

WORKERS COMPENSATION COMMISSION

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

Matter Number:	M1-2983/19
Appellant:	Fujitsu Australia Limited
Respondent:	Farshad Khalilian
Date of Decision:	9 December 2019
Citation:	[2019] NSWCCMA 159

Appeal Panel:	
Arbitrator:	Carolyn Rimmer
Approved Medical Specialist:	Professor Nicholas Glozier
Approved Medical Specialist:	Dr Michael Hong

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 5 August 2019 Fujitsu Australia Limited (the appellant) made an application to appeal against a medical assessment (the appeal) to the Registrar of the Workers Compensation Commission (the Commission). The appellant was insured at the relevant time by AAI Limited trading as GIO. The medical assessment was made by Dr Wayne Mason, Approved Medical Specialist (the AMS) and issued on 14 August 2019.
2. The respondent to the appeal is Farshad Khalilian (Mr Khalilian).
3. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):
 - the assessment was made on the basis of incorrect criteria,
 - the MAC contains a demonstrable error.
4. 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.
5. 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.
6. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment*, 4th ed 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment*, 5th ed (AMA 5).
7. The Appeal was made within 28 days of the date of the medical assessment.

RELEVANT FACTUAL BACKGROUND

8. Mr Khalilian developed a psychological injury in his employment as an assistant systems engineer with the appellant after he was subjected to unfair treatment and bullying and placed in a position for which he was not trained or qualified. The injury was deemed to have occurred on 21 September 2018.
9. In a Certificate of Determination-Consent Orders dated 18 July 2019 Arbitrator Beilby made the following orders:
 - “1. The respondent agrees to pay the applicant weekly compensation in the sum of \$325.00 per week from 27 July 2017 to 15 January 2018. Award for the respondent thereafter.
 2. The respondent agrees to pay medical expenses up to \$7000.00 on production of accounts, receipts and/or notice of charge. Award for the respondent thereafter.
 3. The claim in respect of psychiatric injury is remitted to the Registrar to be referred to an approved medical specialist for whole person impairment assessment. The application and the reply are to be provided. The date of injury is 27 February 2017 (deemed).”
10. The matter was referred to the AMS, Dr Wayne Mason, on 2 August 2019 for assessment of whole person impairment (WPI) of Mr Khalilian’s psychological/psychiatric disorder attributable to the injury deemed to have occurred on 21 September 2018.
11. The AMS examined Mr Khalilian on 9 August 2019 and assessed 15% WPI in respect of the psychological/psychiatric disorder deemed to have occurred on 21 September 2018.

PRELIMINARY REVIEW

12. 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.
13. Neither party sought an opportunity to make oral submissions to the Appeal Panel. The Appeal Panel does not consider it would benefit by hearing oral submissions from the parties. The Appeal Panel shall therefore determine the Appeal without an Assessment Hearing.
14. The appellant did not request that Mr Khalilian be re-examined by an Approved Medical Specialist, who is a member of the Appeal Panel.
15. As a result of that preliminary review, the Appeal Panel determined that it was unnecessary for Mr Khalilian to undergo a further medical examination because there was sufficient evidence on which to make a determination.

EVIDENCE

Documentary evidence

16. 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

17. 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

18. Both parties made written submissions. They are not repeated in full but have been considered by the Appeal Panel.
19. The appellant's submissions include the following:
 - The AMS' WPI assessment of Mr Khalilian was incorrect against the criteria in the psychiatric impairment rating scale (PIRS) tables within the Guidelines.
 - There was a misapplication of the PIRS criteria in respect of the following ratings:
 - (a) Table 11.1, for self-care and personal hygiene;
 - (b) Table 11.5, for concentration, persistence and pace, and
 - (c) Table 11.6, for employability.
 - In respect of self-care and hygiene, the AMS rated Mr Khalilian as Class 3. The AMS observed a man who was neatly dressed and did not smell malodorous. Mr Khalilian provided a history that he assists with domestic chores such as mowing the lawn and washing up after meals. The AMS recorded Mr Khalilian maintained pre injury full time employment as an assistant system engineer with Fujitsu Australia, since returning to work after a workplace mediation in November 2017 (a period of almost two years).
 - The AMS' observations ought to have led to his considering the examples offered under Class 2 impairment of Table 11.1 of the PIRS in order to assess the respondent's clinical impairment in this class.
 - The AMS' reasons for decision did not take into consideration all information provided to him in the interview.
 - If clinical observation is to be upheld and arguably preferred to any other evidence in the assessment of a person's permanent impairment, the AMS ought to have recorded that the behaviours he noted about the respondent under examination were consistent with the examples provided in Class 2 impairment, under Table 11.1. For this reason, there were incorrect criteria applied in the current assessment.
 - In respect of concentration, persistence and pace, the AMS rated Mr Khalilian as Class 3.
 - Mr Khalilian has been able maintain full time employment since November 2017. Arguably, the fact that he maintained this employment as an assistant system engineer would require him to read more than occasionally, and more complex items than news articles. Maintaining employment in a full-time engineering position would imply that the Mr Khalilian can and most likely does follow complex instructions.
 - There is available evidence in the MAC which should have prompted consideration of a higher functioning class assessment under Table 11.5. On page 4 of the MAC the AMS recorded that "after work he does research on his computer or watches television". The fact that Mr Khalilian is most likely able to

maintain employment which would involve reading, research and following directions is inconsistent with a moderate impairment rating.

- Mr Khalilian's reported behaviour complies with Class 1 criteria.
- In respect of employability, the AMS rated Mr Khalilian as Class 2. Mr Khalilian disclosed that he is working five days per week from 7.30 am to 3.00 pm, in his pre-injury position. The AMS has erred as Mr Khalilian has been able to maintain his fulltime pre-injury position since November 2017. It was open to the AMS to find the correct class at Class 1 impairment.
- It ought to have been apparent in Mr Khalilian's overall history that notwithstanding his perception of his workplace environment, he has been able to maintain full-time work as an assistant system engineer since November 2017. This information was disclosed to the AMS and ought to have been a relevant factor in considering his overall impairment rating.
- There has been an incorrect application of relevant assessment criteria and there was a demonstrable error in the AMS' assessment.
- Noting *Mahenthirarasa v State Rail Authority of New South Wales and Ors* [2007] NSW SC 22 (*Mahenthirarasa*) case, the AMS erred in not applying all the information he obtained during his interview when undertaking his assessment of the respondent worker against the PIRS classes. The evidence available to the AMS, in the referral documents and from his own clinical examination, suggested that it would be plausible for the doctor to reach a different conclusion under the PIRS categories than he has recorded. This was more than a difference in opinion, noting that the discrepancy in this information if compared, for example, to Dr Bisht's assessment was based on clinical records rather than clinical opinion.

20. The respondent's submissions include the following:

- In respect of self-care and hygiene, the observation by the AMS of Mr Khalilian in the examination were not inconsistent with his findings in respect to the assessment under self-care and hygiene.
- The fact that Mr Khalilian was neatly dressed and did not smell malodourous does not mean that he does not fit the criteria under Class 3. Class 3 of self-care and hygiene states that the worker needs prompting to shower daily and wear clean clothes. If prompted, there is no reason why Mr Khalilian would not present as he did on the day of the AMS's examination. The appellant's references to the undertaking of domestic chores (such as mowing the lawn and washing up after meals) and being able to maintain full time employment are not relevant to the AMS's assessment under self-care and hygiene.
- The AMS has considered his observations of Mr Khalilian, and together with his clinical judgement, has made the correct assessment in respect of self-care and hygiene. Incorrect criteria were not applied in respect of this aspect of the assessment.
- In respect of concentration, persistence and pace, the AMS stated at page 11 of his Medical Assessment Certificate (MAC) that Mr Khalilian continues to work in his previous position on a full-time basis, but said he is performing poorly and is isolated from his work group. Further, the AMS stated that he said he does not have the confidence to attempt the more difficult jobs and had unsuccessfully been applying for other positions.

- The assertion that Mr Khalilian is able to maintain full-time employment does not indicate that he should not fall into Class 3 under concentration, persistence and pace. The appellant made a number of assumptions in respect of the work undertaken and no consideration was given to Mr Khalilian's performance in this role. Mr Khalilian is performing poorly and is isolated from his work group. This indicates that Mr Khalilian is not able to follow complex instructions or undertake difficult tasks.
- The AMS has not applied incorrect criteria and fact considered the entirety of the evidence, exercised his clinical judgement and applied this to the assessment under this category.
- In respect of employability, Mr Khalilian did not return to his pre-injury position on a full-time basis but returned to a different position.
- Mr Khalilian stated at paragraph 43 of his statement at page 5 of the annexures to the Application to Resolve a Dispute (ARD) that his role was an associate system engineer. At paragraph 45 he stated that he was encouraged to move into a program known as the E2E Project. It is during his secondment to the E2E Project that he suffered the psychological injury, the subject of this claim. At paragraph 69, he states that he returned to his role as an associate system engineer, but at paragraph 75 he stated that he was to return to the E2E Project. He was then in that project for a period of time before returning to his substantive position. At paragraph 161 of his statement at page 17 of the ARD, he states that he attended a meeting with the appellant employer. It was during this meeting that he was offered the opportunity to return to his substantive position. As stated, he returned due to financial reasons and understood that there would be little contact with the employees who had contributed to his psychological injury.
- Mr Khalilian fits into Class 2, given that he is able to work full-time and 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.
- The appellant relied on the case of *Mahenthirarasa* and submitted that the AMS has erred in not applying all the information he obtained during his interview when undertaking his assessment of Mr Khalilian against the PIRS classes. This is a misinterpretation of *Mahenthirarasa*. The AMS has information through the evidence and his clinical examination of Mr Khalilian to support the findings made. It is not the case that the AMS is required to apply all of the information he obtained during his interview. The AMS must exercise his clinical judgment and based on his examination and questioning of Mr Khalilian and the entirety of the evidence before him, place Mr Khalilian into the appropriate class.
- The AMS has taken into account the medical evidence, exercised his clinical judgment and made the correct assessment of Mr Khalilian's WPI resulting from his psychological injury. The AMS has not applied incorrect criteria or made a demonstrable error in respect of the medical assessment certificate.
- The MAC should be confirmed.

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. Though the power of review is far ranging it is nonetheless confined to the matters that can be the subject of appeal. Section 327(2) of the 1998 Act restricts those matters to the matters about which the AMS certificate is binding. 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.
24. 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) was made out, in relation to the AMS's assessment of Mr Khalilian's permanent impairment.

Discussion

25. The 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.
26. The appellant submitted that the AMS' WPI assessment of Mr Khalilian, was incorrect against the criteria in the PIRS tables within the Guidelines. In particular, there was a misapplication of the PIRS criteria in respect of the following ratings.
 - (a) Table 11.1, for self-care and personal hygiene;
 - (b) Table 11. 5, for concentration, persistence and pace, and
 - (c) Table 11.6, for employability.
27. The AMS is required to interview the worker and provide his assessment of WPI and opinion based upon his own findings as at the date of the examination.
28. In *Parker v Select Civil Pty Ltd* [2018] NSWSC 140 (*Parker*) Harrison AsJ at [66] said:
 - "66. In relation to Classes of PIRS there has to be more than a difference of opinion on a subject about which reasonable minds may differ to establish error in the statutory sense...
 70. To find an error in the statutory sense, the Appeal Panel's task was to determine whether the AMS had incorrectly applied the relevant Guidelines including the PIRS Guidelines issued by WorkCover. Even though the descriptors in Class 3 are examples not intended to be exclusive and are subject to variables outlined earlier, the AMS applied Class 3. The Appeal Panel determined that the AMS had erred in assessing Class 3 because the proper application of the Class 2 mild impairment is the more appropriate one on the history taken by the AMS and the available evidence.

71. The AMS took the history from Mr Parker and conducted a medical assessment, the significance or otherwise of matters raised in the consultation is very much a matter for his assessment. It is my view that whether the findings fell into Class 2 or Class 3 is a difference of opinion about which reasonable minds may differ. Whether Class 2 in the Appeal Panel's opinion is more appropriate does not suggest that the AMS applied incorrect criteria contained in Class 3 of the PIRS. Nor does the AMS's reasons disclose a demonstrable error. The material before the AMS, and his findings supports his determination that Mr Parker has a Class 3 rating assessment for impairment for self-care and hygiene, that is to say, a moderate impairment of self-care and hygiene..."
29. In *Chalkias v State of New South Wales* [2018] NSWSC 1561, Adamson J noted that the worker alleged that the Medical Appeal Panel (MAP) failed to identify the error in the MAC which was a necessary jurisdictional prerequisite, and had erred by substituting its own opinion for that of the AMS. Adamson J found at [33]-[36] that the MAP reasons demonstrated that it had correctly understood and exercised its jurisdiction. The MAP was satisfied that the AMS had made errors relating to the grading of the self-care and personal hygiene category, and having identified the error, the MAP was entitled and obliged to review the assessment in relation to that category.
30. Adamson J found that the MAP's assessment of the self-care category did not amount to a mere difference of opinion of the kind described by Harrison AsJ in *Parker*, and that the MAP coming to a different assessment of that category did not "convert" its initial finding of error into a mere difference of opinion (at [36]). Adamson J dismissed the worker's appeal of a MAP's decision, finding there was no error of law or jurisdictional error.
31. The Panel reviewed the evidence in this matter.

Self-Care and Personal Hygiene

32. The appellant submitted that the AMS failed to apply the appropriate PIRS criteria with respect to the choice of ratings for self-care and personal hygiene. The appellant argued that the AMS incorrectly rated the appellant as Class 3 of "Table 11.1: PIRS-Self Care and Personal Hygiene" and that the AMS should have correctly rated the appellant to be in Class 2 in that category.
33. The examples under Table 11.1 in the Guidelines 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 are:
- "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".
34. In the PIRS Rating Form, the AMS assessed the appellant as Class 3 and wrote:
- "Mr Khalilian said he does not shower daily and it could be anything up to one or two weeks between showers. He said his wife pushes him to shower and to change his clothes. He is not regular with dental hygiene or with having his hair and beard trimmed. He often does not bother to have lunch. He is moderately impaired."
35. In his report dated 9 December 2018, Dr Yajuvendra Bisht rated Mr Khalilian as Class 2 for self-care and personal hygiene providing the following reasons: "Farshad is able to look after self-care in a regular fashion but not to the same standards as before, e.g. he eats most of his meals even when his wife is away on trips, but not the healthier options."

36. In a report dated 4 July 2018, Professor Michael Robertson assessed Mr Khalilian as Class 3 for self-care and personal hygiene providing the following reasons: "Mr Khalilian reports that he has to be 'dragged' out of bed and prompted to attend to his hygiene. His wife does all the cooking; otherwise, he would default to a poor diet."
37. The Appeal Panel considered whether the AMS had erred in making a Class 3 rating for self-care and personal hygiene. Associate Professor Robertson also rated the appellant as Class 3 for self-care and personal hygiene. The AMS on examination observed that Mr Khalilian was neatly casually dressed and was not malodorous. The AMS noted that Mr Khalilian had long grey hair and a long grey beard.
38. However, the AMS noted that Mr Khalilian did not shower daily and his wife pushed him to shower and change his clothes. It was open to the AMS to accept that history despite Mr Khalilian's appearance on the day of examination, especially in circumstances where he was accompanied to the AMS examination by his wife. Based on the evidence before the Appeal Panel, and for the reasons provided by the AMS in the MAC, the Appeal Panel considered that it was open to the AMS on the evidence to make an assessment of Class 3 for self-care and personal hygiene as moderate.

Concentration, persistence and pace

39. The appellant submitted that Mr Khalilian should be assessed as Class 1. The AMS had placed Mr Khalilian in Class 3 for concentration, persistence and pace. In particular, the appellant argued that Mr Khalilian had been able maintain full time employment since November 2017 and the ability to maintain his position as an assistant system engineer required him to read more than occasionally, and more complex items than news articles. The appellant argued that maintaining employment in a full-time engineering position lead to an inference that the Mr Khalilian could and most likely did follow complex instructions.
40. In the PIRS Rating Form, the AMS assessed Mr Khalilian as Class 3 and wrote:

"Mr Khalilian said he is able to concentrate with difficulty. He has to read sentences again and again to discern the meaning. He is constantly afraid he is missing something important. He said he constantly forgets to do tasks because he keeps putting them off. When he does something, he has to check to make sure he actually did it. There was evidence of impaired concentration in the interview when he lost his train of thought on a number of occasions. He is moderately impaired."
41. The AMS noted under "present symptoms":

"Mr Khalilian described significant anxiety which has an obsessional self-doubting quality. He is significantly demoralised and has begun to doubt his ability to do even the smallest task. He said he has extreme difficulty making decisions.... He finds decision making extremely difficult because he double thinks everything and is constantly checking. This is all complicated by procrastination because he is fearful of doing the wrong thing."
42. Under Table 11.6 in the Guides, Class 1 for concentration, persistence and pace the examples 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." The examples for Class 2 for concentration, persistence and pace, the examples 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 headache." The examples for Class 3 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."

43. In his report of 9 December 2018, Dr Bisht noted: "Farshad's concentration is not significantly affected, as evidenced by his ability to work in a full-time role doing pre injury duties."
44. In his report dated 4 July 2018, Associate Professor Robertson assessed the appellant as Class 3 for concentration, persistence and pace and noted: "Mr Khalilian reports that he can only read a few lines before losing focus and then has to reread material, and is at times quite forgetful."
45. The Appeal Panel considered whether the AMS had erred in making a Class 3 rating for concentration, persistence and pace. The Appeal Panel noted that during the examination the AMS observed evidence of impaired concentration in the interview when he lost his train of thought on a number of occasions. The Appeal Panel acknowledged that Mr Khalilian had been working full time for two years as an assistant systems engineer and that there was arguably a discrepancy between the Mr Khalilian's self-report and his function as an assistant systems engineer.
46. However, in relation to employment the Appeal Panel noted that Mr Khalilian told the AMS that he was performing poorly and was isolated from his workgroup. Mr Khalilian said that he did not have the confidence to attempt the more difficult jobs.
47. The descriptors in Class 3 are examples and not intended to be exclusive. On balance, and after taking into account the findings on examination, the medical evidence, and Mr Khalilian's statements, the Appeal Panel concluded that it was open to the AMS to make a Class 3 assessment on the evidence.

Employability

48. The appellant submitted that the AMS erred in making this rating as Mr Khalilian has been able to maintain his fulltime pre-injury position since November 2017. The appellant argued that the AMS failed to apply the appropriate PIRS criteria with respect to employability. The appellant submitted that he should be assessed as Class 1. The AMS had placed the appellant in Class 2 for employability.
49. Under Table 11.4 in the Guides, Class 1 for employability, the examples are:
"No deficit, or minor deficit attributable to the normal variation in the general population. Able to work full time. Duties and performance are consistent with the injured worker's education and training. The person is able to cope with the normal demands of the job."
The examples for Class 2 for employability 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 in a specific location due to travel required)."
50. The AMS in the PIRS Rating Form wrote:

"Mr Khalilian continues to work in his previous position on a full-time basis but said he is performing poorly and is isolated from his workgroup. He said he does not have the confidence to attempt the more difficult jobs. He believes they are leaving him alone in order to get rid of him. He has unsuccessfully been applying for other positions. He is mildly impaired."
51. In his report dated 4 July 2018, Associate Professor Robertson assessed the appellant as Class 2 for adaption (employability) and noted: "Mr Khalilian is working full-time duties albeit with modifications."

52. In a report dated 5 December 2018, Dr Bisht assessed the appellant as Class 1 for employability noting: "Farshad can work fulltime in a job similar to pre injury role."
53. Mr Khalilian developed symptoms when he was seconded to the position at Lidcombe (E2E Project). His symptoms improved when he returned to work at Macquarie Park but worsened again when he was sent back to Lidcombe (E2E Project) for several months. Mr Khalilian then returned to Macquarie Park and had problems working with Mr Thinakkone. These problems eventually resulted in Mr Khalilian being incapacitated for work. When Mr Khalilian had a graduated return to work in October and November 2017 it was agreed in a mediation that he would have limited contact with Mr Thinakkone.
54. The AMS wrote under "Brief history of the incident:
- "He said since then he has been totally isolated and does not receive any support. If he asks colleagues for help, they do not get around to it which means he is unable to finish various tasks. He feels days go by where he does not achieve anything and has a sense of being frozen out of the workgroup."
55. The AMS noted under "Work history including previous work history if relevant":
- "He started a computer repair and maintenance business which he ran in the local area for 6 or 7 years, but gave it away due to competition. He obtained a job in the Bigpond call centre and then in 2008 obtained his current position with Fujitsu Australia Ltd. Until his work injury he continued with his computer repair and maintenance business as a secondary form of employment."
56. The Appeal Panel considered whether the AMS had erred in making a Class 2 rating for employability. Mr Khalilian had been working fulltime at Macquarie Park since late 2017 but with limited contact with Mr Thinakkone. He had not returned to work at Lidcombe. His description of his performance since his return to work suggested that he was unable to cope with the normal demands of the job. Mr Khalilian was also unable to continue his computer repair and maintenance business as a secondary form of employment and therefore was performing less work than he did pre injury. The Appeal Panel considered, after taking into account the medical evidence, Mr Khalilian's statement and the MAC that it was open to the AMS to assess the Mr Khalilian's impairment for employability as mild being a Class 2.
57. In conclusion, the Appeal Panel did not consider that there has been an incorrect application of relevant assessment criteria, that is, the relevant Guidelines including the PIRS Guidelines or any demonstrable error in the AMS' assessment.
58. For these reasons, the Appeal Panel has determined that the MAC issued on 14 August 2019 should be confirmed.

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

A Jackson

Ann Jackson
Dispute Services Officer
As delegate of the Registrar

