

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 4679/19
Applicant: Pivot Communications Pty Ltd
First Respondent: Workers Compensation Nominal Insurer
Second Respondent: Nicholas Geracitano
Date of Determination: 22 June 2020
Citation: [2020] NSWCC 207

The Commission determines:

1. I am not satisfied the second respondent sustained a psychological injury pursuant to section 4 of the *Workers Compensation Act 1987* to which his employment with the applicant was the main contributing factor.
2. Pursuant to section 145 (4) of the *Workers Compensation Act 1987* the Commission determines that the applicant is not liable to reimburse the first respondent the sum of \$50,234.04 as claimed in the Notice to Reimburse issued on 2 August 2019.

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

Jill Toohey
Arbitrator

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

S Naiker

Sarojini Naiker
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Pivot Communications Pty Limited (the applicant) seeks a determination as to its liability to reimburse the Workers Compensation Nominal Insurer (the first respondent) for compensation payments made to former employee, Nicholas Geracitano (the second respondent), in respect of a psychological injury.
2. On 2 November 2018, Mr Geracitano claimed compensation for “psychological trauma” as a result of being harassed and bullied while employed by the applicant.
3. The applicant did not maintain a policy of insurance for the purposes of section 140(2) of the *Workers Compensation Act 1987* (the 1987 Act) on that date.
4. The first respondent accepted liability for Mr Geracitano’s injury and paid weekly benefits compensation and medical expenses pursuant to sections 36, 37 and 60 of the 1987 Act.
5. By a Notice to Reimburse dated 2 August 2019 in accordance with section 145(1) of the 1987 Act, the first respondent sought reimbursement from the applicant of \$50,234.04 being the sum of weekly benefits from 15 November 2018 to 24 July 2019, and medical expenses, paid to Mr Geracitano.
6. By a Miscellaneous Application lodged on 10 September 2019, the applicant applies under section 145(3) of the 1987 Act for a determination as to its liability in respect of the payments concerned.
7. At the hearing, Mr Geracitano’s claim was clarified as one for psychological injury:
 - (a) variously described as an Adjustment Disorder; Adjustment Disorder with depressed and anxious mood; Chronic Adjustment Disorder with Mixed Depressed and Anxious Mood within the meaning of section 4(b)(i) of the 1987 Act;alternatively,
 - (b) by way of aggravation, exacerbation, acceleration or deterioration of a pre-existing alcohol disorder within the meaning of section 4(b)(ii) of the 1987 Act.

ISSUES FOR DETERMINATION

8. The following issues remain in dispute:
 - (a) whether Mr Geracitano sustained a psychological injury pursuant to section 4 of the 1987 Act;
 - (b) whether he is precluded from compensation by reason of section 151A of the 1987 Act.
9. No submissions were made as to the extent of weekly payments and medical expenses to which Mr Geracitano may be entitled should he succeed on injury.

PROCEDURE BEFORE THE COMMISSION

10. The proceedings have a lengthy history.
11. At a telephone conference on 8 October 2019, I directed Mr Geracitano be joined as a party, and the first respondent serve on him copies of all documents filed in the proceedings.
12. At a further telephone conference on 7 November 2019, Mr Mark Nelson appeared for Mr Geracitano. He advised he had received the documents the previous day and had been unable to read them and obtain instructions, and he wanted to prepare a further statement of Mr Geracitano's evidence. There was no objection and the matter was adjourned to 10 December 2019. As Mr Geracitano's medical history was the subject of some dispute, I directed him by 14 November 2019 to provide details of all doctors and other health care professionals on whom he attended in the 12 months immediately prior to 24 July 2019 and to lodge any further evidence on which he intended to rely by 3 December 2019. I also made a direction for production by Chatswood Medical and Dental Centre of its records.
13. At the telephone conference on 10 December 2019, Mr Tim Driscoll, on behalf of Mr Nelson, advised that he intended filing additional evidence but some had only been received the previous day, and some was outstanding. He requested until 24 December 2019 to file and serve a reply to the application, with further time to the applicant and the first respondent to respond. There was no objection. There was further discussion about Mr Geracitano's medical history and he was again directed to provide details of the doctors and other health care professionals he saw in the 12 months immediately prior to 24 July 2019. He was directed to file and serve his reply by 28 January 2020 and for the other parties to file their responses. The matter was listed for conciliation/arbitration on 28 February 2020.
14. At the conciliation/arbitration on 28 February 2020, Mr Dewashish Adhikary of counsel appeared for the applicant. Up until this point, Mr Andy Riddock, a director of the applicant, had appeared and represented the applicant. Mr Adhikary advised that Mr Riddock had instructed his solicitor, Mr Miller, on 26 February 2020; he had not previously sought representation because of the cost, and he had believed he could run the matter himself until faced with the complexities of a hearing. Mr Adhikary submitted that the material was voluminous and Mr Geracitano's credit was in issue. He sought an adjournment to allow the applicant to organise a medico-legal assessment of Mr Geracitano and to seek access to certain NSW police information. Mr Adhikary submitted there would be substantial injustice to the applicant in proceeding with the conciliation/arbitration that day.
15. The respondents objected to an adjournment, in particular to Mr Adhikary's contention that further evidence was required. Mr David Saul of counsel for the first respondent submitted the matter had been ongoing for many months, there had been several telephone conferences, and the request for further information was a fishing expedition. Further, Mr Saul submitted, the applicant had been in receipt of the first respondent's medico-legal assessment for some time.
16. While I was not persuaded that all of the further evidence referred to by Mr Adhikary was relevant, I accepted that the medico-legal assessment and the police information were relevant, particularly given the applicant's assertions concerning Mr Geracitano's credit. I was satisfied there would be substantial injustice to the applicant in proceeding that day. In so deciding, I took into account that it is not open in section 145 proceedings for an applicant to discontinue. The conciliation/arbitration was adjourned to 15 April 2020.
17. By email on 3 April 2020, the applicant's solicitors advised the Commission that Mr Geracitano had not responded to their request for information, he had not provided the authority required for access to police records, and he had failed to attend the appointment scheduled that day with Dr Leonard Lee, psychiatrist. They requested the conciliation/arbitration be adjourned so that a further appointment could be made.

18. At a telephone conference on 9 April 2020, Mr Miller advised that Mr Geracitano had provided authority for access to the police documents, and he would provide the particulars sought. Ms Pace for Mr Geracitano advised that he would attend an appointment with Dr Lee on 21 April 2020. The respondents neither consented to nor opposed the adjournment. I granted the adjournment and directed parties to lodge and exchange any further documents by 11 May 2020. The matter was listed for conciliation/arbitration 3 June 2020.
19. On 3 June 2020, Mr Adhikary appeared for the applicant. Mr Saul appeared for the first respondent, and Mr Greg Young of counsel appeared for the second respondent. The hearing was conducted by telephone in accordance with the Commission's procedures during the coronavirus pandemic.
20. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to a settlement acceptable to all of them. I am satisfied that they have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary evidence

21. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) Miscellaneous Application and attached documents;
 - (b) Reply and attached documents filed by the first respondent;
 - (c) Reply and attached documents filed by the second respondent;
 - (d) Documents attached to an Application to Admit Late Documents filed by the first respondent on 24 October 2019;
 - (e) Documents attached to an Application to Admit Late Documents filed by the first respondent on 14 February 2020;
 - (f) Documents attached to an Application to Admit Late Documents filed by the second respondent on 21 February 2020;
 - (g) Documents attached to an Application to Admit Late Documents filed by the second respondent on 8 April 2020;
 - (h) Documents attached to an Application to Admit Late Documents filed by the applicant on 9 April 2020;
 - (i) Documents attached to an Application to Admit Late Documents filed by the applicant on 11 May 2020.
22. After some discussion, a supplementary report of Dr Martin Allan dated 3 April 2020 was tendered at the hearing by Mr Saul and admitted without objection.

Oral evidence

23. There was no oral evidence.

Mr Geracitano's evidence

24. Mr Geracitano's evidence is set out in a written statement taken in December 2018 by an investigator for the first respondent. A supplementary statement dated 30 January 2020 adds nothing for present purposes other than to confirm the contents of the first.
25. Mr Geracitano started work for the applicant as a full time account manager on 13 March 2018. His duties involved selling products, billing, "onboarding of staff" and general administration. He cites the following instances of bullying and harassment, and the applicant's "toxic workplace culture":
 - (a) when he started, he got to work about 8.30am and finished between 5.15pm and 6.00pm. If he attempted to knock off at 5.00pm, Mr Riddock would say "Are you knocking off, do some fucking work." He felt Mr Riddock set unrealistic expectations and picked on him no matter what he did.
 - (b) On 29 June 2018, he went to dinner at a local restaurant with Mr Riddock, Denis Laponin, the senior accounts manager, and Rebekah Malone, the executive assistant, to mark the end of the financial year. Mr Laponin plied him with drinks and said "You are getting drunk tonight." When they returned to the office around midnight, the others were doing "lines of cocaine".
 - (c) One day in July 2018, Mr Riddock stated, "I am impervious to the law and workplace rules don't affect my company." This seemed a strange comment for a company owner and it made him feel concerned and anxious. He felt Mr Riddock thought he could do whatever he wanted to employees without consequences.
 - (d) The atmosphere in the office was "clicky". He felt from the beginning he had been set up to fail. For example, Mr Riddock promised to take him and Mr Laponin to meet Telstra Account Executives but the meeting never eventuated.
 - (e) On 27 September 2018, he saw a position advertised by the applicant with SEEK which matched his own job description, and he took a call from a recruitment agency about the position. When he asked Ms Malone, she said it was probably just a scam call. He felt anxious, nervous and depressed, fearing he was going to lose his job.
 - (f) On 2 October 2018, he received an email from Ms Malone about his tasks for the morning that stated all existing customers should be left with her as they were being taken away from him. He had been off work the previous week with a chest infection, and he felt he was slowly being pushed out the door. He felt bullied, nervous, moody, depressed and extremely anxious, and he knew it was only a matter of time before he was replaced.
 - (g) On 6 October 2018, Mr Riddock went overseas for several weeks. On 10 October 2018, Mr Geracitano received an email from him asking him to attend to certain matters with clients. Later Ms Malone told him she had already looked after the tasks that Mr Riddock had given him. Mr Riddock would send emails without instructions and he would have to work out a solution.

- (h) Around this time, Ms Malone and Mr Laponin would have closed door meetings and telephone conversations with Mr Riddock. That had never been the case previously, he was “part of the team and included in all work related matters”. He presumed that Mr Riddock did not trust him to complete the tasks.
- (i) On 12 October 2018, Ms Malone, Mr Laponin and two other employees went to lunch, leaving him in the office alone to deal with customers and without a lunch break. Mr Laponin told him to "man the fort". He had previously been included in the long lunches and the telephones were switched over to their mobiles. Mr Laponin returned with a bottle of wine and offered him a glass which he refused.
- (j) On the evening of 12 October 2018, he was out with his partner, Danijel James, and friends when he received two emails from Mr Riddock which were copied to other employees. They referred to a quote he had prepared that day and said he was the company's worst performer. They read:

“Nik, And the prize for the worst quote ever goes to?????? are you on drugs??
Do not send shit like that please.
Ask them to buy It.
Regards,
Andy

Nik, What is this? What is an invoice quote? Leave IGT alone mate and work on your quotes.
Regards,
Andy”

On receiving the emails, he felt devastated and suffered anxiety and depression.

- 26. About two months after he started working for the applicant, his drinking increased from two standard drinks a day because of the bullying and harassment. He was absent from work on numerous occasions, usually on a Monday, because he was violently ill at the thought of attending work. Around June to July 2018, he started suffering anxiety and depression as a result of the bullying and harassment. Prior to June 2018 he was “feeling fit and healthy and was not experiencing any psychological problems or suffering from stress or any anxiety”. By the time he was terminated in October 2018, he was drinking two to three bottles of wine a day and he was suffering from anxiety and depression.
- 27. On 24 September 2018, he saw his general practitioner, Dr Mei Choong, for a chest infection. He discussed his anxiety and “was told to seek other employment.” There is no reference in Dr Choong’s notes to bullying or harassment and she issued a general medical certificate. Mr Geracitano states that, at the time, he was aware there was “an issue with work” but thought he would look for another job and “be sensible” about the bullying and harassment, so did not obtain a Workcover certificate. Dr Choong referred him to an addiction counsellor and a psychologist. He says it was “difficult to attend” Odyssey House (for addiction counselling) because he was unable to leave the house. On 9 November 2018, he started seeing psychologist, Emily Dylan.
- 28. By letter dated 22 October 2018 citing his absenteeism without medical certificates and his poor performance, his employment was terminated.

29. Mr Geracitano claims there were no other factors affecting his psychological condition before the workplace bullying and harassment, and he did not have any depression or anxiety before working for the applicant. He was in a secure relationship with Mr James. There were some problems in the relationship, and they were “argumentative at times” but there was no “extreme violence”. Any arguments were because he was affected by work and he was drinking to mask the anxiety about it. He separated from Mr James in November 2018 as a direct result of the circumstances of his termination.

Mr Riddock’s evidence

30. In a statement to the investigator, Mr Riddock describes Mr Geracitano’s key responsibilities and says he was “under performance management” for lack of sales and inability to complete tasks, he was not responding to clients’ emails in a timely manner, and his responses were unprofessional. He did not know all of the Telstra business, and Mr Riddock was constantly training and mentoring him “in the whole Telstra data and associated products”.
31. Mr Riddock denies bullying or harassing Mr Geracitano and says he “looked after him”. He was paid for days when he was off sick. On approximately three occasions he was paid when he stayed home and was not placed on sick leave.
32. Mr Riddock says he understood Mr Geracitano was in an abusive relationship with Mr James. On 6 July 2018, he and Mr Laponin went to his house as they were worried about his mental state due to his abusive relationship. They spoke at the front door and Mr Geracitano said he was okay, “just feeling a bit sick.”
33. On 25 or 26 July 2018, Mr Geracitano “underwent counselling” when he was undergoing “relationship issues” with Mr James (I understand Mr Riddock to mean he “counselled” Mr Geracitano). Mr Riddock offered “all of our services” to assist with his troubles including time off work as he used his annual leave entitlements at that time.
34. On the evening of 27 July 2018, Ms Malone sent him a message with photos showing that Mr Geracitano had been attacked with a knife by Mr James. He telephoned Mr Geracitano to check on his welfare and spoke with him for some 30 minutes and “rendered all possible assistance to him including residing at my personal residence for his safety and wellbeing”.
35. Mr Riddock says the first he knew of any complaint of bullying and harassment was on 16 October 2018 when he received the Workcover certificate while he was overseas. He says there were no prior indicators of any work related stress or depression, but Mr Geracitano was suffering “pre-existing stress and depression” over some time on account of his abusive violent relationship with Mr James.
36. Mr Riddock denies:
- (a) saying “Are you knocking off, do some fucking work” and says Mr Geracitano always finished at 5.00pm “on the dot”;
 - (b) saying he was “impervious to the law” and that workplace rules did not affect his company;
 - (c) that any employees took drugs after the end of financial year dinner. He says Mr Geracitano spent an hour that evening “crying on my shoulder” over his abusive relationship with Mr James;
 - (d) that the office was “clicky” and he did not take Mr Geracitano to meet Telstra executives as promised; on 9 August 2018 he took Mr Laponin and Mr Geracitano to a lunch meeting with Telstra executives;

- (e) excluding him from lunches says he often refused invitations;
 - (f) advertising Mr Geracitano's position and says the advertisement was for a different position;
 - (g) giving his clients to Ms Malone; he says Mr Geracitano had been off work for a week and he wanted him to liaise with Ms Malone about what needed doing;
 - (h) that any emails with instructions were directed at Mr Geracitano in particular; it was his practice to send employees emails about tasks while he was away.
37. Mr Riddock says on 12 October 2018, he was made aware of a substandard invoice Mr Geracitano sent to a customer. He agrees he sent an email to Mr Geracitano. It did not say he was the worst performer but that he had won the prize for the worst quote. There was no malice intended in the email.
38. He believes Mr Geracitano had a drinking problem before he started work for the applicant. At their first after work drinks at a pub, he "fell head first into the table causing glasses on the table to become smashed".

Mr Geracitano's response to Mr Riddock's statement

39. The investigator put Mr Riddock's statement to Mr Geracitano. In response, he denied being in a violent relationship with Mr James and that Mr James attacked him with a knife. He denied that "Your employer assisted you by accompanying you to the local police station for several hours while the matter was sorted out". He says "That's not Danijel" and he never went to the Police Station with any work colleague. He did not recall Mr Riddock offering him accommodation in his own home due to the violence of his partner.
40. It is not clear where the investigator got the statement that someone accompanied Mr Geracitano to the police station. It does not appear in Mr Riddock's statement but nothing really turns on this.
41. Mr Geracitano does not deny being absent from work on several Mondays and that he did not provide medical certificates, but he disputes Mr Riddock's suspicion that it was due to substance abuse. He says his work-induced anxiety and depression was the reason. The alcohol substance abuse was a result of the harassment and bullying.

Mr Laponin's evidence

42. The investigator's report includes two statements by Mr Laponin. He or Mr Riddock supervised Mr Geracitano. He considered Mr Geracitano a friend and they visited each other's homes several times. Mr Laponin says he was treated like other team members with respect and professional courtesy. His allegations of bullying and harassment are baseless.
43. It is not true that Mr Geracitano was excluded from meetings with Telstra executives. He and Mr Riddock both took him out to meet Telstra executives and "on occasion" he would just sit there and not contribute to the meeting.
44. He was aware Mr Geracitano was in a violent relationship and suffered "abuse and neglect" from his partner before he started working for the applicant. He believes Mr Geracitano's stress, depression and anxiety were a direct result of his relationship problems.

45. Mr Laponin says he assisted Mr Geracitano numerous times checking on his welfare. On 25 May 2018, he “crashed” at Mr Geracitano’s apartment; he was upset and needed support due to the events in his personal life with his boyfriend. He was fearful of Mr James attending and harassing him. The next day Mr Laponin helped change the locks to his front door because he was scared of Mr James. He went to Bunnings himself and paid for the new locks. A screen shot of a message on 26 May 2018 (recipient unclear but probably Ms Malone) shows “How did the place scrub up?” “Thank you, all clean ... I’ve changed the locks ... Denis helped ... Danijel left last night again and the cops came ...”
46. On 6 July 2018, he and Mr Riddock went to Mr Geracitano’s apartment to check on his welfare. He had been off work that day due to his problems with Mr James. He appeared “upset, very flat, depressed, softly spoken”. He reassured them everything would be OK and he would “get through it all”. A screen shot of a message on 6 July 2018 (apparently to Mr Laponin) shows “Thank you both for coming to check on me ... It means a lot”.

Ms Malone’s evidence

47. The investigator’s report includes two statements by Ms Malone. She says she saw Mr Geracitano every day at work, they would text and telephone each other, she used to see him socially outside of work, and considered him a good friend.
48. Ms Malone says it was apparent when he started working for the applicant that he was in an abusive relationship with Mr James. He told her Mr James had previously assaulted him, causing bruising and injuries to his ribs. He complained occasionally of ongoing sore ribs as a result of the assault. He would get upset whenever he spoke about being assaulted and he showed her aggressive text messages from Mr James. He would “constantly complain” about their relationship. He had taken out an Apprehended Violence order against Mr James.
49. Ms Malone said on Friday 6 July 2018 she was worried when Mr Geracitano had been off work all week and had not answered her calls. They were all worried about him because of his “toxic abusive relationship” with Mr James and she “had the guys check up on his welfare.”
50. On the evening of Friday 27 July 2018, she received a text message from Mr Geracitano asking her to come over, and he sent a photograph of his hand with a laceration between his thumb and finger. When she phoned him he was very upset and said Mr James had come at him with a knife.
51. Ms Malone and her partner, Jason Pavey, went to Mr Geracitano’s house where he was upset and appeared drunk. He had lacerations on his hand and thigh which he said Mr James had inflicted. He said he would ring the police, and she and Mr Pavey left. They went to the police themselves later that evening and gave statements (see below). She rang him when he did not come to work on the Monday and he said he was waiting for the police to come and take a statement. On checking with the police later, they said there had been no complaint.
52. Ms Malone says Mr Geracitano never indicated he was suffering from work-related stress or depression. He had many Mondays off and, each time, she would ring or text to check on him. Emails and screen shots confirm many such messages. She does not believe he was off work due to workplace bullying or harassment. He never complained to her about bullying and harassment.

53. Ms Malone says if Mr Riddock said anything about knocking off early, it was in jest, there was never anything said in a harmful or degrading way. She denies any employees took drugs at work. She never heard Mr Riddock say anything about being above the law. She looked after the office when Mr Riddock took Mr Geracitano and Mr Laponin to lunch to meet Telstra executives. The SEEK advertisement was for a position unrelated to Mr Geracitano's. She supports Mr Riddock's statement about the emails he sent to staff while he was overseas for several weeks. She has "manned the fort" herself many times when others go out to lunch. She says every support was offered to Mr Geracitano.

Mr James' statement

54. In a statement to the investigator on 6 December 2018, Mr James says he had been in a relationship with Mr Geracitano since 2016. They separated about seven weeks earlier. They had a good relationship. Things were good when he started work for the applicant but, around June or July 2018, he started telling him others would leave early and he had to stay to finish work, and they went out for lunch without him. He started drinking more and did not want to go to work on Mondays. He was treated like an outcast and vilified.
55. Mr James refers to the end of year dinner, Mr Geracitano's job being advertised on SEEK, and the "turning point" when he received Mr Riddock's messages on 12 October 2018. He thought he was going to lose his job. When he was terminated, he was suffering from workplace harassment and bullying and was drinking about three bottles of wine at night.
56. Mr James states he is aware of the incident on 27 July 2018 but it did not involve him.

Police documents

57. Police documents confirm that, on 27 July 2018, Ms Malone and Mr Pavey attended the police station and gave statements about an incident involving Mr Geracitano and Mr James. They stated he had lacerations to his hand and thigh from a serrated steak knife. Police attended at Mr Geracitano's home that evening but he did not want to talk and said he would come in the next day. The records refer to an incident with a knife in May 2018 involving Mr Geracitano's "ex-partner". They also refer to an apprehended violence order but no details.
58. The records refer in detail to Mr Geracitano's relationship with his "ex-partner" (identity deleted) and the incident on 27 July 2018. They show that, when police followed up on 30 July 2018, Mr Geracitano said he was assaulted by a person he met on Grindr. He was embarrassed about meeting someone on Grindr and made up the story about his ex-partner.

Investigation report

59. The investigation report comprises the statements already referred as well as numerous screen shots of SMS messages between Mr Geracitano and others. They include messages on May 2018, 6 July 2018 and 27 July 2018 and those from Mr Riddock in October 2018.

Dr Choong

60. In a form reply to icare on 11 December 2018, Dr Mei Choong reported that Mr Geracitano had a diagnosis of mixed anxiety, depression and substance misuse. Pre-existing factors were mental health issues, psychological stress and "social issues – away from home". He would be able to return to pre-injury duties in two to four months.

61. On 14 December 2018, Dr Choong reported she first saw Mr Geracitano on 25 September 2018. He had been off work the previous two days with gastroenteritis and requested a medical certificate. He was initially drinking alcohol heavily but this had improved with support from an addiction counsellor. He said his current job might “not be suiting him” and would like to look for another job.
62. On 11 October 2018, he presented with work related stress, stating he was feeling isolated at work and he felt others were deliberately making him feel unhappy. He cited an email from his employer and seeing his job advertised on SEEK. On 15 October 2018, Dr Choong certified him unfit to 26 October 2018 due to “stress related to work situation”, difficulties getting sick leave, feeling isolated and criticised, and difficulty completing tasks. The certificate cited pre-existing factors as depression, anxiety and substance intake.
63. On 29 October 2018, Mr Geracitano presented with severe anxiety, stress and paranoia. His employment had been terminated. Dr Choong certified him unfit to 30 November 2018. She continued to certify him unfit through to May 2019.
64. With respect to the Workcover certificate which notes “pre-existing factors include depression, anxiety and substance intake”, Mr Geracitano says he suffered anxiety and depression as a result of a violent relationship 10 years previously from which he had completely recovered.

Dr Allan

65. Dr Martin Allan, psychiatrist, saw Mr Geracitano for assessment on 1 February 2019. It appears he had most, if not all, of the documents in the investigation report.
66. Mr Geracitano told Dr Allan about symptoms of depression, anxiety and worry in a “challenging” relationship in his teens. He saw a psychologist for several months and his symptoms entirely resolved. He denied any ongoing symptoms of depression or anxiety prior to working for the applicant. Before working for the applicant he was a social drinker and drank one or two units of alcohol three or four days a week.
67. Mr Geracitano told Dr Allan the “toxic culture” in the applicant’s workplace led him from being a social drinker to a “gross increase”. His description of events at work was broadly consistent with his written statement to the investigator.
68. Dr Allan noted there were “clearly contrasting views” of his relationship with Mr James. Mr Geracitano’s opinion was that any challenges in the relationship were relatively benign “aside from the influence of his stressful workplace on his own health and further to that on his relationship.” When questioned about the “knife” incident, Mr Geracitano “entirely dismissed this incident indicating he felt it had no relevance to his current predicament”. To the extent that he acknowledged problems in the relationship he said they were caused by his problems at work. Dr Allan reported he was unable to garner further information but, based on the documents supplied to him, he thought the relationship was “more tumultuous” than expressed during the interview, and the evidence from his former colleagues suggested it was “extremely challenging and fraught with difficulties”.
69. Dr Allan said Mr Geracitano was “quite dismissive of past events which would be seen as significant in a psychiatric formulation” including his relationship with Mr James. This led to “some gaps in his personal history” and “various difficulties in fully assessing Mr Geracitano given that he would not discuss any past trauma issues which are very much relevant to psychiatric assessment.”

70. Dr Allan did not take it on himself to determine the truth of the various statements. He concluded that, “[b]ased on the interview alone, Mr Geracitano identifies the difficulties in his treatment and the management of his performance in his workplace as being the key factors to the development of his Adjustment Disorder.” Dr Allan noted there was a “he said/she said” scenario at play but concluded that Mr Geracitano’s perception of what had occurred in the workplace had been the main cause of a diagnosable Adjustment Disorder with depressed and anxious mood. He also had an Alcohol Misuse Disorder now in remission. It is not completely clear from his report, but it appears Dr Allan considered the alcohol disorder was also caused by his employment.
71. Overall, Dr Allan said, issues within Mr Geracitano’s employment appeared to be the main contributing factor to his case. Dr Allan estimated two-thirds of his condition related to his performance conditions and one-third of his recent Adjustment Disorder related to challenges in his relationship.
72. On 2 April 2020, Dr Allan reviewed Mr Geracitano and found he continued to describe symptoms of an Adjustment Disorder with depressed and anxious mood.
73. Dr Allan said he was again “evasive” about past traumas which he alluded to but did not explain, and significant gaps in his history remained. He maintained his relationship had deteriorated only after his mental wellbeing was affected by his work situation. However, Dr Allan said, he was confident that the relationship “further contributed to Mr Geracitano’s mental state difficulties”.
74. With respect to alcohol, Dr Allan said Mr Geracitano did not describe a level of alcohol intake prior to working with Pivot Communications as being consistent with an Alcohol Misuse Disorder, and his history suggested his alcohol intake had increased only after commencing at Pivot.

Dr Teoh

75. Dr Ben Teoh, psychiatrist, saw Mr Geracitano for assessment on 30 January 2020. He was provided with Dr Choong’s and Ms Dylan’s clinical records. He did not have the investigation report documents. Mr Geracitano described to him the “toxic environment” where the managing director was “an aggressive person”, “unethical” and “above the law and untouchable”; he was unfairly critical of him, and brought alcohol into the workplace. As a result, he became anxious, lost his confidence and locked himself in the house. He was distressed by the termination of his employment.
76. Dr Teoh recorded that Mr Geracitano had no past history of psychiatric illness and no history of substance abuse. He admitted he had “strained relationship problems” but “he denied that there was a past history of significant psychological problems with his ex-partner. He had felt intimidated and harassed by his partner.”
77. Dr Teoh diagnosed Chronic Adjustment Disorder with Mixed Depressed and Anxious Mood caused by the work related stress, bullying and harassment, “as documented”.

Dr Lee

78. Dr Lee saw Mr Geracitano for assessment by video link on 21 April 2020 at the request of the applicant. He described Mr Geracitano as “only moderately cooperative”. Asked when his psychological problems started, Mr Geracitano said “things started to get interesting” around July 2018. He described the “cliquey” environment at work, comments about him leaving early, and seeing his job advertised. He said he had no previous psychological problems. He became a recluse and started drinking heavily.

79. Noting Mr Geracitano's responses to various questions, Dr Lee said he formed the view that "he was either uncooperative or unable to proceed" and he ended the assessment after half an hour.
80. The remainder of Dr Lee's report comprises a "file review". He refers to Dr Choong's clinical records, Dr Allan's and Dr Teoh's reports, Odyssey House records, and statements in the investigator's report. He said Mr Geracitano's denial of previous psychological problems and drinking problems was inconsistent with the Odyssey House records showing he had already sought support to reduce his alcohol consumption and had reported his abusive past relationship, difficulties with his parents who did not accept his sexuality, and moving to Sydney had "triggered some anxiety and drinking was a coping mechanism."
81. Dr Lee said it was difficult to provide a current diagnosis as Mr Geracitano was uncooperative, and Dr Choong's records indicated there had been significant improvement after being terminated. He discounted an Adjustment Disorder saying it does not persist beyond six months. He concluded the information available indicated that Mr Geracitano "has or had" an alcohol use disorder.
82. Noting there was "no corroborative evidence" that Mr Geracitano was mistreated at work, and significant evidence of a drinking problem before he started, Dr Lee concluded "the injuries sustained at work have not caused his alcohol use disorder." He disagreed with Dr Allan because "on the balance of probabilities, his performance and conduct were not managed in a way that led to him feeling belittled, sidelined and unsupported." He disagreed with Dr Teoh because his account relied "entirely on Mr Geracitano's information."
83. Dr Lee concluded Mr Geracitano's employment had not caused any aggravation, acceleration, exacerbation or deterioration of his condition.

Odyssey House records

84. Clinical records from Odyssey House, a drug and alcohol dependency service, show Mr Geracitano started "treatment" on 28 November 2017. He was "self-referred". On 23 January 2018, he ceased participation "without notice".
85. Clinical notes of his session on 4 January 2018 show, relevantly, that Mr Geracitano said "his main drug of concern is alcohol"; he was "seeking support to reduce his alcohol consumption and eventually stop drinking"; he had recently moved to Sydney with his partner and a new job had "triggered some anxiety"; he tended to drink every day "to relax and calm his anxiety". He discussed his past relationship which had been abusive; he was in that relationship for 10 years. I note that the new job cannot have been with the applicant as he did not start there until 13 March 2018.
86. The Odyssey House records are at odds with Mr Geracitano's statement to Dr Allan that he was a social drinker and drank one or two units of alcohol on three or four days each week before he started work for the applicant.

SUBMISSIONS

87. Parties made oral submissions which were sound recorded, and a copy is available to the parties. I will not recite them in detail but summarise them as follows.

The first respondent's submissions

88. Mr Saul submits that Mr Geracitano's statement sets out how he felt isolated and victimised by Mr Riddock in particular. His alleged psychological injury is appropriately characterised as a disease injury. There is no doubt he had led a troubled life and had issues in the past with alcohol and drugs but the test remains whether his employment caused or contributed to his injury and if it was the main contributing factor.
89. Mr Saul submits I need only be satisfied that the events Mr Geracitano complains of were real, and caused or aggravated his disease as long as they were the main contributing factor. Mr Saul submits that Mr Geracitano's statement shows they were real, and what is important is his perception of them.
90. Mr Saul submits that Dr Allan reviewed all the documents and took a history from Mr Geracitano of the "toxic culture" in the workplace. He diagnosed an alcohol misuse disorder and an Adjustment Disorder due to his work. He acknowledged there was a "he said/she said scenario at play" but he found no evidence of psychological problems before Mr Geracitano started work for the applicant.
91. Mr Saul submits that nothing turns on Mr Geracitano's relationship with Mr James. The issue is not whether there were problems in the relationship but whether the alleged events at work can be shown to have occurred. Anything that occurred previously with Mr James is irrelevant; Mr Geracitano was able to work and the logical inference is that his employment gave rise to his psychological injuries.
92. The Workcover certificates and Dr Choong's clinical records support Mr Geracitano's condition as a result of his work and his incapacity from October 2018 to May 2019. There is no reason not to accept her opinion. The fact that Dr Allan thought Mr Geracitano was fit for suitable duties starting in February 2019 is irrelevant to determining injury.
93. Mr Saul submits that Dr Teoh also diagnosed an Adjustment Disorder and his opinion is broadly consistent with Dr Allan's. In contrast, Dr Lee comes into the picture very late. His opinion is unconvincing and unreliable. He did not take a proper history, and his report is a rehash of other documents. His opinion that Mr Geracitano did not sustain injury in the course of his employment is contrary to all the evidence.

The applicant's submissions

94. Mr Adhikary submits that there are too many inconsistencies Mr Geracitano's evidence for it to be accepted, and the medical opinions based on his evidence cannot be relied upon.
95. In particular, Mr Adhikary says Mr Geracitano maintains he had no relationship problems before he started work, there was no violence in his relationship with Mr James, he had not previously had depression, and his work caused him to drink excessively. He claims all were due to what was happening at work. Moreover, he made no complaint of bullying or harassment until October 2018.
96. Mr Adhikary submits that Mr Geracitano's claims that Mr James was not involved in the "knife incident" in July 2018 cannot be accepted. Ms Malone's statement is clear and detailed, and supported by reports she and her partner made to the police that night. I can infer either that he was in an abusive relationship or he is willing to lie about the incident, either of which goes to his credit. Mr James' statement that he was not involved in the "knife incident" cannot be relied on and nor can his statements that Mr Geracitano's depression and drinking were all due to his work.

97. It is clear from the statements of Mr Riddock, Mr Laponin and Ms Malone that Mr Geracitano was in an abusive relationship, and that he had a problem with alcohol from the time he started work for the applicant. In particular, he told Ms Malone that Mr James had assaulted him before his employment started and showed her an “aggressive” SMS from Mr James; Mr Laponin changed the locks at his house in May 2018 after an incident with Mr James; and his excessive drinking was evident from early in his employment. They have no reason to make up these claims and the screen shorts of SMSs confirm their claims.
98. The Odyssey House records showing that Mr Geracitano sought treatment for his alcohol use contradict his claim that his excessive drinking was due to his employment.
99. Citing *Paric v John Holland (Constructions) Pty Ltd* [1985] HCA 58; 62ALR85; 59 ALJR 84, Mr Adhikary submits that the medical opinions which rely on Mr Geracitano’s history cannot be accepted because they are not based on a fair foundation and reasonable support. Dr Teoh thought there was no history of alcohol misuse or violence in the relationship and gave no consideration to either. His opinion should be given no weight.
100. Dr Allan did not have the Odyssey house records. Mr Geracitano was “reluctant” to discuss his history and it was apparent the relationship was “more tumultuous” than he let on. Dr Allan did not give proper consideration to the issues. He needed more information but Mr Geracitano was not forthcoming. There was no basis for attributing two-thirds of his psychological condition to his employment and one-third to his relationship.
101. In contrast, Mr Adhikary submits, Dr Lee had a complete history and had regard to the documents.
102. Mr Adhikary submits that, if Mr Geracitano succeeds on injury, he is precluded from compensation by reason of section 151A of the 1987 Act and damages received in proceedings in the Fair Work Commission. Mr Saul and Mr Young dispute that submission but, given my determination as to injury, it is not necessary to determine whether section 151A applies.

The second respondent’s submissions

103. Mr Young refers to Mr Geracitano’s statement about events at work and his perception that he was excluded. Even if the advertisement was not in fact for his position, he nevertheless perceived that it was, and that he was to be replaced, and that is what occurred a month later. Mr Riddock’s emails around that time confirmed Mr Geracitano’s feeling that he was under threat and about to be pushed out.
104. Mr Young submits that the incidents Mr Geracitano complains of were real. He was excluded from lunch with the others on 12 October 2018. The emails Mr Riddock sent him were disrespectful and unprofessional, and meant to belittle and embarrass him. They were enough to push him over the edge.
105. Mr Young submits that the Odyssey House notes show that Mr Geracitano had a pre-existing problem with alcohol but his evidence is that it increased significantly after about two months, supporting his claim that it was significantly exacerbated by his employment. As to what happened at work in the first two months to cause his drinking to increase, Mr Young acknowledged he could not cite any particular incident but his contact with clients was restricted and Mr Riddock made it difficult for him to do his job. At that point, the “seeds of doubt were sown”. With respect to the Adjustment Disorder, Mr Young submits that what happened around September/October 2018 was critical.

106. Mr Young acknowledged that Mr Geracitano has not disputed a number of matters asserted by others about his relationship but submits I would not accept their evidence over his, and I would accept his and Mr James' evidence that their relationship was not abusive. Even if I find it was, that is not relevant to what occurred around October 2018.

The first respondent's submissions in reply

107. In reply, Mr Saul reiterated that the issue for determination is causation. Notwithstanding his previous problem with alcohol, by September/October 2018 his problem was exacerbated by what was happening at work, and he had developed an Adjustment Disorder. As long as his employment was the main contributing factor to the contraction of the Adjustment Disorder, or the aggravation of his alcohol use disorder, he must succeed. Despite others' views of events, he felt picked on and isolated, and his perception is important.

FINDINGS AND REASONS

108. Section 4 of the 1987 Act relevantly provides:

“injury”:

(a) means personal injury arising out of or in the course of employment,

(b) includes a

"disease injury", which means-

- (i) a disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease, and
- (ii) the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease”

109. Neither the applicant nor the second respondent takes issue with Mr Saul's submission that a psychological injury of the kind alleged by Mr Geracitano would be characterised as a “disease injury” for the purposes of the 1987 Act. To be an injury within the meaning of section 4(a) would require Mr Geracitano to have experienced an identifiable physiological change as a result of his employment.¹ It is not submitted, and the evidence does not suggest, such a physiological change. I am satisfied that the claimed psychological injury (or injuries, considering the claim in the alternative) is appropriately characterised as a “disease injury”. It follows that it is not necessary to consider whether employment was a substantial contributing factor within the meaning of s 9A of the 1987 Act.

110. The applicant does not dispute that, during the time he was employed, Mr Geracitano had psychological “issues”, that he drank excessively and that he appeared to be stressed and depressed. The applicant disputes that he was bullied or harassed, or that his employment caused or contributed to an Adjustment Disorder, or caused the aggravation, acceleration, exacerbation or deterioration of an Alcohol Misuse Disorder to the required degree.

¹ *Zickar v MGH Plastic Industries Pty Ltd* [1996] HCA 31; *Kennedy Cleaning Services Pty Ltd v Petkoska* [2000] HCA 45; *Military Rehabilitation and Compensation Commission v May* [2016] HCA 19 at [47], [75];

Were the events real?

111. Mr Geracitano cites a number of incidents in the course of his employment as causing his injury. It is necessary to consider whether all, or any, of those events were real. Before doing so, it is relevant to consider how credible and reliable Mr Geracitano's evidence is generally.
112. Mr Adhikary submits that there are too many inconsistencies in Mr Geracitano's evidence for it to be accepted and the medical opinions based on his evidence cannot be relied upon. Mr Adhikary says Mr Geracitano maintains he had no relationship problems before he started work, there was no violence in his relationship with Mr James, he had not previously had depression, and his work caused him to drink excessively, all of which Mr Adhikary submits were untrue.
113. I do not accept that Mr Geracitano's evidence is so inconsistent that it should be discounted altogether. As set out below, I accept that some of the events he complains of did occur and that he perceived them as creating an 'offensive or hostile working environment'. However, he denied or did not volunteer to the doctors information that was relevant to their diagnoses and their relationship to his employment. He denied previous problems with alcohol when information from Odyssey House shows otherwise. He maintains his relationship with Mr James was good and secure, apart from being argumentative, but his evidence is contradicted by Mr Riddock, Mr Laponin and Ms Malone. In my view, his evidence should be approached with caution.
114. In *State Transit Authority of NSW v Fritz Chemler* [2007] NSWCA 249, (*Chemler*) Spigelman CJ said a perception of real events, which are not external events, can satisfy the test of injury, and the "egg shell skull" rule applies in a general sense, and in psychiatric cases in particular.
115. In *Attorney General's Department v K* [2010] NSWCCPD 76 Roche DP summarised at [52] the principles to be applied in determining psychological injury in circumstances of the worker's perception of real events at work:
- "(a) employers take their employees as they find them. There is an 'egg-shell psyche' principle which is the equivalent of the 'egg-shell skull' principle (Spigelman CJ in *Chemler* at [40]);
 - (b) a perception of real events, which are not external events, can satisfy the test of injury arising out of or in the course of employment (Spigelman CJ in *Chemler* at [54]);
 - (c) if events which actually occurred in the workplace were perceived as creating an offensive or hostile working environment, and a psychological injury followed, it is open to the Commission to conclude that causation is established (Basten JA in *Chemler* at [69]);
 - (d) so long as the events within the workplace were real, rather than imaginary, it does not matter that they affected the worker's psyche because of a flawed perception of events because of a disordered mind (President Hall in *Sheridan*);
 - (e) there is no requirement at law that the worker's perception of the events must have been one that passed some qualitative test based on an 'objective measure of reasonableness' (Von Doussa J in *Wiegand* at [31]); and
 - (f) it is not necessary that the worker's reaction to the events must have been 'rational, reasonable and proportionate' before compensation can be recovered."

116. At [54], DP Roche said:

“The critical question is whether the event or events complained of occurred in the workplace. If they did occur in the workplace and the worker perceived them as creating an ‘offensive or hostile working environment’, and a psychological injury has resulted, it is open to find that causation is established. A worker’s reaction to the events will always be subjective and will depend upon his or her personality and circumstances.”

117. I am not satisfied that all of the events Mr Geracitano complains of in fact occurred. I do not accept that Mr Riddock failed to take him to lunch to meet Telstra executives. Both Mr Riddock and Mr Laponin dispute this claim, and Mr Riddock recalls the specific date of one meeting. I prefer their evidence about this to Mr Geracitano’s. Nor am I satisfied that Mr Riddock made comments to the effect of “do some fucking work” or that he was “above the law”. He denies making those comments and Mr Laponin and Ms Malone support him. Ms Malone’s comment that, if Mr Riddock said anything about knocking off early, it was in jest, suggests it was possible he could have made such a comment, but I am not satisfied he in fact did.

118. However, I accept that other events did occur, even if Mr Geracitano’s perception of them was flawed. There is no dispute that he was asked to “man the fort” while others went out to lunch on 12 October 2018. The evidence of Mr Laponin and Ms Malone indicates it was usual for someone to stay behind if they went out to lunch but there is no dispute he was asked to stay behind on this occasion. There is no dispute that an advertisement for a job apparently similar to his was posted on SEEK in October 2018. There appear to have been some “closed door” meetings that he was not included in. There is no dispute that Mr Riddock sent an email while overseas about his tasks for the day. There is no dispute that he sent two emails on 12 October 2018 referring to the standard of Mr Geracitano’s work, and I accept their tone was demeaning.

119. I accept these events were real and that Mr Geracitano perceived them as creating an “offensive or hostile working environment”, whether or not his perception was rational, reasonable or proportionate.

The doctors’ opinions

120. The doctors made differing diagnoses of Mr Geracitano’s psychological condition. The first evidence of a diagnosis is in October 2018 when Dr Choong diagnosed mixed anxiety, depression and substance misuse. In February 2019, Dr Allan diagnosed Adjustment Disorder with depressed and anxious mood, and Alcohol Misuse Disorder in remission. In January 2020, Dr Teoh, who seemed unaware of any alcohol-related condition, diagnosed a Chronic Adjustment Disorder with Mixed Depressed and Anxious Mood. In February 2020, Dr Lee discounted an Adjustment Disorder because “it does not persist beyond six months” but he concluded on the information available to him that Mr Geracitano “has or had” an alcohol use disorder according to DSM 5.

121. Dr Teoh and Dr Lee saw Mr Geracitano 15 months or more after he ceased his employment. While there is some commonality with Dr Allan as to diagnosis, I do not find their reports helpful.

122. Dr Teoh saw Mr Geracitano in February 2020. He was provided with clinical notes of Dr Choong and Ms Dylan but that was all. He took a history of the “toxic environment” at work and that Mr Riddock was aggressive, unethical and above the law but, apart from saying he brought alcohol into the workplace and that he was distressed at his termination, Mr Geracitano does not appear to have described any other events at work to Dr Teoh.

123. Dr Teoh recorded that Mr Geracitano had no past history of psychiatric illness and no history of substance abuse. Apparently he was not aware of Mr Geracitano's treatment at Odyssey House, or of any issues related to drinking, or that he had previously felt depressed. He recorded that Mr Geracitano had felt "intimidated and harassed by his partner" but no details.
124. Dr Teoh's report is brief and it is not clear how he came to the conclusion that Mr Geracitano's condition was "caused by work related stress, bullying and harassment, as documented." I agree with Mr Adhikary's submission that his report should be given no weight.
125. Dr Lee saw Mr Geracitano for half an hour in May 2020. He said it was difficult to provide a current diagnosis as Mr Geracitano was "uncooperative" and Dr Choong's records indicated a significant improvement after he was terminated. Considering there was "no corroborative evidence that he was mistreated at work and there is significant evidence that he had a drinking problem before he started" Dr Lee concluded that "the injuries sustained at work have not caused his alcohol use disorder." Dr Lee had the Odyssey House notes but did not consider whether his employment aggravated or exacerbated his disorder.
126. Dr Lee disagreed with Dr Allan because "on the balance of probabilities [Mr Geracitano's] performance and conduct were not managed in a way that led to him feeling belittled, sidelined and unsupported." That was not what was asked of him. I agree with Mr Saul's submission that Dr Lee came into the picture late, he did not have a full history and his report is largely a recitation of other documents. I place no weight on his report.
127. In April 2020, Dr Allan confirmed his diagnosis of Adjustment Disorder. While he did not specifically confirm his diagnosis of Alcohol Misuse Disorder, nothing in his report suggests he had revised his earlier opinion.
128. Dr Choong saw Mr Geracitano around the time of the main events he complains of, and continued to see him. Dr Allan saw him not long after he ceased employment and took a history of events at work consistent with Mr Geracitano's evidence.
129. Dr Allan said Mr Geracitano did not describe to him a level of alcohol intake prior to working for the applicant consistent with an Alcohol Misuse Disorder, and he suggested his drinking only increased only after commencing work for the applicant. Dr Allan did not have the Odyssey House records which show Mr Geracitano sought "support to reduce his alcohol consumption" only months before starting work for the applicant. The history Mr Geracitano gave Dr Allan was not accurate.
130. Mr Saul submits that Dr Allan found no evidence of psychological problems before Mr Geracitano started work for the applicant but, as far as the Alcohol Misuse Disorder, that was based on an incomplete history. Presumably that is what let him to say that employment was the main cause of that condition, rather than the aggravation or exacerbation of a pre-existing condition.
131. Mr Young submits that the Odyssey House notes show that Mr Geracitano had a pre-existing problem with alcohol but his evidence is that it increased significantly after about two months, supporting his claim that it was significantly exacerbated by his employment.
132. Dr Allan concluded that Mr Geracitano's perception of what had occurred in the workplace had been the main cause of a diagnosable Adjustment Disorder with depressed and anxious mood. He also had an Alcohol Misuse Disorder "now in remission". I understand Dr Allan to say the Alcohol Misuse Disorder was also related to his employment.

133. There is evidence that Mr Geracitano had, or considered he had, depression at some time before he started working for the applicant. Dr Allan said he “explicitly denied any *ongoing* symptoms of depression or anxiety” prior to starting work for the applicant. He also noted that Mr Geracitano reported “previous issues with depression and anxiety likely consistent with an Adjustment Disorder related to stress of past difficulties.” Dr Allan was aware of this history but nevertheless thought his Adjustment Disorder developed during the course of his employment with the applicant.
134. Leaving aside whether it was the *main* contributing factor, I accept Dr Allan’s opinion that Mr Geracitano’s employment was a contributing factor to the development of an Adjustment Disorder, and the aggravation or exacerbation of his alcohol disorder.

Was employment the main contributing factor

135. In *Meaney v Office of Environment and Heritage – National Parks and Wildlife Service* [2014] NSWCC 339 (at [138]-[147]) Arbitrator Capel considered the meaning of “main contributing factor” and interpreted the word “main” to mean “chief” or “principal”. This approach has been followed by the Commission since.
136. In *Goodson v Wingecarribee Shire Council* [2020] NSWCCPD 9 (*Goodson*), Snell DP considered the history of the relevant amendments to the 1987 Act, the different tests of “a substantial contributing factor” in section 9A and “the main contributing factor” in section 4(b), and relevant authorities. He concluded at [78]:

“The following may be taken from the above:

(a) The test of ‘main contributing factor’ in s 4(b)(ii) is more stringent than that in s 4(b)(ii) in its previous form, which applied in conjunction with the test in s 9A. There will be one ‘main contributing factor’ to an alleged aggravation injury.

(b) The test of ‘main contributing factor’ is one of causation. It involves consideration of the evidence overall, it is not purely a medical question. It involves an evaluative process, considering the causal factors to the aggravation, both work and non-work related. Medical evidence to address the ultimate question of whether the test of ‘main contributing factor’ is satisfied is both relevant and desirable. Its absence is not necessarily fatal, as satisfaction of the test is to be considered on the whole of the evidence.

(c) In a matter involving s 4(b)(ii) it is necessary that the employment be the main contributing factor to the aggravation, not to the underlying disease process as a whole.”

137. The requirement of “main contributing factor” is equally applicable to the contraction of a disease for the purposes of section 4(b)(i).
138. For the reasons set out above, I place no weight on Dr Teoh’s opinion that Mr Geracitano’s Adjustment Disorder was caused by work related stress, bullying and harassment. Moreover, for the purposes of considering whether it was the main contributing factor to the contraction of the disorder, his report offers no assistance. He was aware of the “strained relationship” but apparently did not consider it a factor. He did not consider the question of any possible competing causative factors. Dr Lee also did not turn his mind to that question.

139. In contrast, Dr Allan did turn his mind to the relative contributions of Mr Geracitano's employment and the problems in his relationship with Mr James. He concluded that issues within his employment appeared to be the main contributing factor. He estimated two-thirds of Mr Geracitano's condition related to his performance conditions and one-third of his recent Adjustment Disorder related to challenges in his relationship. He did not specifically apportion contributions to the Alcohol Misuse Disorder (which he thought developed during the period of his employment) but I think a fair reading of his report is that a similar apportionment applied.
140. The difficulty with Dr Allan's assessment is that it was based on an inaccurate or incomplete picture. Dr Allan himself said in his first report that Mr Geracitano was "quite dismissive of past events which would be seen as significant in a psychiatric formulation" including his relationship with Mr James. As a result, there were "some gaps in his personal history" and "various difficulties in fully assessing Mr Geracitano given that he would not discuss any past trauma issues which are very much relevant to psychiatric assessment." Dr Allan noted there were "clearly contrasting views" of Mr Geracitano's relationship with Mr James, that Mr Geracitano considered any challenges in the relationship were relatively benign, and that he "entirely dismissed" the "knife incident" as of no relevance. Dr Allan said based on the documents supplied to him, he thought the relationship was "more tumultuous" than expressed during the interview. He made similar observations in his second report.
141. I am not satisfied that Mr Geracitano has been frank in his evidence and in what he told Dr Allan about the state of his relationship with Mr James. I do not accept Mr Saul's submission that nothing turns on his relationship with Mr James. Dr Allan evidently thought it played a significant role because he assigned it a one-third contribution to the development of the Adjustment Disorder.
142. Dr Allan did not have the Odyssey House records and Mr Geracitano was not frank in the history he gave to him about his previous drinking. Without that history, Dr Allan was not in a position to consider fully the effect and relative contribution of his employment with the applicant to his alcohol disorder.
143. The test of 'main contributing factor' is not purely a medical question. In *Goodson*, Snell DP said at [70]-[72]:

"In *Awder Pty Limited t/as Peninsular Nursing Home v Kernick*, I expressed the view that whether 'substantial contributing factor', for the purposes of s 9A of the 1987 Act, was satisfied was "a question to be decided on the evidence overall, including a consideration of the matters described in section 9A(2). It is not purely a medical question." That view was applied by Keating P in *Hogno v Fairfax Regional Printers Pty Limited* and by Roche DP in *Villar v Tubemakers of Australia Pty Ltd*. The test of 'main contributing factor', like that of 'substantial contributing factor', involves a broad evaluative consideration of potential competing causative factors. It should be decided on the evidence overall and is not purely a medical question.

In *El-Achi* Roche DP, considering the application of the test in s 4(b)(ii) in its current form, said:

"That a doctor does not address the ultimate legal question to be decided is not fatal (*Guthrie v Spence* [2009] NSWCA 369; 78 NSWLR 225 at [194] to [199] and [203]). In the Commission, an Arbitrator must determine, having regard to *the whole of the evidence*, the issue of injury, and whether employment is the main contributing factor to the injury. That involves an evaluative process." (emphasis added)"

144. Mr Geracitano's evidence that there were no other factors affecting his psychological condition before he started work for the applicant and before the events he complains of, and that he was in a secure, albeit sometimes "argumentative", relationship with Mr James is at odds with the evidence of Mr Riddock, Mr Laponin and Ms Malone.
145. Mr Geracitano has not disputed Ms Malone's evidence that he told her Mr James had previously assaulted him causing bruising and injuries to his ribs, that he showed her "aggressive text messages", and that he had taken out an Apprehended Violence order against Mr James. He has not disputed Mr Laponin's evidence that he stayed over on 25 May 2018 and helped him change the locks because he was scared of Mr James. He has not disputed Mr Riddock's and Mr Laponin's evidence that they visited him on 6 July 2018 because they were worried about his mental state on account of his abusive relationship, and that he "underwent counselling" around 25 or 26 July 2018 about "relationship issues" with Mr James. He has not disputed Mr Riddock's evidence that he spent an hour at the end of financial year diner "crying on his shoulder" over his abusive relationship with Mr James.
146. I accept the evidence Mr Riddock, Mr Laponin and Ms Malone about these matters. I prefer their evidence to the effect that the relationship was abusive at the time Mr Geracitano started work for the applicant and continued that way. It is not for them to say whether he was suffering from stress or depression, but I accept their evidence about the state of his relationship.
147. Mr Geracitano and Mr James are not disinterested witnesses to their own relationship. I accept that Mr James might not have been involved in the "knife incident" in July 2018 but I accept Mr Adhikary's submission that, if he was not, it underscores the unreliability of Mr Geracitano's evidence because he told Ms Malone one thing and reported something different to the police.
148. Dr Allan thought the relationship was more "tumultuous" than Mr Geracitano said, and he was aware there were differing views. He apparently took these into consideration in concluding that his employment was the main contributing factor, but I am not satisfied the material he had represented a "fair climate" for his opinion.
149. Considering the whole of the evidence, I am not satisfied that Mr Geracitano's employment with the applicant was the main contributing factor to the development of an Adjustment Disorder, or the aggravation, acceleration, exacerbation or deterioration of an Alcohol Misuse Disorder.

CONCLUSION

150. For these reasons I am not satisfied on the balance of probabilities that employment was the main contributing factor to the contraction of Mr Geracitano's Adjustment Disorder, or the aggravation or exacerbation of his Alcohol Misuse Disorder.
151. It is not necessary to determine whether compensation was precluded by reason of section 151A of the 1987 Act.
152. Pursuant to section 145(4) of the 1987 Act the Commission determines that the applicant is not liable to reimburse the first respondent the sum of \$50,234.04 as claimed in the Notice to Reimburse issued on 2 August 2019.