Gordon's impairment rating, there is consensus in Self-care, Travel and Social functioning and Employability.”
55. Dr Bertucen and Dr Prior both made the same assessments in respect of those categories so the statement by the AMS that there is consensus is accurate.

56. The AMS then went on to discuss where his assessment differed from that of Dr Bertucen in the only categories in which he made a different assessment, being Social and Recreational Activities and Concentration, Persistence and Pace. He had regard to the examples in the Table and explained why his assessment differed. For example with respect to Social and Recreational Activities, the AMS said:

“Ms Gordon's described activities are consistent with the example descriptors found in classes 1, 2 and 3. Ms Gordon regularly and actively engages in different activities, some by herself and some in need of a support person. Ms Gordon described various activities as 'therapeutic', and derived positive emotional benefit from such activities. This category should not be rated on a single activity. Having considered Ms Gordon's history, the frequency, level of self-initiation, nature of her involvement with in the activities, her social interaction and the level of independence, I conclude a rating of 2 to be appropriate.”

### **Social and Recreational Activities**

57. There is no error in the AMS's assessment in Class 2.
58. The submissions prepared for Ms Gordon include information which does not appear in the file and the State is correct to point out that this information goes beyond submissions on by providing new information and does not fulfil the requirements for fresh evidence. Section 328(3) of the 1998 Act provides:

“Evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the medical assessment appealed against may not be given on an appeal by a party to the appeal unless the evidence was not available to the party before that medical assessment and could not reasonably have been obtained by the party before that medical assessment.”

59. The explanation about the location of the photo shoots and the people present will therefore not be considered.
60. Ms Gordon's submissions refer to detail provided by Ms Gordon to the AMS as though it was provided by someone else – for example:

“It is unknown how many invites were prepared however one would expect them to all be the same design and it is unknown how complicated any design was . This also appears to be an isolated event.”

61. Submissions of that nature are unhelpful and will not be considered further.
62. Dr Bertucen had assessed Ms Gordon in Class 3 for this category in his report dated 7 May 2019. He did so on the basis of a different history, including that no visitors attended Ms Gordon's home. That is not consistent with the history provided to the AMS (nor with the additional evidence in Ms Gordon's submissions.) The AMS noted that Dr Bertucen's history was not current
63. The AMS took a history from Ms Gordon and, on the basis of that history, formed the view that the appropriate assessment for Social and Recreational Activities was in Class 2. While some of the restrictions could suggest an assessment in Class 3, a difference of opinion as to the appropriate assessment does not constitute an error (*Parker*). The AMS himself accepted that there were features of Ms Gordon's presentation which fell into Classes 1, 2 and 3 and gave detailed reasons justifying his assessment of a Class 2.

## Social Functioning

64. Ms Gordon challenged the assessment in Class 2 by the AMS even though her own independent medical examiner, Dr Bertucen had made the same assessment. Dr Prior also assessed Ms Gordon in Class 2.
65. Contrary to Ms Gordon's submissions, the AMS did provide reasons for his assessment, setting them out in the PIRS Table.
66. The most relevant factors for Drs Bertucen and Prior, and the AMS was that Ms Gordon has been able to form a new, stable and lasting relationship, and has maintained a number of friendships since her injury.
67. The assessment in Class 2 was open to the AMS.

## Concentration, Persistence and Pace

68. As noted above, the AMS was required to assess Ms Gordon on the day she presented for examination. He set out his observations of her ability to communicate and provide a history and performed tests to assess her concentration. This was appropriate because it is the only aspect of a psychological examination which can be objectively tested. Her ability to concentrate throughout a 55 minute interview was relevant.
69. Contrary to Ms Gordon's submissions, the AMS did not disregard her history. He recorded she no longer read avidly and that she took longer to do things. He noted that she paints less than she did and that she often does not finish her projects.
70. Ms Gordon's partner contributed to the history provided and, contrary to Ms Gordon's submissions, the AMS specifically set out that her partner was present, and that he obtained information from Ms Gordon which was supported by her partner.
71. Again, Harrison AsJ's comments in *Parker* are relevant. The AMS set out his reasoning and the fact that others may disagree does not indicate that his assessment was in error.
72. For these reasons, the Appeal Panel has determined that the MAC issued on 10 March 2020 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*.

H Mistry

Heena Mistry  
Dispute Services Officer  
**As delegate of the Registrar**

