

# 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 and M2-1987/19</b>
<b>Appellant:</b>	<b>Kaitlyn Peachey</b>
<b>Respondent:</b>	<b>Bildom Pty Ltd (incorrectly sued as Quality Siesta Resort Pty Ltd and Quality Hotel)</b>
<b>Date of Decision:</b>	<b>5 November 2019</b>
<b>Citation:</b>	<b>[2019] NSWCCMA 162</b>

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<b>Appeal Panel:</b>	
<b>Arbitrator:</b>	<b>Carolyn Rimmer</b>
<b>Approved Medical Specialist:</b>	<b>Dr Douglas Andrews</b>
<b>Approved Medical Specialist:</b>	<b>Dr Lana Kossoff</b>

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### BACKGROUND TO THE APPLICATION TO APPEAL

1. On 26 August 2019, Kaitlyn Peachey lodged an Application to Appeal Against the Decision of Approved Medical Specialist (M1-1987/19). The medical dispute was assessed by Professor Nicholas Glozier, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 7 August 2019.
2. On 3 September 2019, Bildom Pty Ltd (incorrectly sued as Quality Siesta Resort Pty Ltd and Quality Hotel) lodged an Application to Appeal Against the Decision of Approved Medical Specialist (M2-1987/19).
3. For convenience, the Appeal Panel will refer to the parties by their role in the substantive dispute as applicant and respondent.
4. In both appeals, the applicant and respondent rely on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):
  - the assessment was made on the basis of incorrect criteria, and
  - the MAC contains a demonstrable error.
5. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.
6. 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.
7. 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**

8. The applicant developed a primary psychological injury in her employment as an apprentice chef with the respondent arising from bullying, verbal abuse, humiliation and sexual harassment. The injury occurred during 1 March 2016 and 16 September 2016.
9. The matter was referred to the AMS, Professor Nicholas Glozier, on 30 May 2019 for assessment of whole person impairment (WPI) of the applicant's psychological/psychiatric disorder attributable to the injury deemed to have occurred on 7 November 2018.
10. The AMS examined the applicant on 31 July 2019 and assessed 13% WPI in respect of the psychological/psychiatric disorder deemed to have occurred on 7 November 2018.

## **PRELIMINARY REVIEW**

11. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the Workers Compensation Medical Dispute Assessment Guidelines.
12. The applicant requested a re-examination by an AMS, who is a member of the Appeal Panel, if the Appeal Panel considered that re-examination would be beneficial. The respondent submitted that re-examination was not necessary.
13. 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 there was sufficient evidence on which to make a determination.

## **EVIDENCE**

### **Documentary evidence**

14. 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.

### **Medical Assessment Certificate**

15. 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**

16. Both parties made written submissions. They are not repeated in full but have been considered by the Appeal Panel.
17. The applicant's submissions in M1-1987/19 include the following:
  - The AMS failed to properly apply paragraphs 1.31 and 1.32 of the Guidelines in respect to an adjustment for the effects of treatment. The applicant has been taking medication in the form of 40 mg of Citalopram daily, which is continuing.
  - The AMS on page 6 of the MAC stated that there has been improvement and in particular:

"although her treatment has probably not been optimal, she has been compliant with antidepressant medication, engage with psychotherapy and rehabilitation for many months with only a recent improvement in her symptoms of functioning as she has obtained employment."

- Due to the extent of the treatment and the improvement, including enabling her to return to some form of employment, there should be a considerable score for adjustment of 2% or 3%.
- There appears to be a rounding error in that paragraph 1.26 of the Guidelines does not appear to be correctly applied, resulting in an increase of the impairment of potentially 1%. It appears this error has been corrected.
- The AMS based his assessment of impairment on an incorrect history.
- In relation to concentration, persistence and pace, the AMS applied excessive import to her ability to play computer games and to use devices for social media and online banking. These tasks are simple and do not equate to following complex instructions. The applicant stated that she has difficulty holding conversations and concentrating on any tasks at hand, including watching television shows. The AMS confirmed that she can become easily upset depending upon the content of shows. These factors did not seem to be considered by the AMS as they were not detailed in the MAC.
- The AMS correctly noted that the applicant has been unable to return to cooking or baking due to her psychological condition. Her inability to complete cooking tasks is indicative of her capacity to demonstrate concentration, persistence and pace.
- The AMS noted that the applicant has been unable to complete a relatively simple online course. The AMS reported that the reason apparently was that the applicant was busy, however, this is patently not evident as she only works part-time and spends considerable time on unproductive tasks/computer games. Dr Baker in his report noted that the applicant has lost interest in a number of activities including her work and "cooking and reading". The evidence demonstrates that she has inability to complete tasks, including the necessary work to complete her online course.
- Taking into account all relevant factors the correct category of impairment for concentration, persistence and pace should be in Class 3.
- In relation to travel, the most appropriate category for assessment therefore would be as found by Dr Baker in Class 3. Both Dr Baker and the AMS noted that apart from being able to travel unsupported to her workplace, the applicant could not travel unsupported and when she was travelling on her own, she would keep her doors locked and music on to distract her. The applicant demonstrates an excessive anxiety was travelling alone to and from work and has reduced travel considerably overall.

18. The respondent's submissions in M1-1987/19 include the following:

- In respect of no adjustment for the effects of treatment, the AMS found that the applicant was compliant with all treatment options to no avail and only experienced an improvement in her symptomology when she obtained employment. On this basis, the respondent submits that the AMS has appropriately not included an allowance for the effects of treatment.
- The respondent does not dispute that there has been a rounding error as identified by the appellant.

- In relation to concentration, persistence and pace, there was evidence available to the AMS that showed a clear improvement in the applicant's symptomology. At the time of assessment by Dr Baker and Dr Wotton, it was noted that she could only read a few lines of text. The AMS recorded an improvement of the applicant's concentration, persistence and pace noting that she could play video games for up to three hours. Further, the AMS noted that the applicant's memory impairment was within normal range and she showed good focus throughout the entire interview. It is not evident that the AMS disregarded or failed to adequately consider any of the relevant material provided with the referral.
- The correct assessment for concentration, persistence and pace should be Class 1 in accordance with the appeal in M2-1987/19.
- In respect of travel, Dr Baker's report was over 12 months old and since that time the applicant has obtained employment working 30 hours a week. The AMS recorded a history of the applicant being able to travel locally on her own. It was not apparent that the information from Dr Baker was overlooked or not considered by the AMS. The assessment in this category should remain a Class 2.
- The appeal should be dismissed.

19. The respondent's submissions in M2-1987/19 include the following:

- The AMS has fallen into error in his assessment of the psychiatric impairment rating scales (PIRS) for (a) self-care and personal hygiene, (b) concentration, and persistence and pace and (c) employability.
- In respect of self-care and personal hygiene, the AMS assessed the applicant as Class 3 and noted that her self-care had improved as she now showered regularly, prepares herself for work but has a phobic avoidance of cooking and shopping.
- There is no evidence that she cannot live independently or that she requires regular support. On that basis, the AMS erred in applying Class 3 impairment as "best fit". The applicant would be more appropriately assessed in Class 2 of this category based on the history recorded by the AMS and Dr Baker.
- In respect of concentration, persistence and pace, the AMS assessed the applicant as Class 2. The applicant's ability to play video games for extended periods of time together with the recorded clinical findings on examination by the AMS warrant an assessment in Class 1 in this category. The findings of the AMS are a significant departure from those of Dr Wotton and Dr Baker. At the time of Dr Baker's assessment, the applicant could only read a few lines of text. The evidence clearly supports an improvement in function since the original assessment.
- In respect of employability, the AMS assessed Class 3 and recorded that although the applicant worked 30 hours a week in a cleaning firm for the past few weeks, this was less stressful than working in a kitchen environment and even in this new employment she was required to take a full day off work when there was hostility in a work meeting.
- The applicant is clearly capable of working more than 20 hours a week. She is employed in a position that is inherently different to her position as an apprentice chef. Her ability to hold and maintain employment in an alternative position ought to have a bearing on the assessment of employability. The applicant should be classified as Class 2 in this category.

- The MAC should be revoked and a new MAC issued.

20. The applicant's submissions in M2-1987/19 include the following:

- In respect of self-care and personal hygiene, any improvement since the applicant was assessed by Dr Wotton and Dr Baker was minimal. The course that the AMS referred to when he commented that she had improved a little over 2019, was not actually completed by the applicant and her participation was limited to an online course. Although she can shower independently, the AMS recorded that "she has been unable to cook or return to baking since her experiences at the resort, as this triggers anxiety and panic." The AMS confirmed that she can only perform some vacuuming, helping around the house and dishes. The AMS also recorded: "...she says she can only go shopping with her mother because she fears being in supermarkets following the threat some years ago. She is picked up weekly to do this."
- The AMS has taken into account the applicant's inability to cook and shop and with a history of her being able to perform some domestic duties, she clearly relies on family members, particularly her mother to help "to ensure a minimum level of hygiene and nutrition". The best fit is clearly Class 3 as found by the AMS.
- In respect of concentration, persistence and pace, the applicant repeats the submission made above in M1-1987/19.
- Class 1 requires that the worker is able to pass a TAFE or university course within the normal time frame. The applicant was in fact unable not only to pass the course but has yet to complete it. Reliance on the ability to play video games for extended periods does not demonstrate a capacity to pass a TAFE or university course. A more relevant indicator of concentration, persistence and pace is her inability to return to cooking due to her frequent mistakes.
- In respect of employability, the applicant has been working for a relatively short period on a part-time basis (30 hours per week) as a cleaner. The AMS noted the difficulties that the applicant had in not only travelling and attending work but coping with adverse situations at work. The AMS made a proper assessment as to the best fit.
- A Class 2 assessment is indicative of a person who works full-time, which is not the case, and also in a position whereby the duties require comparable skill and intellect as those of the preinjury employment. This is not the case as instead of working as a chef, the applicant now works as a cleaner. Class 3 is the best fit and the AMS's discretion in this regard was properly applied.

## **FINDINGS AND REASONS**

21. The procedures on appeal are contained in s 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment but the review is limited to the grounds of appeal on which the appeal is made.
22. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.

23. The role of the Medical Appeal Panel was considered by the Court of Appeal in the case of *Siddik v WorkCover Authority of NSW* [2008] NSWCA 116 (*Siddik*). The Court held that while prima facie the Appeal Panel is confined to the grounds the Registrar has let through the gateway, it can consider other grounds capable of coming within one or other of the heads, if it gives the parties an opportunity to be heard. An appeal by way of review may, depending upon the circumstances, involve either a hearing de novo or a rehearing. Such a flexible model assists the objectives of the legislation.
24. Section 327(2) was amended with the effect that while the appeal was to be by way of review, all appeals as at 1 February 2011 were limited to the ground(s) upon which the appeal was made. In *New South Wales Police Force v Registrar of the Workers Compensation Commission of New South Wales* [2013] SC 1792 Davies J considered that the form of the words used in s 328(2) of the 1998 Act being, 'the grounds of appeal on which the appeal is made' was intended to mean that the appeal is confined to those particular demonstrable errors identified by a party in its submissions.
25. In this matter, the Registrar has determined that he is satisfied that at least one of the grounds of appeal under s 327(3)(d) is made out, in relation to the AMS's assessment of the applicant's permanent impairment due to a psychological injury.
26. The Appeal Panel reviewed the history recorded by the AMS, his findings on examination, and the reasons for his conclusions as well as the evidence referred to above. The Appeal Panel accepts the findings on examination that the AMS made in the MAC.

#### **Appeal in M1-1987/19**

27. First, the applicant submitted that the AMS failed to properly apply paragraphs 1.31 and 1.32 of the Guidelines in respect to an adjustment for the effects of treatment.
28. Paragraphs 1.31 and 1.32 of the Guidelines provide:
  - “1.31 In circumstances where the treatment of a condition leads to a further, secondary impairment, other than a secondary psychological impairment, the assessor should use the appropriate parts of the Guidelines to evaluate the effects of treatment, and use the Combined Values Chart (AMA5, pp 604–06) to arrive at a final percentage of WPI.
  - 1.32 Where the effective long-term treatment of an illness or injury results in apparent substantial or total elimination of the claimant's permanent impairment, but the claimant is likely to revert to the original degree of impairment if treatment is withdrawn, the assessor may increase the percentage of WPI by 1%, 2% or 3%. This percentage should be combined with any other impairment percentage, using the Combined Values Chart. This paragraph does not apply to the use of analgesics or anti-inflammatory medication for pain relief.”
29. The AMS, on page 6 of the MAC, stated that there has been improvement and in particular:

"although her treatment has probably not been optimal, she has been compliant with antidepressant medication, engaged with psychotherapy and rehabilitation for many months with only a recent improvement in her symptoms of functioning as she has obtained employment."
30. The applicant submitted that due to the extent of the treatment and the improvement, including enabling her to return to some form of employment, there should be a considerable score for adjustment of 2% or 3%.

31. The Appeal Panel accepted that the AMS did not specifically refer to the question of whether there should be an adjustment for the effect of treatment in the MAC. Obviously, the AMS made no adjustment for the effect of treatment and it can be inferred that the AMS was of the opinion that no adjustment should be made. Further, for the reasons set out below, the Appeal Panel reached the view that that no adjustment should be made for the effects of treatment.
32. The Appeal Panel noted according to the Guidelines that there needed to be an apparent substantial or total elimination of the claimant's permanent impairment for an assessor to increase the percentage of WPI. The AMS noted that the applicant's condition had improved in 2019. The AMS assessed the applicant as having 15% WPI and then deducted one tenth for a pre-existing condition. It appears that Dr Baker assessed 17% WPI in his report of 2 September 2018, as that was the claim made by the applicant in Part 5.6 of the Application to Resolve a Dispute.
33. The Appeal Panel was not satisfied that the difference between the assessments of the AMS and Dr Baker demonstrated that there had been an apparent substantial or total elimination of the applicant's permanent impairment as a result of long-term treatment. In those circumstances, the Appeal Panel reached the view that no adjustment should be made for the effects of treatment.
34. Second, the applicant submitted that there was a rounding error in that paragraph 1.26 of the Guidelines did not appear to be correctly applied resulting in an increase of the impairment of potentially 1%. However, the applicant stated that it appeared this error has been corrected. The Panel noted that the respondent agreed that the error had been corrected.
35. The Appeal Panel agreed that a rounding error had been made and the total impairment assessed was 14% WPI, not 13% WPI.
36. Third, the applicant submitted that the AMS based his assessment of impairment on an incorrect history in two categories of the PIRs ratings. In relation to concentration, persistence and pace, the appellant argued that the evidence in fact demonstrated that she had an inability to complete tasks, including the necessary work to complete an online course and the correct category of impairment for concentration, persistence and pace should be Class 3.
37. The AMS in the PIRS Rating Form wrote: "Her ability to game online requires focus for at least 1½ hours and up to two, and there was no objective cognitive impairment on testing today which would only accord with a Class 2."
38. The AMS, under "Present symptoms" noted that "subjectively she has problems with her memory". He noted under "Findings on Mental Examination":

"...There was no formal thought disorder. Although she suggested that at times, she had a poor memory, this was not out of the normal range within the assessment itself and she displayed good focus and concentration throughout. She currently has neither pervasive low mood nor anhedonia but still has some intermittent low moods, feelings of lack of energy and not restful sleep. She has a normal sleep duration with no onset or middle insomnia. She appears more positive although still thinks she is fragile, as noted by her triggered panic attacks although these are no longer unprecipitated. She can ruminate about her experiences and described anticipatory anxiety, fear, avoidance, particularly of public scenarios where she requires accompanying. She is aroused when out although can be out of the home, say in her car, on her own now. There are no psychotic phenomena. On cognitive testing her attention, registration and

five-minute recall were all intact. She scored within the average range on both the Trails A and B, although made one error on the latter but corrected herself and finished this within the standard time, again all within the expected objective cognitive function for her age and educational background...”

39. Under Table 11.6 in the Guides, Class 3 for concentration, persistence and pace, the examples are: “Moderate impairment: unable to read more than newspaper articles. Finds it difficult to follow complex instructions (e.g. operating manuals, building plans), make significant repairs to motor vehicle, type long documents, follow a pattern for making clothes, tapestry or knitting.” The examples for Class 2 are: “Mild impairment: can undertake a basic retraining course, or a standard course at a slower pace. Can focus on intellectually demanding tasks for periods of up to 30 minutes, then feels fatigued or develops headaches.” The examples for Class 1 are: “No deficit, or minor deficit attributable to the normal variation in the general population. Able to pass a TAFE or university course within normal time frame.”
40. The AMS gave reasons for assessing the applicant as Class 2 for concentration, persistence and pace and the Appeal Panel considered that it was open to him to make that assessment on the evidence, particularly given the findings on mental examination on the day of assessment. The Appeal Panel considered, on balance, that the history obtained by the AMS was consistent with a Class 2 assessment. The AMS had the benefit of assessing the applicant in his examination as well as reviewing all the evidence in the matter. Based on the evidence before the Appeal Panel, and for the reasons provided by the AMS in the MAC, the Appeal Panel considered that the AMS made no error in assessing the applicant’s impairment for concentration, persistence and pace as being a Class 2 and that such assessment was made on the basis of correct criteria.
41. In relation to travel, the applicant submitted that the most appropriate category would be Class 3 as found by Dr Baker as the applicant had demonstrated an excessive anxiety was travelling alone to and from work and had reduced travel considerably overall.
42. The AMS in the PIRS rating Form wrote: “She can drive to and from work and locally on her own, although says that when in public places she needs to be accompanied.”
43. Under Table 11.3 in the Guides, Class 2 for travel, the examples are: “Mild impairment: can travel without support person, but only in familiar area such as local shops, visiting a neighbour.” The example for Class 1 is: “No deficit, or minor deficit attributable to the normal variation in the general population: Can travel to new environments without supervision”. The example for Class 3 is: “Moderate impairment: Cannot travel away from own residence without support person. Problems may be due to excessive anxiety or cognitive impairment.”
44. The AMS in the PIRS rating Form wrote: “She can drive to and from work and locally on her own, although says that when in public places she needs to be accompanied.”
45. The AMS gave reasons for assessing the applicant as Class 2 for travel and the Appeal Panel considered that it was open to him to make that assessment on the evidence, particularly as the applicant was able to travel to and from work and locally on her own. The Appeal Panel considered that the history obtained by the AMS was consistent with a Class 2 assessment. The AMS had the benefit of assessing the applicant in his examination as well as reviewing all the evidence in the matter. Based on the evidence before the Appeal Panel, and for the reasons provided by the AMS in the MAC, the Appeal Panel considered that the AMS made no error in assessing the applicant’s impairment for travel as being a Class 2 and that such assessment was made on the basis of correct criteria.
46. In conclusion, the Appeal Panel as concluded that there was a rounding error in the MAC. However, the Appeal Panel agreed with the AMS that no adjustment should be made for the effects of treatment. The Appeal Panel also agreed with the AMS’s ratings in the two PIRS categories, namely, concentration, persistence and pace, and travel.



## Appeal in M2-1987/19

47. The respondent submitted that the AMS has fallen into error in his assessment of the PIRS categories for (a) self-care and personal hygiene, (b) concentration, persistence and pace, and (c) employability.
48. In respect of self-care and personal hygiene, the AMS assessed the applicant as Class 3 and noted that her self-care had improved. The respondent submitted that there was no evidence that the applicant cannot live independently or that she requires regular support, and the AMS erred in applying Class 3 impairment as “best fit”. The respondent argued that the applicant would be more appropriately assessed in Class 2.
49. The AMS wrote under “Social activities/ADLs”:
- “She does some chores around the home and generally looks after herself more so now that she has to go to work. She has been unable to cook or return to baking since her experiences at the resort, as this triggers anxiety and panic. Over the past few weeks she has been doing some vacuuming, helping around the home, and dishes. She says she can only go shopping with her mother because she fears being in supermarkets following the threats some years ago. She is picked up weekly to do this.”
50. In the PIRS Rating Form, the AMS wrote: “Although her self-care has improved, noting she showers regularly and prepares herself for work, I noted her phobic avoidance of cooking and shopping.”
51. Dr Baker, in his report dated 2 September 2018, noted that the applicant reported she had lost weight as she skipped meals because her appetite was poor and she had lost her interest in her nutrition. He also noted that she reported a loss of interest in her self-care and personal hygiene.
52. The examples under Table 11.2 in the WorkCover Guides for Class 2 for self-care and personal hygiene are: “Mild Impairment: able to live independently; looks after self adequately, although may look unkempt occasionally; sometimes misses a meal or relies on take-away food.” The examples for Class 3 for self-care and personal hygiene:
- “Moderate impairment; Can’t live independently without regular support. Needs prompting to shower daily and wear clean clothes, does not prepare own meals, frequently misses meals. Family member or community nurse visits (or should visit) 2-3 times per week to ensure minimum level of hygiene and nutrition.”
53. The Appeal Panel accepted that the applicant’s self-care had improved, however, she still had a phobia in relation to cooking and shopping.
54. The AMS gave reasons for assessing the applicant as Class 3 for self-care and personal hygiene and the Appeal Panel considered that it was open to him to make that assessment on the evidence. The Appeal Panel considered, on balance, that the history obtained by the AMS was consistent with a Class 3 assessment. The AMS had the benefit of assessing the applicant in his examination as well as reviewing all the evidence in the matter. Based on the evidence before the Appeal Panel, and for the reasons provided by the AMS in the MAC, the Panel considered that the AMS made no error in assessing the applicant’s impairment for self-care and personal hygiene as being a Class 3 and that such assessment was made on the basis of correct criteria.
55. In respect of concentration, persistence and pace, the AMS assessed the applicant as Class 2. The respondent submitted that the evidence clearly supported an improvement in function since the original assessment.

56. The AMS gave reasons for assessing the respondent as Class 2 for concentration, persistence and pace as noted above in paragraphs 37 and 38 and the Appeal Panel considered that it was open to him to make that assessment on the evidence. The Appeal Panel considered, on balance, that the history obtained by the AMS was consistent with a Class 2 assessment. The Appeal Panel further noted that the applicant had not completed the medical technology course that she had enrolled in. The AMS noted under "Social activities/ADLs": "She has been doing an online, course over the months prior but has not done anything for the past few weeks because she is too busy." However, the applicant was only working 30 hours a week and appeared to have very little social activity outside her home. The Appeal Panel inferred that the applicant was unable because of problems with concentration, persistence and pace to continue the online course. Further, the Appeal Panel noted that the applicant reported some problems with her memory.
57. Based on the evidence before the Panel, and for the reasons provided by the AMS in the MAC, the Panel considered that the AMS made no error in assessing the applicant's impairment for concentration, persistence and pace as being a Class 2 and that such assessment was made on the basis of correct criteria.
58. In respect of employability, the AMS assessed Class 3. The respondent submitted that the applicant is capable of working more than 20 hours a week and is employed in a position which is inherently different to her position as an apprentice chef. The respondent argued that her ability to hold and maintain employment in an alternative position should have a bearing on the assessment of employability and she should be classified as Class 2 in this category.
59. Under Table 11.6 in the Guides, Class 3 for employability, the examples are: "Moderate impairment: cannot work at all in same position. Can perform less than 20 hours a week in a different position, which requires less skill or is qualitatively different (e.g. less stressful)." The examples for Class 2 are:
- "Mild impairment. Able to work full time but in a different environment from that of the pre-injury job. The duties require comparable skill, and intellect as those of the pre-injury job. Can work in the same position, but no more than 20 hours per week (e.g. no longer happy to work with specific persons, or work at a specific location due to travel required)."
60. In the PIRs rating Form, the AMS wrote: "Although working 30 hours in a cleaning firm for the past few weeks, this is patently less stressful than working in a kitchen environment, and even here she has required a day off work when there was hostility in a work meeting."
61. Under "Social activities/ADL" the AMS wrote:
- "Recently she has been working for a cleaning company, 30 hours a week. She finds the older female staff unthreatening. There was a problem two days prior to the incident where in a work meeting there was some hostility between two other women. She said this led to a panic attack. The boss was very understanding and gave her the following day off."
62. The AMS gave reasons for assessing the applicant as Class 3 for employability and the Appeal Panel considered that it was open to him to make that assessment on the evidence. The Appeal Panel considered that the history obtained by the AMS was consistent with a Class 3 assessment. The Appeal Panel noted that the applicant works 30 hours a week in her job as a cleaner. However, she had to take a day off when there was conflict in a work meeting which led to her having a panic attack. The Appeal Panel did not consider that Class 2 would be an appropriate class as cleaning is not as difficult as cooking and the applicant is not working full-time.

63. Based on the evidence before the Panel, and for the reasons provided by the AMS in the MAC, the Appeal Panel considered that the AMS made no error in assessing the applicant's impairment for employability as being a Class 3 and that such assessment was made on the basis of correct criteria.
64. In conclusion, the Appeal Panel was satisfied that there was no error in the MAC in relation to the PIRS categories of (a) self-care and personal hygiene, (b) concentration, persistence and pace, and (c) employability and that the assessments were made on the basis of correct criteria.
65. For these reasons, the Appeal Panel has determined that the MAC issued on 7 August 2019 should be revoked in order to correct a rounding error, and a new MAC should be issued. The new certificate is attached to this statement of reasons.

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*.

A Jackson

Ann Jackson  
Dispute Services Officer  
As delegate of the Registrar



# WORKERS COMPENSATION COMMISSION

## APPEAL PANEL MEDICAL ASSESSMENT CERTIFICATE

Injuries received after 1 January 2002

**Matter Number:** 1987/19  
**Applicant:** Kaitlyn Peachey  
**Respondent:** Bildom Pty Ltd (incorrectly sued as Quality Siesta Resort Pty Ltd and Quality Hotel)

This Certificate is issued pursuant to s 328(5) of the *Workplace Injury Management and Workers Compensation Act 1998*.

The Appeal Panel revokes the Medical Assessment Certificate of Professor Glozier and issues this new Medical Assessment Certificate as to the matters set out in the Table below:

**Table - Whole Person Impairment (WPI)**

Body Part or system	Date of Injury	Chapter, page and paragraph number in the Guidelines	Chapter, page, paragraph, figure and table numbers in AMA 5 Guides	% WPI	Proportion of permanent impairment due to pre-existing injury, abnormality or condition	Sub-total/s % WPI (after any deductions in column 6)
Psychological injury/ Mind	7/11/18 (deemed)	Chapter 11, pp 55-60	14	15%	1/10th	14%
<b>Total % WPI (the Combined Table values of all sub-totals)</b>						<b>14%</b>

**Carolyn Rimmer**  
Arbitrator

**Dr Douglas Andrews**  
Approved Medical Specialist

**Dr Lana Kossoff**  
Approved Medical Specialist

4 November 2019

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

A Jackson

Ann Jackson  
Dispute Services Officer  
As delegate of the Registrar

