

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 6401/20
Applicant: Ylleyna Williamson
Respondent: Yarrowonga & Border Golf Club Ltd
Date of Determination: 17 February 2021
Citation No: [2021] NSWCC 49

The Commission determines:

1. The applicant has sustained a disease injury within the meaning of the *Workers Compensation Act 1987* (the 1987 Act) as a result of the nature of her employment with the respondent between August 2019 and 20 February 2020.
2. The deemed date of the disease injury is 20 February 2020.
3. The nature of the disease injury is Adjustment Disorder with Mixed Anxiety and Depressed Mood (chronic) under DSM-5.
4. There is an award for the applicant pursuant to s 36 of the 1987 Act at the rate of \$1,124.52 per week between 20 February 2020 and 21 May 2020 and then pursuant to s 37 of the 1987 Act at the rate of \$946.96 per week between 22 May 2020 to date and continuing.
5. There is an award for the applicant for s 60 expenses pursuant to the 1987 Act.
6. Liberty to apply in respect of the calculations and periods above or in relation to any de-identification application.
7. There is credit to the respondent for any payment of weekly compensation already made between 20 February 2020 and 6 May 2020.

A brief statement is attached setting out the Commission's reasons for the determination.

Michael Perry
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF MICHAEL PERRY, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

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Lucy Golic
Acting Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Ylleyna Williamson (the applicant) was employed by the Yarrawonga & Border Golf Club Ltd (the respondent) between about 10 May 2019 and 20 February 2020 performing event and function co-ordination duties. By an Application to Resolve a Dispute dated 4 November 2020 (ARD), she alleges sufferance of psychological injury during that time as a result of her employment conditions; including a lack of support, excessive workloads, unrealistic work expectations and bullying and harassment. She claims weekly compensation from 20 February 2020 to date and continuing and medical and the like expenses under s 60 of the *Workers Compensation Act 1987* (the 1987 Act).

PROCEDURE BEFORE THE COMMISSION

2. The parties attended a conciliation conference and arbitration hearing on 19 January 2021. Allen Parker of Counsel, instructed by Phillip Bussoletti, solicitor, appeared for the applicant. Paul Barnes of counsel, appeared for the respondent.
3. I tried to bring the parties to a settlement, acceptable to each. I am satisfied they had sufficient opportunity to explore settlement and were unable to reach a resolution. I am also satisfied they understand the nature of the application and legal implications of any assertion made in the evidence.
4. At the beginning of the arbitration, Mr Parker objected to the admission into evidence of two forensic medical reports from Dr Deepinder Miller (Dr Miller). The objection had two limbs. Firstly, the Commission would not be satisfied Dr Miller was qualified to provide an expert opinion on specialised psychiatric matters because there is insufficient evidence she was a qualified psychiatrist with the only reference to her qualifications in her report being a description of herself as a “Consultant Physician in Psychiatry”. Mr Barnes said “a simple Internet search” demonstrated Dr Miller was a qualified psychiatrist. It seems clear enough to me on reading the whole of Dr Miller’s reports that she does represent herself as, and profess to be, a qualified psychiatrist. Dr Miller describing herself as a consultant physician in psychiatry does not show otherwise. In *University of New South Wales v Lee* [2020] NSWCC PD 33, Dr Miller’s qualifications as a psychiatrist were not in issue. I rejected the submissions for the applicant regarding Dr Miller’s expertise.
5. The second limb of Mr Parker’s objection was that Dr Miller’s reports did not comply with the principles in *Makita (Australia) Pty Ltd v Sprowles* [2001] NSWCA 305 (*Makita*); essentially because she referred to various source material in recording some of the history and undertaking some of her analysis, in circumstances where such material is not in evidence. Dr Miller noted her “source material” included an “Investigation of Harassment Claim dated 24 October 2019” and “Human Resources Engagement dated 19 February 2020”. Mr Barnes submitted this did not make the reports inadmissible, and it was a matter that should only go to the weight given to the reports. I accepted Mr Barnes’s submissions, noting s 354 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) provides that the Commission is not bound by the rules of evidence and may inform itself in such manner as a proper consideration of the matter permits.
6. The parties also agreed that the pleading in the ARD should be read as the applicant relying upon both an injury pursuant to s 4(a), and or a disease injury pursuant to s 4 (b) of the 1987 Act – with the deemed date for the disease being 20 February 2020.

7. Another procedural issue related to the applicant's assertion that compensation should be paid to her from 20 February 2020. It was conceded that this was the time when she first went off work. Mr Barnes stated the applicant had been paid weekly compensation and expenses pursuant to s 60 of the 1987 Act by the respondent up to 6 May 2020 at which stage such benefits ceased. This is asserted in the notice issued by the respondent's insurer under s 78 of the 1998 Act (the s 78 notice). But Mr Parker stated that the applicant still insisted she had not received any weekly payments. The parties agreed the matter could proceed on the basis that if an award of weekly compensation was made, credit should be given for any relevant payments subsequently shown to have been made.
8. The parties agreed the applicant's preinjury average weekly earnings were \$1,183.70.

ISSUES FOR DETERMINATION

9. Mr Barnes adhered to all issues referred to in the s 78 notice. The respondent disputes the applicant received an injury, and/or the employment was either a substantial, or the main, contributing factor to any injury or disease. The respondent also disputes any lack of current work capacity (CWC) and any entitlement to s 60 expenses under the 1987 act.

EVIDENCE

Documentary evidence

10. The ARD and Reply and a late document (supplementary report of Dr Takyar dated 10 December 2020) in the applicant's case, and a late document (supplementary report of Dr Miller dated 11 December 2020) in the respondent's case were all admitted into evidence and taken into account in making this determination.

Applicant's statements

11. The applicant's first statement dated 13 March 2020 is unsigned. However Mr Parker stated the content was true and correct in accordance with his instructions from the applicant. Mr Barnes said there was no issue from the respondent about the statement being unsigned. It notes that before working with the respondent she had worked mainly in the hospitality industry, including as "front of house" at the Essoign Club in Melbourne up to around February 2019, shortly before commencing work with the respondent as a duty manager in May 2019. Prior to working at the Essoign Club, she worked at the Anglers Club in Maribyrnong as the Events Manager on a full time basis for about 12 months up to early 2018. Before that she had also worked for Epicure in Federation Square as Events Manager working between around 2014 until 2017. She had also worked as a receptionist in a real estate firm and for Westpac in the call centre and as a bank teller.
12. The applicant was diagnosed with depression in 2012, for which she was prescribed medication, however she did not "take them for long as I also met with a psychologist and after a couple of sessions ... stopped taking the medication ..." She was going "through a rough patch at that time because my house had just burned down". Otherwise, the applicant said that she had not suffered depression, anxiety or any other psychological injury since. She had also not known of any history of psychological injury in her biological family.
13. The applicant received an induction, including being provided with an employee handbook containing all policies and procedures, when she commenced employment with the respondent, and was given a tour of the premises. Her supervisor was Mr Darren Quinn (DQ), the senior duty manager. Her position changed in August 2019 when she was told by Mr Greg Ferguson (GF), the CEO, that she would now be managing functions, and Alicia Leeburn (AL), the functions coordinator, would be reporting to her. AL was on leave at the time. The applicant had said in her job interview that she did not want to be managing functions, and wished to perform the duty manager role. But she felt she could not refuse the CEO's request, particularly as she was still on probation.

14. The applicant soon realised she was being required to perform the duties of the duty manager as well as managing functions. Both roles involved a lot of work. She asked GF if she could have a meeting to discuss what the further function role would involve. He agreed but told her to not tell anyone she would be doing functions. When AL returned from leave and was told she would be reporting to the applicant, "she was understandably very upset". The applicant "felt awful and ... apologised the first chance I could and said it wasn't my choice and I would just be there to support her ... (AL) ... went home sick ... don't think I saw her back at work until she came in to resign ...".
15. The applicant then stated one of her superiors, Kim Hogan (KH), told her that "I should not have spoken to her ... had made it worse ...". The applicant requested training in relation to "Eventory" work and was told by KH that this could not happen until AL returned from sick leave. However, AL resigned "and was walked out". It was then announced to all staff that the applicant would be taking over AL's job as functions coordinator. The applicant told DQ she was not "confident in Eventory at all and was worried about how I would manage the upcoming weddings ... hardly any time left to learn ..." DQ "organised it with ... (Rory Burling 'RB' – executive chef) ... I was expected to do that as well as manage the venue only 3 months into a job they said would take at least 6 months to learn with cuts made to the roster and at least half the staff hating me ...".
16. The applicant stated that she had never been formally spoken to about any issues with her work performance. She stated her injury had "come about from bullying by staff and KH which started to happen from around August 2019". She felt like she was getting into trouble when KH told her she "should not have spoken to (AL) and ... should have left things alone".
17. While AL was on leave during August 2019, the applicant asked KH if she could receive training about the systems for the functions. KH "made me feel that I was annoying her and she kept telling me that they couldn't do that until they knew what was happening with ... (AL) ..." The applicant did not understand this in circumstances where she had been told she would be responsible for the functions from that time onwards. Also RB "... thought that I had taken ... (AL's) ... job maliciously ... didn't trust me and was unhelpful ...".
18. The applicant mentioned to DQ that she had not received training about the function system. DQ then arranged a meeting with "Kez" (part time bistro & bar attendant), RB and the applicant in about September 2019. But RB ran through the information so quickly that the applicant was not confident with what she had been told, even though RB had spent a couple of hours with her and Kez. The applicant reported this to KH and requested more training but KH was dismissive of this. The applicant then spoke to the operations manager, Peter Savvy (PS), and told him he wanted a meeting. PS agreed he would arrange training when he returned from leave on 14 October 2019 and the applicant booked a meeting for October 2019. In the meantime, on 28 September 2019, she managed her first function, a wedding. She said that Christine Lennon (CL) was rostered on there and:

"she was awful to me ... I was giving the staff instructions ... throughout the function ... (CL) ... would do the opposite ... and encourage the staff to follow her lead ... ignored me, talked over the top of me, excluded me, pretended not to hear me ... would not acknowledge me or even look at me ... later ... approached me and said ... she had made a mistake ... was clear ... she was pretending it was unintentional. The chef, Simon...(S) ... joined in and told me I was a 'fucking joke' ..."
19. The wedding MC complained to the applicant about the behaviour of CL. As the applicant witnessed CL being rude to the MC she asked CL to go home. CL exploded saying to the applicant "you're a fucking idiot! You don't know what you're doing". The applicant tried to remain calm, advising CL that she was the organiser of the function, however CL "continued to yell at me and guests at the function looked at us".

20. On the applicant's return to work, she was called into the office of KH. The finance officer, Samantha Machada, was also present in the room. KH advised the applicant that a bullying complaint had been lodged against her by CL. The applicant was shocked. KH told the applicant that there would be an investigation. The applicant was "confronted by this meeting ...had no warning about it". KH then told the applicant " ...they have already completed the investigation and ... nobody backed up ... (CL's) ... allegation ... witnesses backed up my version ..." KH advised the applicant that she may wish to consider lodging a bullying complaint about CL. The applicant did that. The applicant asked KH to assist her with the grievance procedure but KH did not help. The applicant also asked KH whether she could not be placed to work with CL anymore. KH did not commit to any action about this.
21. The applicant then stated that the above episode "felt like it was just hanging over me ... bullying steadily continued ... was just more covert ... excluded from decisions ... no opportunity for consultation ... was left numerous times feeling completely humiliated and had been set up to fail ..."
22. There was another large function on 14 October 2019. The chef employed by the respondent, Paul Cohen (PC):
- "gave staff information that contradicted my instructions and was quite overbearing and aggressive ... went ... to start food service ... waitresses ... walked out of the kitchen ... looked upset. I ... reassured them they could have a break ... both ... lodged bullying complaints about the chef a few days later with ... (KH) ... came into my office after ... expressed they felt ... belittled by making the complaint ... told them I would speak to ... (KH) ... I did ... she responded ... they just had not had experience in a 'real kitchen' ..."
23. On 23 October 2019, the applicant told KH that she was overwhelmed at work and :
- "felt like I was being excluded ... everybody hated me ... information was being deliberately withheld to make me look incompetent ... for example, work was being done by others without me knowing and ...I would only find this out after I started to do the work myself ... I started to cry ... (KH) ... did not say much ... then had days off planned ... asked ... (KH) ... if I could have an extra day off ... needed a break ... (KH) ... told me I could not have the day off because there was a dinner on ... it was only for 30 people ... staff we had rostered on ... were our strongest and they could handle the event without me ... (KH) ... shut me down ..."
24. Later on the same day, DQ and PS came to see the applicant and she told them she had been overwhelmed, they looked at the dinner function and agreed it was a very small function and approved for the applicant to have the extra day off.
25. On 31 October 2019, there was a meeting involving the applicant, PS and RB when "very soon into the meeting ... I was halfway through reading my first dot point ... (RB) ... cut me off and asked me to leave ..." The applicant left the meeting "in tears and went to the office and gathered my things". She received a call from KH about 45 minutes later asking if the applicant was okay to work the following day. The applicant asked KH if she could have a "chat with her when I came in and she agreed". The next day, she met with KH and told her that she had been dismissed from what she regarded as her "own meeting ... and now I knew I wasn't imagining it, it was intentional to exclude me and ... on top of everything else I had been feeling overwhelmed ... without support ... (DS and PS) ... KH did not say a lot..."

26. The following day, the applicant phoned the mother of a bride partaking in a wedding to tell her that there was a safety risk for the wedding to continue as planned beside a river. There was an assessment by PS. He agreed the wedding should not be at the river. The applicant and her team worked hard to decorate the inside room as best as they could and had positive reports from the bride's father when he inspected that room. But when the groom attended and complained about the decorations and that the wedding could not go ahead as planned, he expressed anger to the applicant. The applicant "could not help but take it personally ... was physically and mentally exhausted".
27. Two days later, 5 October 2019, GF told the applicant that she was not to do functions anymore. When she asked him why, he told her it was because she found it stressful and she went home early the week before. The applicant was disappointed with this and told GF she thought she had got through the hardest part with practically no support. But the decision had been made. GF "then got up and left". The applicant felt shocked, upset and humiliated. Even though she did not want to be overburdened with work, she "was proud to have made it". Two days later, an email announced that RB was now the functions manager. The applicant felt like the lack of communication and clarity around her job role and responsibility set her up for failure and that she was not at any point offered a job description or even a discussion surrounding how she was reasonably expected to maintain duty managing and functions roles – despite repeated requests for such information.
28. The applicant was also upset at this "decision to demote me without discussion ... left me feeling insecure ... discarded ... done my best despite all of it ... knew ... this was actually an ongoing campaign against me for taking ... (AL's) ... job ..."
29. The applicant was aware that "...7 staff, including myself, had lodged separate complaints about ... (PC) ... over several months ... January 2020 I got yelled at by ... (PC) ... for not programming specials into the till ... explained ... I was never given the codes to be able to do that...".
30. In January 2020, the applicant emailed KH and they subsequently spoke about "further instances of bullying and how much it was affecting me, I was crying at least twice a day ... now ... asked ... (KH) ... about the original investigation into ... bullying complaints about me ... though the bullying complaints I had made were ignored". The applicant was making an effort to be friendly to PC and offered for him to talk to her about the bullying complaints against him. He responded with "what complaints?" The applicant perceived PC did not know that people had lodged complaints about him. She spoke to KH about the complaints regarding PC. KH said it was "defamation". The applicant printed a template of a bullying policy and took it to KH and showed it to her. KH "seemed unhappy with this ... irritated ... told me the policy would need to be drafted by a lawyer". Later, one of the other junior members of the staff who had made a complaint about PC told the applicant that KH made her withdraw such complaint. The applicant perceived that a young staff member was "really upset". The applicant later perceived "... that all other staff were forced by (KH) to withdraw their complaints and they were upset by this". The applicant felt these staff had trusted her as manager to deal with these issues for them and they were now being punished for it.
31. On 20 February 2020, the applicant was getting ready for work when she felt she "couldn't breathe and ... like I was being suffocated ... dizzy ... as if I was going to die ... don't remember what happened next ... must have phoned my doctor ... now understand that I had a panic attack ... saw Dr Moe ... provided with a certificate ..."
32. The applicant made a supplementary statement on 30 October 2020. She stated she "remained unable to work due to my condition" and has continued to consult with her general practitioner (GP) Dr Mya Moe Aung (Dr Aung). She was given a referral to a psychologist, Dr Susette Sowden (Dr Sowden), who she saw on one occasion on 2 April 2020. The applicant found the consultation was helpful. Dr Sowden told her that she required further psychological treatment. But due to the insurer denying liability for the claim, she has not been able to undertake any further treatment for costs reasons.

33. The applicant has also made a statement in the context of completing her claim form dated 5 March 2020 for compensation. Relevantly, in answer to the form question as to “What happened and how were you injured?” The applicant stated:

“Repeatedly bullied and discriminated against, verbally abused, information ... deliberately withheld from me to intentionally make me look stupid, conflict with the HR manager ... treated differently to other staff ... untrue and hurtful rumours ... criticised or belittled ...”

Dr Mya Moe Aung, GP

34. Dr Aung issued a series of medical certificates for the applicant between 21 February 2020 and 16 April 2020 during which time she certified the applicant as having no CWC. On each of these certificates, he placed question marks indicating he was unsure about when the applicant might develop any CWC. On 17 June 2020, Dr Htwe, GP at the same practice as Dr Aung, certified the applicant as having no CWC until 13 July 2020. Dr Htwe also examined the applicant on 5 October 2020 and provided a written response to specific questions from the respondent and wrote the applicant “... is not able to safely perform the inherent requirements of the position as duty manager ... believes she will be able to return to work gradually and resume the inherent requirements of this position in six months’ time”.
35. On 27 February 2020, Dr Aung reported to the employer’s insurer in response to some questions asked of her by that insurer. He noted in answer to a request to outline the applicant’s current psychological symptoms that the applicant was emotional, anxious, stressed and not coping at work with sleep disturbances. Dr Aung also wrote “possible work related stress/anxiety” in answer to a question of whether the applicant had suffered a diagnosable psychiatric or psychological condition as a result of the workplace. Then, in answer to the question to describe all diagnostic criteria sufficient for that diagnosis, he answered “emotional ... stress/anxiety ... sleep disturbances ... not coping at work”.

Dr Susette Sowden, clinical & forensic psychologist

36. Dr Sowden wrote to Dr Aung on 2 April 2020 noting Dr Aung had referred the applicant to her. Dr Sowden took a history from the applicant and described her as having

“fragmented thought processes ... difficult to gain a coherent account ... presents as a very brave young women who has understandably suffered a degree of psychological decompensation in response to exposure to severe psychological stressors in the workplace that in part triggered trauma memories from her childhood ... this is a very complex presentation. Ms Williamson will need significant psychological care...”

Dr Deepi Miller, psychiatrist, forensic reports 14 April 2020 and 11 December 2020

37. Dr Miller assessed the applicant by Telehealth and noted she was assisted by documents including the WorkCover capacity certificate by Dr Aung of 21 February 2020, the response to a questionnaire by Dr Aung, the response to a questionnaire by Dr Aung of 18 March 2020, an “investigation of harassment claim ... 24 October 2019” and “Human resources engagement dated 19 February 2020”. Amongst those documents was a “Statement of Events to a human resources interviewer on 4 October 2019”. Dr Miller noted this related to an allegation by the applicant that “she was bullied by a colleague ... (CL) ...” Dr Miller has purported to summarise this statement. But because it was not in evidence, with there being no explanation by the respondent for its omission, I have to be very careful about what use, if any, to make of that summary. Nevertheless, it appears to me that what Dr Miller has summarised is not significantly inconsistent with the way the applicant has described *some of* the bullying and harassment. This essentially related to CL. The applicant’s statement of 13 March 2020 contains much more detail and examples of the bullying and harassment.

38. However, Dr Miller went on to comment on the documents she was supplied with, stating:

“... it is also important to note from the documents provided that Ms Williamson struggled in her role as a duty manager. On several occasions, staff have not been able to find ... (her) ... at work ... has engaged in duties that are not part of her role, whilst neglecting other duties which are inherent to her role, she has not been able to manage the duty rota ... has permitted staff members who erroneously attend a shift to continue to work despite the budgetary effect ... accused by human resources of ignoring directives from senior staff, requiring excessive support from other duty managers whom she at times has had to shadow as she has been unable to perform the skills inherent to her role ... has left the facilities in an unacceptable manner... not checked ... they were properly cleaned ... left doors unlocked ... when senior management have attempted to discuss the episodes with Ms Williamson she becomes upset and returns home early on those occasions ...”

39. Dr Miller also noted that the applicant:

“Described the symptoms of Major Depressive Disorder in the order ... they appear in DSM-5 ...reported experiencing anhedonia and social withdrawal but could not provide evidence of either... reported experiencing insomnia, stating ...is only to sleep for one consecutive hour at a time, per day ... consequently ... feels lethargic throughout the day but denied taking day time naps ... described comfort eating “rubbish” food despite having lost weight ... lost 5 to 6 kilograms but was not able to confirm this stating ‘I don’t have scales’ ...”

40. Dr Miller noted the applicant denied experiencing feelings of hopelessness or helplessness or guilty ruminations “but stated ... ‘I should be able to control it’ ...experiencing cognitive difficulties stating ‘I just watch TV all day’ ... described high trait anxiety but denied experiencing any panic attacks ...”

41. Dr Miller noted that the applicant had been prescribed Sertraline by her GP in early 2000 in the context of her house burning down and ceasing it after two or three months without advice, then being prescribed another medication in 2014 in the context of relationship breakdown but not for any more than a month.

42. There appears to be no clinical type examination or an examination similar to that conducted by Dr Takyar and which he described as “mental state examination”.

43. Dr Miller opined the applicant was “not suffering from any psychiatric injury as defined in DSM-5 or ICD-10 ... is experiencing an emotional upset in the context of an industrial dispute ...”

44. In answer to a request by the respondent to obtain a detailed history of the applicant’s mental health conditions and symptoms, Dr Miller went further to comment that while the applicant “describes significant psychiatric symptoms, it is important to note that all of these self-reported symptoms (were presented) in the exact order in which they appear in DSM-5”.

45. Dr Miller also appears to attempt to point out inconsistencies in the applicant’s history by stating that the applicant said she was only able to sleep for one consecutive hour at a time per day and consequently she felt lethargic throughout the day – but denied taking daytime naps. Dr Miller stated that “this level of sleep deprivation is not physically possible”.

46. Dr Miller also asserted an incongruity between the applicant’s report of having lost 5 to 6 kilograms and her not being able to confirm it because she does not have scales.

47. Dr Miller also opined that while the applicant provided a list of symptoms “it is my opinion that there is either an element of self-reporting bias or frank malingering”.

48. Dr Miller stated that the applicant “is experiencing an emotional upset in the context of interpersonal conflict with CL which arose at a wedding function at work in October 2019 ... on a background of the negative feedback she received from her employer...” She also is of the view that the applicant had a level of emotional vulnerability as a result of problems with her biological mother as a child and that the “current reporting bias arises due to her maladaptive help-seeking behaviour” and that the applicant “has decompensated due to her employer’s criticism of her work, in particular her inability to manage the organisation and the rotas in an efficient manner despite having repeated support from HR”.
49. In relation to CWC, Dr Miller believes that the applicant has “immediate and full capacity to return to work” with the respondent in her substantive role at her previous hours. Alternatively, if that job was not available, “she has immediate and full capacity to work outside the golf club in any role of her choosing for which she is qualified”.
50. In her 11 December 2020 report, Dr Miller noted she has considered the reports of Drs Ash Takyar and Susette Sowden (see below) and still adhered to the opinions expressed in her own earlier report.

Dr Ash Takyar, psychiatrist, forensic report dated 1 July 2020

51. Dr Takyar assessed the applicant by Telehealth on 30 June 2020. He had the benefit of the applicant’s 13 March 2020 statement, her claim form, the report of Dr Sowden, the workers compensation certificates of capacity of 27 February and 5 March and the report of Dr Miller.
52. Dr Takyar took a history from the applicant that her “mental state” began in about August or September 2019 when she “just felt like I was being set up to fail at work and like I always get blamed for things that weren’t my fault”. She said that “just about everyone ... all the senior managers” were involved. He took a history of the problems with the respondent’s managers telling the applicant at the job interview that it would take at least six months to learn the job but after three months they gave her “another girl’s full time job”, and this led to increased stress and pressures, which continued up until November when someone else took on the role. He recorded one example of the applicant believing she was being blamed for things when “one of the members ... had to walk home because the duty manager did not tell him that the last bus was leaving”. This was an older man and he had put in a complaint to the club “and I got the blame for it even though I wasn’t working that night”.
53. The applicant also told Dr Takyar that she believed there was a lack of support at work, with one set of rules for her and one for everyone else. She asked for meetings many times to discuss her problems but her superiors would not adequately assist. She put in a complaint about another staff member bullying her (CL), but CL also made a complaint about the applicant, which the applicant said was untrue, and nothing was done by the management about this. Dr Takyar noted the applicant complained of the bullying occurring all the time, that she did not want to manage functions and when she started to do so, three months in, they gave her the further role of looking after functions – announcing it in front of others to make it look like she had taken duties from another staff member and had sabotaged them. Dr Takyar recorded that the applicant believed that the other staff members thought that she had taken her job “so they all hated me”.
54. The applicant provided a history to Dr Takyar having no family history of psychiatric illness, but that she had been prescribed an antidepressant in 2000 for one to two months when her house burnt down and that she recovered after a month or two. Dr Takyar also dealt with her current treatment, substance use and forensic history, functional & daily living activities and developmental & occupational history. He also conducted a “Mental State Examination”, noting she presented with other psychomotor restlessness in the form of shifting posture at times, weeping intermittently, her affect being restricted in range, moderately anxious in quality and well communicated. He also noted “some memory disturbance as well as moderate concentration difficulties ... insight and judgement were generally fair”.

55. Dr Takyar found that the applicant developed a psychiatric condition in the form of an adjustment disorder with mixed anxiety and depressed mood (chronic) under DSM-5 and that such developed as a result of her work-related circumstances, and that her employment was the main contributing factor to that injury. He also found, on balance, the applicant “did not have psychiatric capacity from 20 February 2020 to the current date” – and that such was a consequence of the psychological injury as a result of the employment. He opined also that the applicant requires at least 20 sessions of psychology treatment as well as a referral to a psychiatrist for monthly review. He thought the prognosis for the future was guarded because of the lack of access to treatment and the entrenched psychiatric symptoms.
56. Dr Takyar disagreed with Dr Miller’s view
- “that there is no diagnosable psychiatric ... (condition)..., based on the history I obtained – there was clear evidence of a range of psychiatric symptoms relating to anxiety and depression ... no evidence of inconsistency between Ms Williamson’s symptoms and her mental state suggestive of malingering”.
57. Dr Takyar also prepared a short supplementary report. This clarified that he believed that the applicant’s injury “was a disease process, occurring in and related to her employment, which I had already noted in the original assessment”

Submissions for the applicant

58. There is no factual dispute in relation to the applicant’s statements about what the nature and conditions of her employment were and the conduct she alleges she was exposed to. The respondent has not put on any lay witness statements to challenge what the applicant says in these regards, nor is there any argument that s 11A of the 1987 Act applies.
59. The basis upon which the applicant is being judged by Dr Miller is unclear. She does refer to a “human resources engagement dated 19 February 2020 ...” and “investigation of harassment claim dated 24 October 2019”, but these documents do not appear in the evidence. There is also reason to believe that there is an investigation report that has been prepared by the respondent that is not in the evidence. Also Dr Miller appears not to be aware of the applicant’s 13 March 2020 statement.
60. The analysis by Dr Miller at various points of her report in relation to the underlying facts is even inconsistent with the respondent’s own position. Her pointing out the references, in the documents she was provided with, to the applicant’s alleged inadequate work performance went beyond, and was inconsistent with, the respondent neither relying on such documents nor putting up a defence under s 11A of the 1987 Act. Dr Miller’s treatment of this also shows she is going beyond her role as a forensic medical expert.
61. The evidence from both Dr Sowden and Dr Aung does support the applicant’s case, contrary to the submissions for the respondent.
62. Dr Miller’s finding about malingering has not been explained and is otherwise incapable of being understood. It has not even been explained by the respondent.
63. Dr Miller’s report does not include any clinical examination or as Dr Takyar described his, “mental state examination”. This further militates against her opinion being able to be accepted.
64. Dr Miller’s opinion that there was no psychiatric injury, or anything other than “emotional upset in the context of interpersonal conflict” is not consistent with the respondent terminating her employment on the basis of the results of a medical examination by Dr Htwe who was said, by the respondent in its letter of termination of employment to the applicant, to have written that the applicant was “not able to safely perform the inherent requirements of

the position as duty manager ... will be able to return to work gradually and resume the inherent requirements of this position in 6 months' time".

65. In reply to the submission for the respondent about Dr Aung's medical certificates, the respondent's submission is incorrect when one reads the whole of the evidence from Dr Aung. He provided a number of medical certificates and while there were initially some question marks as to how long incapacity would last, the last certificate, dated 17 June 2020, found no CWC, even though Dr Aung was unable to estimate the time for return to work. The medical certificates prior to that by Dr Aung also refer to there being no CWC.

Submissions for the respondent

66. The applicant's first statement (13 March 2020) sets out a work history that shows she was well experienced to work in the hospitality industry, and in particular as an events manager and or supervisor. She also completed her schooling in year 12 in Victoria and attained her Victorian Certificate of Education, a similar qualification to the NSW Higher School Certificate. She then completed other online courses, receiving Diplomas of Operations Management and Change Management. She also commenced a Diploma of Business Management but had dropped out of it a couple of months before the statement was made. This work and educational history was relevant to the analysis of any current work capacity (CWC) within the meaning of s 32A of the 1987 Act, and pointed to there being a substantial capacity for work – and one which was at least equal to or better than what she was earning with the respondent.
67. The applicant is not a witness of credit. Dr Miller believed the applicant was malingering because she provided her symptoms to Dr Miller "in the order that they appear in DSM-5", and also because of exaggerations that appear in the applicant's statements, e.g. the statement about "at least half the staff hating me" (ARD p 7). Another example of the exaggeration is the reference to certain conduct by RB who "thought that I had taken AL's job maliciously ... he didn't trust me ... was unhelpful ... did not give me much information ... did not report this to anybody" (ARD p 8). This shows exaggeration and is also an attempt to give evidence about what is in someone else's mind.
68. At paras 43-45 of her 13 March 2020 statement, the applicant's complaints about bullying and harassment are exaggerated and should not be accepted. At para 48, the applicant again refers to what is a "recurring theme" (per Mr Barnes) of the applicant stating that "everybody hated me ... information was being deliberately withheld to make me look incompetent". Her statements have been "fully embellished" (per Mr Barnes). The applicant's statement (ARD p 16, pars 69-72) are a further illustration of the exaggeration because of her attempts to give evidence about other staff being "punished" for their complaints. While "perception" can be looked (*State Transit Authority of NSW v Fritz Chemler* [2007] NSWCA 249) (*Chemler*), this evidence from the applicant should still be rejected as embellishment.
69. Even though there is no lay evidence from the respondent to contradict the applicant's statements in these respects, such needs to be balanced against the problems with the applicant's statements, particularly relating to the exaggeration or embellishment. This points towards her not being a witness of credit. She should not be accepted as a witness of credit.
70. The applicant stated she had been diagnosed with anxiety and since being off work her condition had improved and she had not had a panic attack since then. It is well known that anxiety and/or adjustment disorder usually resolves after a period of six months. This should be taken into account on the CWC question.
71. The applicant has noted in her second statement that she has received payments under the "Coronavirus Economic Response Package" between 7 April and 13 April 2020 and continues to receive those payments.

72. In her claim form under the heading “What happened and how were you injured?” (ARD p 21), the applicant’s description of being “Repeatedly bullied and discriminated against, verbally abused, information deliberately withheld to intentionally make me look stupid ...” shows her exaggerations and also the vagueness and lack of detail in her complaints.
73. The history provided to Dr Miller (at ARD p 32) about CL calling the applicant a “fuckwit” should not be accepted because it was hearsay – as the applicant had reported that she had heard it from another source.
74. There are various inconsistencies in the applicant’s evidence and these go against her credit.
75. At ARD p 36, Dr Miller opined that the applicant was malingering because “the symptom list she provided is questionable, given that it was presented in the exact order in which it appears in DSM-5”. This is “a serious accusation by the doctor”. The Commission should consider whether the applicant seriously holds a belief that all other staff are against her, or whether the applicant was exaggerating.
76. Dr Aung, reported only “possible” work related stress or anxiety, and the initial medical certificates only marked the applicant unfit for a short period of time and there was a question mark over the extent of the incapacity. The report of Dr Sowden noted that the applicant’s presentation was “very complex”. The medical certificate by Dr Aung of 21 February 2020 (ARD p 77-80) refers to a date of injury on 23 October 2019. This is the time of the CL incident and there is much “conjecture” about this incident. There is also conjecture about Dr Aung’s opinion about the extent of any incapacity for work.
77. Dr Takyar’s opinion that the employment was the main contributing factor to the disease is questionable because he prefaces that opinion by saying “appeared” to be that factor. Dr Miller’s notes of the history provided to her by the applicant should be taken into account in terms of the information she had to provide her opinion.
78. The applicant has failed to discharge the onus she carries to show that her employment was the main contributing factor to any disease within the meaning of s 4 (b) of the 1987 Act. In the alternative, if the applicant is to receive an award of weekly compensation, the Commission should find that she has a CWC equivalent to the same number of hours, and same earnings, but in a different role to one with the respondent.

FINDINGS AND REASONS

The injury issue including the applicant’s credit

79. I reject the submission that the applicant is not a witness of credit. I also do not accept the opinion of Dr Miller on this issue. The respondent points to various aspects of the applicant’s 13 March 2020 statement to support its submission that she was exaggerating her statements, e.g. about the extent of other staff “hating me” and exaggeration or embellishment of events. The respondent also has criticised the applicant’s evidence having regard to her attempts to ascribe motives to other staff or make statements about what must be in the mind of the other staff member(s). The first difficulty with these submissions is there is no evidence to the contrary. The applicant’s 13 March 2020 statement is lengthy and detailed in relation to the events that she states, and believes, she was exposed to between about August 2019 and February 2020. These events go beyond the initial problems involving the conduct of CL. She has also given detailed evidence about conduct by RB, PC, KH and GF in particular that has shocked, upset and humiliated her. These are just examples, although important ones. She has also felt unsupported or at least inadequately supported by various of her managers.

80. Despite that level of detail, including the naming of a number of persons who might reasonably be supposed to be not only easily identifiable but also in the respondent's camp, there was no explanation by the respondent for there being no evidence put on from any witness to challenge the applicant's statements. It was still submitted for the respondent that the content of the applicant's claim form describing having been "repeatedly bullied and discriminated against, verbally abused, information deliberately withheld to intentionally make me look stupid" also illustrated her exaggerations and showed the vagueness and lack of detail in her complaints. I reject that submission. That description was obviously only intended to be a summary. It should be read with and in the context of the statement – which did provide substantial detail.
81. I acknowledge the applicant's statements should not necessarily be accepted at face value simply because there is no evidence to the contrary and internal or external inconsistencies in her statements need to be considered.
82. Dr Miller thought there were inconsistencies in the applicant's presentation. However, I accept the evidence of Dr Takyar and prefer it to Dr Miller's evidence for these reasons. Dr Takyar had the benefit of Dr Miller's first report when he wrote his report. He disagreed with Dr Miller's opinion. Dr Takyar also conducted a clinical analysis ("Mental State Examination") of the applicant's presentation. There was no such analysis by Dr Miller.
83. When this was raised with Mr Barnes, he was unable to identify any such assessment either. I think this is important in the context of Dr Miller not being able to find any diagnosable psychiatric condition. Dr Takyar did find such a condition and found the employment was the main contributing factor to that condition - Adjustment Disorder with Mixed Anxiety and Depressed Mood. He also disagreed with Dr Miller that there was no diagnosable psychiatric condition "based on the history I obtained"; and found clear evidence of a range of psychiatric symptoms relating to anxiety and depression.
84. Dr Takyar was also in a better position than Dr Miller to make this assessment. He had material which included the applicant's 13 March 2020 statement, a document which includes the applicant's full history as presented to the Commission. Dr Miller appears not to have had that document. She did have other documents, including, it seems, an investigation report and an earlier statement, which included a range of information, upon which she has relied, and which underpins to some extent her opinion. That information has not been put into evidence by the respondent, nor has there been any explanation by the respondent for such omission.
85. I also accept the submission for the applicant that Dr Miller has gone beyond her role as an expert psychiatrist by attempting to draw attention ("it is also important to note from the documents ..." see par 38 above) to selective pieces of information to suggest the applicant was not able to perform her role in an acceptable manner. I give no weight to that evidence and reject it. The respondent was not even positing such a case itself.
86. I have still considered Dr Miller's evidence carefully before completing the analysis of the applicant's evidence because if I were to accept Dr Miller's evidence that the applicant was engaged in "frank malingering", that would have to adversely influence my assessment of the applicant's evidence. However, it should be remembered that Dr Miller's opinion was "that there is either an element of self-reporting bias or frank malingering". She does not explain what she means by these two terms or what the precise difference is between them.
87. However, importantly, Dr Takyar disagreed with Dr Miller's view in this respect. He believed "there was clear evidence of a range of psychiatric symptoms relating to anxiety and depression ... no evidence of inconsistency between ... symptoms and her mental state suggestive of malingering". Again, I prefer the opinion of Dr Takyar in this respect.

88. It is also difficult to understand Dr Miller's attempts to point out inconsistencies in the applicant's history. For example, Dr Miller stated that the level of sleep deprivation the applicant complained of was not physically possible. But this was not explained by the doctor. I believe it needed explanation. For example, there is no reference in this history to what "one consecutive hour at a time per day" means. Presumably, it means the applicant wakes up every hour, but this leaves open the question about how long she then remained awake. I do not understand, for example, how it "is not physically possible" for, say, a person to wake up every hour for a short period of time say, 5 to 10 minutes, and then go back to sleep. This was not explained by the doctor.
89. Similarly the asserted incongruity between the applicant's report of having lost five to six kilograms and not being able to confirm it because she does not have scales is not readily understandable in circumstances where the doctor does not disclose as to whether she then asked the applicant how the applicant assessed that loss. It may be, for example, that the applicant was simply having a guess on the basis of looking in the mirror. To the extent that the doctor presents it as an incongruity for the purpose of displaying possible malingering, is not understandable at all. It is also unclear whether Dr Miller is of the view that there is an inconsistency between the applicant describing "... comfort eating rubbish food... despite not having lost weight...". If so, it has not been adequately explained to me, either by Dr Miller or in the submissions for the respondent, how that would necessarily follow.
90. Dr Miller also refers to anhedonia and social withdrawal but the applicant not being able to "provide evidence of it". Again, if Dr Miller is trying here to point out that there is a necessary inconsistency between these two statements, it would need further explanation and that did not occur. It is a bare conclusion without any, or at least any adequate, content to allow its viability to be properly tested.
91. Similarly, if Dr Miller is opining that the order in which the applicant presented her psychiatric symptoms necessarily means that she was malingering, I do not accept that evidence. There is no, or no adequate, explanation for such comment. Dr Miller did not even expose the detail of the particular order in which the applicant did give the symptoms to her – let alone then benefiting the reader with the order that DSM-5 lists the symptoms.
92. This does not allow the applicant to discern whether in fact Dr Miller's statement was correct. In any event, again, Dr Miller ultimately opines that there could be either self-reporting bias or frank malingering. So there is no firm conclusion about the "frank malingering".
93. Dr Miller does not explain what she means by self-reporting bias; in the DSM-5 context. To the extent that such concept may allow for some *unconscious* or *unintentional* exaggeration of *some* (Dr Miller referred to an *element* of self-reporting bias) of the symptoms or history, I accept that may be so. That is not to suggest that I do not generally accept the evidence of the applicant. I do accept her evidence. In particular, I accept she suffered significant bullying and harassment, particularly by RB, CL and PC. I also accept that her managers, particularly GF and KH, were unsupportive of her.
94. The applicant has an impressive work history. There has been no evidence or submission to the contrary. There is also no evidence of the applicant having experienced this type of trouble in any of her earlier employments. I am actually persuaded that she has done her best to genuinely recount the history as she remembers it. However, I note Dr Sowden's comment that the presentation of the applicant was complex and that she felt the applicant had "fragmented thought processes with it being difficult to gain a coherent account". In my opinion any such fragmentation is as a result of the bullying and harassment and lack of support she was unfortunately exposed to in her employment with the respondent. Dr Sowden went on to describe her as a very brave young woman who understandably suffered a degree of psychological decompensation in response to exposure to severe psychological stressors in the workplace. This raises *Chemler* considerations.

95. In *Attorney General's Department v K* [2010] NSWCCPD 76, Roche DP, in considering the issue of establishing psychological injury in circumstances of a worker's perception of real events at work, provided the following summary of relevant authorities on this issue:
- “(a) Employers take their employees as they find them. There is an ‘egg-shell psyche’ principle which is the equivalent of the ‘egg-shell skull’ principle ...
 - (b) A perception of real events, which are not external events, can satisfy the test on injury arising out of or in the course of the employment ...
 - (c) If events which actually occurred in the workplace were perceived as creating an offensive or hostile working environment ... and a psychological injury followed ... it is open to the Commission to conclude that causation is established ...
 - (d) So long as the events within the workplace were real, rather than imaginary, it does not matter that they affected the worker's psyche because of a flawed perception of the events because of a disordered mind ...
 - (e) There is no requirement at law that the worker's perception of the events must have been one that passed some qualitative tests based on an ... objective measure of reasonableness ...
 - (f) It is not necessary that the worker's reaction to the events must have been ... rationale, reasonable and proportionate, before compensation can be recovered...”
95. In these circumstances, even if there may have been some unconscious or unintentional exaggeration by the applicant in the reporting of some of her history or symptoms, her perceptions are relevant in satisfying the test on injury arising out of or in the course of the employment. And even if some of those perceptions were to some extent flawed, I find they were real, and not external or imaginary events. I also make this finding in relation to the submissions of Mr Barnes about the applicant's evidence being embellished or exaggerated.
96. I find that the applicant's employment was the main contributing factor to the psychological injury described by Dr Takyar: adjustment disorder with mixed anxiety and depressed mood (chronic) under DSM-5. I make that finding under s 4(b)(i) on the basis of Dr Takyar's opinion. I appreciate that Dr Sowden refers to the applicant's decompensation being in part triggered by trauma memories from her childhood. However, Dr Takyar took a careful history of the applicant's childhood, including difficulties with her biological mother and going into foster care at age 11. He also took a history that the applicant then “... was lucky ... found a family that I'm still in touch with ... think of them as my mum and dad...” Nevertheless, and in any event, even if this case is looked at on the basis of aggravation of a pre-existing disease, the applicant's case should still succeed under s 4(b)(ii) – on the basis that the applicant's employment with the respondent was also the main contributing factor to the aggravation of any such disease. If that be the case, such aggravation continues in my opinion.
97. Mr Barnes submitted that Dr Takyar's opinion that the employment was the main contributing factor to the disease is questionable because he prefaces that opinion by saying “appeared” to be the factor. I reject this submission. Plainly, this word “appeared”, taken in isolation should have been read with the whole of his report, in particular his first report. Dr Takyar clearly was of the view that the employment was the main contributing factor to the disease he diagnosed. In any event, in her second report, Dr Miller accepted that the employment was the main contributing factor – to an “emotional upset”, opining that she disagreed with Dr Takyar's opinion that the applicant did suffer a psychiatric injury. For the reasons given above, I accept and prefer the opinion of Dr Takyar.

The capacity Issue

98. Mr Barnes has pointed out the applicant's relatively extensive work history and education. But even after taking that into account, I find the applicant has not had any CWC from the time she left work on 20 February 2020 to date and continuing. This is the clear evidence of Dr Takyar. It is also the clear evidence of Dr Aung. The only question mark Dr Aung expressed in this respect was as to when the applicant might become fit in the future.
99. While Dr Htwe is said to have expressed a view to the employer on 5 October 2020 that the applicant would be able to return to work gradually and resume the inherent requirements of the duty manager position in six months' time, I prefer the opinion of Dr Takyar as the specialised psychiatrist in relation to this question. I also accept the applicant's evidence in her 30 October 2020 statement when she said that she remained unable to work due to her condition. The asserted opinion of Dr Htwe needs to be treated with some care as the only evidence of it is second hand in the form of the email from the respondent to the applicant of 22 October 2020 which terminated the employment of the applicant. That email extracts what may or may not be all relevant content of Dr Htwe's letter. That letter also came about following an approach by the respondent to the applicant on 10 September 2020 giving her notice that because her illness had prevented her from performing the inherent requirements of her job as a duty manager since 20 February 2020, further medical information was required from her medical practitioner that she was able to safely perform the inherent requirements of that role. It was implied in the email that the applicant's position was at risk of being terminated unless there was medical information from her treating doctor to say she was fit for work. In any event, even if the opinion of Dr Htwe in this respect was fully and correctly reported, it only goes so far as to say that his expectation would be that the applicant would be able to gradually resume the inherent requirements of the duty manager's position from about late April 2021.
100. I do not accept the opinion of Dr Miller in relation to CWC. Dr Miller does not accept there is a diagnosable psychiatric condition in any event and I have not accepted that evidence. Dr Miller has opined that the applicant has immediate and full capacity to return to not only her pre-injury employment but also to work outside that employment in any role of her choosing for which she was qualified. This evidence is also against the overwhelming weight of the other evidence. It is inconsistent with the opinion of Dr Takyar. It is also inconsistent with Dr Sowden's observations and the medical certificates of Drs Aung and Htwe.
101. I am required to assess the CWC in accordance with s 32A of the 1987 Act. I take into account the "suitable employment" factors I need to have regard to in s 32A (a). I note the applicant's "age, education, skills and work experience", but find the nature of the applicant's "incapacity and ... details provided in medical information" makes it far more likely that she in fact has no CWC and has not had any since 20 February 2020. I also note s 32A (b) and disregard whether suitable work or employment is available or is of a type or nature that is generally available and the nature of the pre-injury employment or her place of residence.
102. Mr Barnes also noted in his submissions that the applicant disclosed in her 30 October 2020 statement that she had received Coronavirus Economic Response Package payments from 7 April 2020 until the time of the statement. But there was no submission about what the Commission should do, if anything, about that. In the absence of those submissions, I take it the respondent does not seek any particular order in that respect.

The Issue Regarding Expenses under s 60 of the 1987 Act

103. Clearly enough, Dr Miller does not believe that the applicant needs any treatment. I have given reasons above as to why I do not accept her opinion in relation to this case generally. I also do not accept her opinion in relation to medical, hospital and the like expenses. Dr Sowden and Dr Takyar made it clear that the applicant required treatment. The evidence clearly favours the applicant being entitled to an award under s60 of the 1987 Act.

SUMMARY

104. I find the applicant sustained a disease injury within the meaning of the 1987 Act, namely, Adjustment Disorder with Mixed Anxiety and Depressed Mood (chronic) under DSM-5.
105. As a result of the said disease injury, the applicant has had no CWC, as that phrase is defined in s 32A of the 1987 Act, since 20 February 2020.
106. At all material times, the applicant's pre-injury average weekly earnings were \$1,183.70 per week.
107. There is an award for the applicant pursuant to s 436 and s 37 of the 1987 Act from 20 February 2020 to date and continuing.
108. There is an award for the applicant for medical and the like expenses under s 60 of the 1987 Act.