

WORKERS COMPENSATION COMMISSION

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

Matter Number: M1-2237/19
Appellant: Angus Speedie
Respondent: State of NSW (NSW Police Force)
Date of Decision: 21 April 2020
Citation: [2020] NSWCCMA 76

Appeal Panel:
Arbitrator: Brett Batchelor
Approved Medical Specialist: Dr Lana Kossoff
Approved Medical Specialist: Dr Patrick Morris

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 19 August 2019, Angus Speedie (the appellant/Mr Speedie) lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Michael Hong, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 22 July 2019.
2. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):
 - deterioration of the worker's condition that results in an increase in the degree of permanent impairment,
 - availability of additional relevant information (being additional information that was not available to, and that could not reasonably have been obtained by, the appellant before the medical assessment appealed against),
 - the assessment was made on the basis of incorrect criteria, and
 - the MAC contains a demonstrable error.
3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel (the Panel) has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.
4. The workers compensation medical dispute assessment guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the Workers compensation medical dispute assessment guidelines.
5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4th ed* 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment, 5th ed* (AMA 5).

RELEVANT FACTUAL BACKGROUND

6. The appellant served for 17 years as a NSW police officer from 27 April 1990 when he was attested as a probationary constable until May 2007 when, as a result of his physical and/or psychological injuries, he was medically discharged while stationed at Coffs Harbour Police Station. During the time of his service he was stationed at Campbelltown, Liverpool and Bourke.
7. Throughout his career the appellant was exposed to many various traumatic events, including murders, suicides, the recovery of deceased persons, fatal motor vehicle accidents, riots and brawls, drug incidents and domestic violence matters. On 30 April 1996, he had the top of his right index finger amputated at the scene of an accident, and when he returned to work, was obliged to remain on restricted duties notwithstanding being cleared to return to full duties.
8. During his police career the appellant sustained right knee, left ankle and left knee injuries. He has had numerous operations on his right knee.
9. The appellant consulted his general practitioner in 2007 with increasing psychological symptoms and was referred to a psychologist for continued treatment. In May 2007 Mr Speedie was medically discharged from the NSW Police Force as a result of his Post-traumatic Stress Disorder (PTSD), depression and pain management issues in addition to his physical injuries.
10. The appellant was admitted to St John of God Hospital in about October 2015 to undertake the PTSD course to treat his increasing psychological and psychiatric symptoms. He had a further admission to this hospital for a PTSD course in about April 2016.
11. Since leaving the Police Force the appellant has engaged in several occupations. He worked as a pool attendant and became a first aid trainer. He performed occasional teachers' aide work at his son's school. He joined the Hunter Valley Training Company as a safety coordinator, where he worked full-time for several years before receiving a redundancy package.
12. Mr Speedie subsequently worked as a safety officer for Boral in Coffs Harbour on a full-time basis. After two years he made a sudden decision and walked off the job to move back to Sydney, due to a desire to return to his core group of friends. His family later followed him. He says that he was struggling psychologically. He started working for Camden Council as a work health and safety officer on a full-time basis where he has been for the last two years. He has missed some days at work and feels overwhelmed by anxiety. He has been using sick and annual leave.
13. Mr Speedie completed a Diploma in Work Health and Safety through TAFE and has largely kept up-to-date with his training.
14. On 12 July 2019, the appellant was assessed by the AMS, Dr Hong who issued the MAC dated 22 July 2019 containing an assessment of 11% whole person impairment (WPI). The grounds of his appeal against Dr Hong's assessment are set out in [2] above. Mr Speedie submits that he has suffered a further deterioration of his condition since the assessment on 12 July 2019. He was admitted to St John of God Hospital from 22 July 2019 until 9 August 2019 under the care of his treating psychiatrist, Dr Muhammad K Malik, who saw him on 15 July 2019 and reported worsening PTSD symptoms. The appellant alleges that, based on the records obtained from St John of God Hospital, his psychological and/or psychiatric injury further deteriorated, which required this admission.

PRELIMINARY REVIEW

15. The 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.
16. As a result of that preliminary review, the Panel determined that the worker should undergo a further medical examination because it is of the view that there is an error in the MAC in that the AMS, in assessing the appellant for concentration, persistence and pace at a rating of 1, noted that such assessment was consistent with the assessment both the independent medical examiners Dr Peter Anderson¹ and Dr Deepinder Miller² that substantial improvement had been achieved through treatment, with 2% addition for treatment effects. However, the AMS has not taken that into account when making his assessment of WPI. Both Dr Anderson and Dr Miller have taken this into account when making their assessments. When summarizing the appellant's injuries and diagnoses at [7] in the MAC, the AMS said that,

“[A]lthough Mr Speedie has had consistent treatment with his psychologist and psychiatrist, and had an admission with day program, and taken a number of medications *he remains significantly impaired* and has maintained his current level of functioning for more than two years.”³ (emphasis added)
17. The AMS found no inconsistency in the appellant's presentation.
18. The Panel was also of the view that the further medical examination should take place not less than six months after his admission to St John of God Hospital for the period from 22 July 2019 to 9 August 2019.

Fresh evidence

19. Section 328(3) of the 1998 Act provides that evidence that is fresh evidence or evidence in addition to or in substitution for the evidence received in relation to a medical assessment appealed against may not be given on an appeal by a party unless the evidence was not available to the party before the medical assessment and could not reasonably have been obtained by the party before that medical assessment.
20. The appellant seeks to admit the following evidence:
 - (a) medical records of Dr Muhammad K Malik including reports dated 15 July 2019 and 19 August 2019, and
 - (b) inpatient medical records of St John of God Hospital in respect of the appellant's admission between 22 July 2019 and 9 August 2019.

The appellant notes that these documents post-date the appellant's assessment by the AMS and accordingly, were not considered by the AMS in making his assessment.

21. The appellant submits that the evidence is relevant to the further deterioration of his injury since the assessment by the AMS of 12 July 2019. The appellant submits that the evidence was not available and could not reasonably have been obtained because he was admitted to St John of God Hospital on 22 August [sic, July] 2019 following an appointment with Dr Malik on 15 July 2019, both of these dates falling after the assessment by the AMS on 12 July 2019. On 15 July 2019 Dr Malik reported that the appellant's PTSD symptoms had worsened and had started to have suicidal thoughts and felt hopeless and helpless.

¹ Reports dated 2 and 16 September 2016, Appeal Papers pp 407 and 471.

² Reports dated 30 November 2017, Appeal Papers pp 419 and 546.

³ Appeal Papers p 252.

22. The AMS was therefore unable to take into account the further deterioration of the appellant's injury or consider the evidence in respect of that deterioration.
23. The respondent opposes the admission of the fresh evidence sought to be relied upon by the appellant, relying on s 328(3) of the 1998 Act and what was decided by Deputy President Fleming in *Ross v Zurich Workers Insurance*⁴ (*Ross v Zurich*). Section 328(3) states that evidence that is fresh evidence or evidence in addition to or in substitution for evidence received in relation to the medical assessment appealed against may not be given on appeal by a party to the appeal unless the evidence was not available to the party before the medical assessment or could not reasonably have been obtained before that medical assessment.
24. In *Ross v Zurich* at [11] the Deputy President referred to several authorities which considered the tests at common law for the introduction of fresh evidence in appellate proceedings before the courts. These are:

“...firstly, that the evidence which is sought to be admitted on appeal was not available to the appellant at the time of the original proceedings or could not have been discovered at that time with reasonable diligence, and secondly that the evidence is of such probative value that it is reasonably clear that it would change the outcome of the case These tests are addressed to the underlying principle of the need for finality in litigation and the importance of the ability of the successful party to rely on the outcome of litigation. They are also addressed to the fundamental demands of fairness and justice in the instant case.” (authorities omitted)
25. The respondent also relies upon what the Supreme Court stated in *Pitsonis v Registrar of the Workers Compensation Commission & Anor*⁵ (*Pitsonis*) which was that competing assertion and speculation are insufficient to demonstrate error in a MAC. When new evidence is asserted to be evidence of either error or an incorrect assessment on the part of the AMS, these will not establish a ground of appeal, and error needs to be established with reference to the documents that were before the AMS at the time of assessment.
26. The respondent submits that it does not appear that any effort was made by the appellant to seek the opinion of Dr Malik prior to the assessment of the AMS, nor does Dr Malik appear to have provided a report prior to the AMS assessment. No report from the doctor was included within the documents in evidence and attached to the Application to Resolve a Dispute (the ARD).
27. The respondent submits that Dr Malik appears to be the appellant's treating specialist and that the appellant could have requested a report from him prior to the AMS assessment for the doctor to provide an assessment of the severity of his condition prior to the assessment. As such, it is submitted that the reports of Dr Malik ought not be admitted into evidence as an opinion from the doctor could have been obtained prior to the assessment of the AMS. The respondent submits that the reports of Dr Malik simply represent an alternate opinion as to the appellant's condition that would have been available prior to the AMS assessment, if the appellant had elected to obtain it.
28. The respondent submits that the contents of the reports of Dr Malik are not evidence of the appellant's condition having deteriorated, as the opinion of the doctor is unable to be compared with any opinion from the same doctor prior to the AMS assessment. The respondent submits that as such, the reports are not of such probative value that it would be reasonably clear that the opinions therein would change the outcome of the case. The appellant ought to have obtained an opinion from the doctor who initially provided an assessment of his condition, namely Dr Peter Anderson. The respondent submits that there is no reason why this was not done.

⁴ [2002] NSWCCPD 7.

⁵ [2007] NSWSC 50.

29. In addition, while the respondent concedes that the clinical notes of St John of God Hospital in respect of the period following the examination of the appellant by the AMS would not have been available to the appellant prior to the assessment, there is a significant amount of documentation that pertains to the period before this that could not be said to be unavailable to the appellant, yet was not included in the ARD.
30. The respondent therefore submits that the appeal ought to be denied on the grounds of either s 327(a) or 327(b) of the 1998 Act.
31. In the alternative, if the appeal is allowed, the respondent submits that the Panel must necessarily find either that the appellant continues to suffer the same or similar permanent impairment as assessed by the AMS or, alternatively, that his condition has not yet reached maximum medical improvement.
32. The respondent further submits that, given that it appears that the apparent deterioration in the appellant's condition was said to be in fact caused by the assessment conducted by the AMS, there ought to be an apportionment of the appellant's permanent impairment applied equal to the difference between the assessment conducted by the AMS and that following any further assessment conducted following the current appeal.
33. The Panel is of the view that, while the records of Dr Malik up until the date of examination of the appellant by the AMS may have been available and reasonably obtained before the medical assessment, it was Dr Malik (who from his letterhead appears to practice at St John of God Hospital) who recommended Mr Speedie's admission to the hospital in his report dated 15 July 2019⁶. That evidence must be considered together with the other evidence which the appellant seeks to have admitted, namely, the clinical records of St John of God Hospital⁷. The appellant relies on these clinical notes in support of his submissions that there has been a deterioration in his condition that results in an increase in the degree of permanent impairment (s 327(1)(a) of the 1998 Act). In support of this ground, the appellant relies upon the availability of additional information that was not available to him, and could not reasonably have been obtained by him before the medical assessment appealed against (s 327(1)(b) of the 1998 Act). The hospital clinical notes in respect of the appellant's admission to St John of God Hospital from 22 July 2019 to 9 August 2019 clearly were not available to the appellant before the AMS examination.
34. The hospital clinical notes do also pertain to a period of treatment of the appellant at the hospital before the AMS examination, principally the appellant's admission for periods in 2015 and 2016, which were available to the appellant before the AMS examination. However, these periods of admission to the hospital are referred to in other evidence that was attached to the ARD and therefore in evidence before the AMS when he made his assessment.
35. The appellant was admitted to the St John of God Hospital for five weeks in 2015 for a residential PTSD programme, a fact referred to by Dr Peter Anderson in his report dated 16 September 2016⁸. He was also admitted to the hospital between 4 April 2016 and 29 April 2016 for a PTSD programme, a fact referred to in the Progress Report of Clare Russell-Williams, psychologist of the St John of God Hospital, dated 2 May 2016⁹.
36. In any event, the appellant does not seek to rely on the records of St John of God Hospital other than those that relate to his admission to the hospital between 22 July and 9 August 2019.

⁶ Appeal Papers p 22.

⁷ Appeal Papers p 46.

⁸ Appeal Papers p 410.

⁹ Appeal Papers p 404.

37. The Panel is of the view that the records of Dr Malik and the St John of God Hospital in respect of the appellant's admission between 22 July and 9 August 2019 are of such probative value that it is reasonably clear that it would change the outcome of the case. This evidence demonstrates a deterioration in the appellant's condition that results in an increase in the degree of permanent impairment. This increase is evident from the report of Dr Patrick Morris set out hereunder
38. The Panel determines that the following evidence should be received on the appeal:
- (a) medical records of Dr Muhammad K Malik including reports dated 15 July 2019 and 19 August 2019, and
 - (b) inpatient medical records of St John of God Hospital in respect of the appellant's admission between 22 July 2019 and 9 August 2019.

EVIDENCE

Documentary evidence

39. 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.

Further medical examination

40. Dr Patrick Morris of the Appeal Panel conducted an examination of the worker on 27 March 2020 and reported to the Appeal Panel.

Medical Assessment Certificate

41. 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

42. Both parties made written submissions. They are not repeated in full but have been considered by the Appeal Panel.
43. In summary, the appellant submits that he has suffered a further deterioration of his injury since his appointment with the AMS and that as a result of this, further evidence relating to this deterioration has become available for consideration. The appellant's submissions in respect of deterioration of his condition and admission of fresh evidence are set out above at [17]-[20] above.
44. The appellant further submits that the AMS used incorrect criteria in making his assessment under the psychiatric injury rating scale (PIRS) in respect of:
- (a) self care and personal hygiene;
 - (b) travel;
 - (c) concentration, persistence and pace, and
 - (d) employability.
45. The appellant refers to what Wood CJ at CL said in *Campbelltown City Council v Vegan*¹⁰ in respect of the ground of appeal of "incorrect criteria", namely that the Police Minister's second reading speech (NSW Legislative Assembly, Hansard 19 June 2001, p 14772), tends to suggest that the "criteria" upon which assessment is to be based "...are to be found in any relevant guides, including guides issued by WorkCover which have been issued for the assessment of impairment and that appeal lies where they have been incorrectly applied."

¹⁰ [2004] NSWSC 1229.

46. The appellant also refers to a decision of a medical appeal panel in *NSW Police Force v Daniel Watk*¹¹ which noted that the question of the classification under the PIRS scale is one for the AMS to determine having considered the balance of the information before him. The decision noted that there may be some grey areas but "...unless a glaringly improbable categorisation has been made or it can be demonstrated that the AMS was unaware of significant factual matters" then the assessment is a matter for the AMS based on clinical experience and the assessment of the evidence before him.
47. The appellant makes submissions in respect of his classification pursuant to the PIRS in respect of the four matters listed above in [44]. He submits that on the available evidence the ratings should be as follows:
- (a) self-care and personal hygiene – Class 3;
 - (b) travel – Class 2;
 - (c) concentration, persistence and pace – Class 2, and
 - (d) employability – Class 4.
48. In respect of concentration, persistence and pace, the appellant submits that Class 1 rating constitutes an incorrect application of criteria. He notes that the Guidelines provide that Class 1 rating reflects "no deficit or minor deficit" and may be indicated where a worker is "able to pass a TAFE or university course within a normal time frame." The appellant submits that the AMS has failed to take into account the balance of the evidence available to him, and that notwithstanding omissions noted in the submissions, the evidence before the AMS suggests a greater impairment of concentration, persistence and pace than that indicated by the AMS.
49. The appellant refers to the decision of Malpass AJ in *Mahenthirasa v State Rail Authority of New South Wales & Ors*¹², who in turn referred to the decision of Hoeben J in *Merza v Registrar of the Workers Compensation Commission & Anor*¹³ (*Merza*) to submit that a demonstrable error would essentially be an error for which there is no information or material to support the finding made – rather than a difference of opinion. The appellant repeats the submissions made in respect of incorrect criteria and submits further that these matters also reflect a demonstrable error by the AMS.
50. In reply, the respondent's submissions in respect of the grounds of appeal referred to in s 327(a) and (b) of the 1998 Act are summarised above at [23]-[32].
51. The respondent submits that it is incumbent on the appellant to establish the existence of error within the MAC as prescribed under s 327(c) or (d) of the 1998 Act. For an appeal to be successful on the ground of demonstrable error, there must be an error of fact or law which is readily apparent on the face of the MAC, citing *NSW Police Force v Derek Fleming*¹⁴ and *Merza*. The respondent submits that a difference in opinion as to whether a claimant ought to be classed in one class or another is insufficient to amount to a demonstrable error or incorrect criteria. There needs to be "more than a difference of opinion on a subject on a subject about reasonable minds may differ" (relying on what was said by Harrison AJ in *Parker v Select Civil Pty Ltd*¹⁵).
52. The respondent draws attention to what the AMS says at [10] of the MAC under the heading "Reasons for Assessment", and in particular at [10(c)] where the AMS takes into account what the appellant says in his statement dated 25 February 2019 and what Dr Parsonage and Dr Anderson say in their reports dated 7 November and 1 December 2014 (Dr Parsonage) and 2 September 2016 (Dr Anderson). The respondent submits that the AMS, in the case of the report of Dr Anderson, specifically took time to address each assessment in term of the various PIRS categories, and to explain why his assessment may

¹¹ NSWWCMA 36.

¹² [2007] NSWSC 22.

¹³ [2006] NSWSC 393.

¹⁴ [2010] NSWSC 216.

¹⁵ [2018] NSWSC 140 at [66].

have differed in terms of certain categories. The respondent says that, in light of such a thorough assessment, it cannot be said that the AMS did not consider the material that was available to him on assessment.

53. The respondent submits that the appeal on the basis of demonstrable error should fail; there is no such error on the face of the MAC.
54. The respondent submits that it is insufficient for the Panel to overturn an assessment of an AMS and substitute its own rating based on a difference in opinion as to whether one particular class rating in respect of a PIRS category would be more appropriate than that as indicated by the AMS. Rather, it is incumbent on the Panel to first make a determination that the assessment of the AMS was in fact made in error, and that the assessment must therefore be set aside.
55. The respondent submits that the primary enquiry to be made is not as to whether the assessments of the AMS were in accordance with the material that was before him, but rather whether, following his clinical interview of the appellant and review of the documentation, his assessment of the appellant's psychological condition correctly accords with the relevant ratings according to the PIRS categories indicated within the MAC.
56. The respondent then makes submissions as to the four categories in the PIRS assessment of the AMS with which the appellant takes issue. The respondent submits that it is misguided for the appellant to seek to establish error on the part of the AMS in failing to take account of material that was not available to him at the time of the assessment. In this regard the respondent says that the appellant seems to seek to establish error or incorrect criteria based on the new evidence of Dr Malik. Those reports were not in existence at the time of the AMS Assessment.

FINDINGS AND REASONS

57. 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.
58. 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.
59. As noted above at [16], the Panel is of the view that there is an error in the MAC in that the AMS did not add the 2% adjustment for treatment effects when making his assessment whereas both Dr Anderson and Dr Miller have taken this into account when making their assessments. For this reason and having regard to the appellant's grounds of appeal pursuant to s 327(a) and (b) of the 1998 Act, the Panel determined that the appellant should be re-examined by a member of the Panel, Dr Morris.
60. The report of Dr Morris is as follows:

"27 March 2020

Assessment for Medical Appeal Panel:

RE: Mr Angus Speedie
Claim Reference: M1- 2237/19
Date of Injury: 1 November 2003 (deemed)
Date of Assessment: 27 March 2020 via Zoom video platform

In this assessment I focussed upon the history that has occurred since Mr Speedie saw Dr Michael Hong for a Medical Assessment Certificate on 12 July 2019.

Since that time Mr Speedie has continued to see Dr Malik, his treating psychiatrist on about a two weekly basis. He takes the medication Lovan 20mg two to three tablets a day depending how he is feeling and Minipress 5mg in the morning and 10mg at night.

Mr Speedie was admitted to the Xavier Unit of St John of God Hospital Richmond from late July 2019 for three weeks as a result of his suicidal thoughts and depressed mood. He attended groups and saw Dr Malik once or twice per week. During this admission he said that the medication Minipress 15mg at night was commenced to help with his sleep. Mr Speedie said that the admission reduced his suicidal thoughts and he felt less depressed for a period after his discharge. He said since then his symptoms have worsened slightly but he has not had such severity of suicidal thoughts again.

Mr Speedie said that his Minipress dosage was changed to 5mg in the morning and 10mg at night in February 2020 due to an apparent episode of hypotension. Mr Speedie said he has started to see a psychologist at Macarthur Pain Clinic but has only seen her on two occasions. The last time he saw her was more than a month previously.

Mr Speedie said that he currently feels depressed most of the day every day. He believes his motivation has worsened since last July. He said that he is 'just existing'. He reports having very little energy, feeling tired and sleeping much of the time. He reports having very little pleasure or enjoyment in life. He reports having reduced concentration. He said that he was not able to do a re-accreditation course for his work as the Health and Safety Officer because of his reduced concentration. He complains of very poor short-term memory and said he forgets what he has said to his wife and needs constant reminders from her. He reports having a reduced appetite. He said he thinks of suicide but would not act upon these thoughts. He continues to have poor sleep with a broken sleep pattern. He said his irritability has worsened since July 2019 and he is generally more agitated. He has frequent intrusive traumatic memories of the traumatic events he experienced in the police force. He said that hearing people yelling and certain smells trigger the intrusive traumatic memories. Being near places where violent events occurred during his police work trigger the memories and he tries to avoid these places. He avoids watching news items or reading newspapers because they trigger these traumatic memories. He said seeing people of Middle Eastern appearance trigger the intrusive traumatic memories. He experiences frequent nightmares relating to his traumatic events that he went through in the police but said that these nightmares are slightly less frequent with the Minipress medication he takes. He said that he is very socially withdrawn.

Mr Speedie said he has continued to work at Camden Council as a Work Health and Safety Advisor. After the hospital admission from July to August 2019 he had about three months off work. He returned to work two days a week for two months and then three days a week for two months. For the past three or four weeks he has been trialling working four days per week but is not coping with the workload because of his reduced concentration and anxiety levels. He felt that he was managing better on three days a week but felt that he coped much better with work when he was only working two days a week. He said that his work hours are from 7 to 7.5 hours per day.

Mr Speedie lives with his wife who works in administration at NSW Fire and Rescue. They have four children aged 23, 21, 19 and 10. The two youngest children live at home and the 19 year old has an intellectual disability.

On mental state examination Mr Speedie was a depressed looking, bearded man with grey hair. He was cooperative but tense in his manner. His speech was of normal rate and flow. His mood was depressed and anxious. His affect was appropriate to his mood and unreactive. There was no formal thought disorder and no psychotic symptoms.

Mr Speedie was alert and orientated. There were no impairments in cognitive testing on assessment at the interview.

WPI Assessment

From the history given to me it appears that Mr Speedie's psychiatric condition has slightly worsened since last July when he was assessed for the Medical Assessment Certificate by Dr Michael Hong on 12 July 2019. This is despite the three week hospital admission to St John of God Hospital Richmond and the continuing regular psychiatric consultations and medications that have been prescribed by his treating psychiatrist Dr Malik. I believe that Mr Speedie's condition is now well-stabilised and is unlikely to change substantially in the next year with or without further medical treatment.

I completed a whole person impairment rating for Mr Speedie as he presented during this assessment.

I rated Mr Speedie a Class 3, Moderate impairment for Self Care and Personal Hygiene. Mr Speedie said that his wife now does all the cooking, shopping, clothes washing and most of the house cleaning. He frequently misses meals. He needs prompting from his wife to shower and change his clothes on a regular basis. In my opinion he needs his wife's support to live independently.

I rated Mr Speedie a Class 3, Moderate impairment for Social and Recreational Activities. Mr Speedie generally remains quiet and withdrawn at home. He only occasionally goes to watch his son play soccer at his wife's prompting. He never leaves his home by himself for any social or recreational activities. He said that his wife's family visits him at their home.

I rated Mr Speedie a Class 1 for Travel. Despite being less comfortable driving by himself than previously, Mr Speedie is able to drive by himself to and from work and for short trips for his work. He is able to drive by himself from his home to Richmond on a fortnightly basis to see his psychiatrist, a trip of about one hour's duration each way.

I rated Mr Speedie a Class 2, Mild impairment for Social Functioning. Mr Speedie reported that there is a lot of strain in his relationship with his wife. They are now sleeping in separate rooms due to his disturbed sleep. He continues to live with his wife and two younger children. He said that his relationship with his children has been strained but remains good. He has lost a lot of friendships through his social withdrawal.

I rated Mr Speedie a Class 3, Moderate impairment for Concentration, Persistence and Pace. Mr Speedie reports significant problems with reduced concentration and poor memory. He said that he can only read about a two page report at work if he needs to. He finds it difficult to read policy and procedure manuals at work and needs to check with others about these. He said that he could not complete a re-accreditation training course for his work because of his reduced concentration. He said that he frequently forgets what he has to do at home and needs reminders from his wife. He said that he used to manage the household finances but has handed this over to his wife because of his poor concentration.

I rated Mr Speedie a Class 3, Moderate impairment For Employability. Mr Speedie continues to work as a Work Health and Safety Advisor for Camden Council. He is currently working four days per week (30 hours per week) but said that he is not coping with this. He said that he coped with work better when he was working three days a week but was still finding it difficult to manage. He said that he was managing his work reasonably well when he was only working two days a week. This is a less stressful and qualitatively different position to his pre-injury employment as a NSW police officer.

Median Score Class: 3
Aggregate Score: 15
No pre-existing impairment.
Final WPI: 15%.

This is an increase from the 11% WPI assessed by Dr Hong on 12 July 2019, reflective of a worsening in Mr Speedie's clinical condition since that time despite the treatment he has received.

I have not made an adjustment for the effects of treatment as there has not been an apparent or substantial total elimination of the claimant's level of permanent impairment as a result of his long term psychiatric treatment.

Dr Patrick Morris

Approved Medical Specialist"

61. It is apparent from Dr Morris' examination and assessment of the appellant that there has been a deterioration in his condition since the assessment of the AMS.
62. An appeal under s 327(a) of the 1998 Act was considered in *Riverina Wines Pty Ltd v Registrar of the Workers Compensation Commission of NSW & Ors*¹⁶. This matter involved an appeal against the assessment in a MAC in respect of the loss of efficient use of a worker's right arm, assessed in accordance with the Table of Disabilities.
63. In the Court of Appeal judgement Campbell JA stated at [94] (Hodgson JA and Handley AJA agreeing) that:

"Considering that submission involves, first, construing section 27(3)(a). 'Deterioration' of a person's condition is an inherently relational concept. It involves the condition in question having become worse than it previously was, at some particular point in time. In my view, the 'deterioration' that section 327(3)(a) talks of is a deterioration from the degree of impairment that has been certified by the MAC, over the time since the examination or examinations on the basis of which the MAC was issued took place. That conclusion follows from the fact that the appeal in question is, as section 327(2) requires, against a matter as to which the assessment of an AMS certified in a MAC is conclusively presumed to be correct."
64. The Panel's finding is that there was a deterioration in the appellant's condition after the assessment by the AMS and by the time he was admitted to St John of God Hospital on 22 July 2019. This is evident from the report of Dr Malik dated 15 July 2019 and the inpatient records of the hospital in respect of that admission.

¹⁶ [2007] NSWCA 149.

65. The Panel accepts Dr Morris' assessment. Having regard to the additional relevant information admitted into evidence and the findings and assessment of Dr Morris, the Panel finds that there has been a deterioration in the appellant's condition that results in an increase in the degree of permanent impairment. That deterioration continued to the date of the assessment by Dr Morris. Dr Morris also finds the appellant's condition is now well established and is unlikely to change substantially in the next year with or without further medical treatment.
66. In view of the acceptance by the Panel of the assessment of Dr Morris, it is not necessary to consider the respondent's submissions in respect of the other grounds of appeal referred to in s 327(c) or (d) of the 1998 Act. However, the Panel notes the assessment in respect of concentration, persistence and pace in Class 3, and accepts the submissions of the appellant referred to in [47] above in respect of this category.
67. The Panel does not accept the respondent's submission that, if the appeal is allowed, it must necessarily find either that the appellant continues to suffer the same or similar impairment as assessed by the AMS, or that his condition has not reached maximum medical improvement. The assessment of Dr Morris addresses this submission.
68. The Panel does not accept the respondent's submission that, given that it appears that the apparent deterioration in the appellant's condition was said to be in fact caused by the assessment conducted by the AMS, there ought to be an apportionment of the appellant's permanent impairment applied equal to the difference between the assessment conducted by the AMS and that following any further assessment conducted following the current appeal¹⁷.
69. The Panel notes that the appellant was admitted to St John of God Hospital for treatment on two prior occasions in 2015 and 2016, and that the condition of PTSD waxes and wanes over time; in some cases, it may never be stable. The appellant was required to undergo the assessment by the AMS in order to determine his level of WPI, and the progress in the appellant's condition over the years since his injury in demonstrative of this point.
70. For these reasons, the Appeal Panel has determined that the MAC issued on 22 July 2019 should be revoked, 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*.

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar



¹⁷ See [17] at Appeal Papers p 240.

WORKERS COMPENSATION COMMISSION

APPEAL PANEL MEDICAL ASSESSMENT CERTIFICATE

Injuries received after 1 January 2002

Matter Number: 2237/19
Applicant: Angus Speedie
Respondent: State of NSW (NSW Police Force)

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 Dr Michael Hong 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)
1.Psychological	November 2003 (deemed)	Ch 11 pp 55-60	14	15	0	15
Total % WPI (the Combined Table values of all sub-totals)					15	

Brett Batchelor
Arbitrator

Dr Lana Kossoff
Approved Medical Specialist

Dr Patrick Morris
Approved Medical Specialist

21 April 2020

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*.

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar

