

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 3400/19
Applicant: Michelle Maguire
Respondent: Deaf Society of NSW
Date of Determination: 4 December 2019
Citation: [2019] NSWCC 387

The Commission finds:

1. The applicant suffered a primary psychological injury in the form of chronic adjustment disorder with depressed mood and anxiety (chronic anxiety and depression).
2. The applicant's employment was the main contributing factor to contracting the disorder.

The Commission determines:

1. The date of injury for the claim for physical injury is amended to 14 December 2017 (deemed).
2. The date of injury for the claim for psychological injury is amended to 27 July 2016 (deemed).
3. The injury description in the Application to Resolve a Dispute is amended to read:

"As a result of her employment the applicant suffered primary psychological injury in the form of chronic adjustment disorder with depressed mood, anxiety (chronic anxiety and depression)".
4. Award for the applicant on the claim for primary psychological injury under section 4(b)(i) of the *Workers Compensation Act 1987* (the 1987 Act).
5. The matter is remitted to the Registrar for referral to Approved Medical Specialists to assess the whole person impairment as follows:

Injury A

- (a) Body parts/systems: Cervical spine and left upper extremity (shoulder)
- (b) Date of injury: 14 December 2017 (deemed)

Injury B

- (a) Body parts/systems: Psychological injury (chronic adjustment disorder with depressed mood, anxiety (chronic anxiety and depression)).
- (b) Date of injury: 27 July 2016 (deemed)

6. The documents to be referred to the Approved Medical Specialists are:

- (a) The Application to Resolve a Dispute, and attachments;
- (b) The Reply, and attachments;
- (c) The Applicant's Application to Admit Late Documents lodged on 7 August 2019, and attachments;
- (d) The Applicant's Application to Admit Late Documents lodged on 20 August 2009, and attachments;
- (e) The Respondent's Application to Admit Late Documents lodged 26 September 2019, and attachments.

7. The parties are to have liberty to restore the matter on the issue of the dates of injury and the application of section 65A(4) of the 1987 Act.

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

NICHOLAS READ
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 NICHOLAS READ, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Michelle Maguire was employed by the Deaf Society of NSW, the respondent, as a sign language interpreter. Ms Maguire worked with the respondent since around the mid-1980s. Her role predominantly involved interpreting for deaf people with high needs in institutional settings such as prisons, police stations and court rooms.
2. In or around mid to late 2015 Ms Maguire suffered a mental and physical breakdown. She complained of pain in her left shoulder and neck. Ms Maguire stopped working with the respondent on or around 27 July 2016.
3. Ms Maguire made claims for lump sum compensation for a physical injury to her left shoulder and neck and for a primary psychological injury. Ms Maguire alleged she had contracted a chronic adjustment disorder as a result of the nature and conditions of her employment.
4. Ms Maguire's claims were declined by the respondent. During these proceedings the respondent admitted liability for the claim for physical injury. It was agreed this matter would be remitted to the Registrar for referral to an Approved Medical Specialist (AMS) to assess the degree of whole person impairment.
5. The remaining issue is whether Ms Maguire suffered a primary psychological injury in the form of a chronic adjustment disorder.

ISSUES FOR DETERMINATION

6. During the conciliation/arbitration the issues for determination were agreed as follows:
 - (a) Whether Ms Maguire suffered a primary psychological injury arising out of or in the course of her employment in the form of chronic adjustment disorder;
 - (b) If so, whether Ms Maguire's work was the main contributing factor to the development of the above disorder.
7. It is agreed between the parties that if I find the above matters in Ms Maguire's favour, the matter is to be remitted to the Registrar for referral to an AMS to assess the degree of permanent impairment of the primary psychological injury.

Matters previously notified as disputed

8. The issues were notified in a notice issued under section 74 of the 1998 Act dated 22 March 2018 and a notice issue under section 78 of the 1998 dated 2 July 2019.

PROCEDURE BEFORE THE COMMISSION

9. The parties attended a conciliation conference and then arbitration on 3 October 2019.
10. Mr Stephen Hickey of counsel appeared for the applicant. Mr Andrew Parker of counsel appeared for the respondent.

11. Ms Maguire applied to amend the date of injury for both the physical and psychological injury in Part 4 of the Application to Resolve a Dispute (ARD). The description of the psychological injury was also amended to claim the specific psychological injury diagnosed by Dr Raymond Tint Way. The amendments were not opposed by the respondent.
12. Whilst the parties agreed to fixing separate deemed dates of injury, I have reservations that this is logical or legally correct in the circumstances where both the injuries are alleged to have arisen from the “nature and conditions” of the applicant’s employment. Accordingly, as requested by the respondent, I have given the parties liberty to apply on the issue of the dates of injury and the application of section 65A(4) of the 1987 Act. Mr Parker said, if I found the applicant suffered from a primary psychological injury, the matter could be listed for a further telephone conference after the issue of the Medical Assessment Certificate.
13. The respondent did not press the “notice of injury” or “notice of claim” issues raised in the dispute notices.
14. I was satisfied that the parties to the dispute understood the nature of the application and the legal implications of the assertions made in the information supplied. I used my best endeavours to attempt to bring the parties to the dispute to a settlement acceptable to all of them. I was satisfied that the parties had sufficient opportunity to explore settlement and that they were unable to reach an agreed resolution of the dispute.

EVIDENCE

15. The following documents were in evidence before the Commission and have been taken into account in making this determination:
 - (a) ARD and attached documents;
 - (b) Reply and attached documents;
 - (c) Application to Admit Late Documents lodged on 7 August 2019 and attached documents (applicant’s ALD 7 August 2019);
 - (d) Application to Admit Late Documents lodged on 20 August 2019 and attached documents (applicant’s ALD 20 August 2019); and
 - (e) Application to Admit Late Documents lodged on 26 September 2019 and attached documents (respondent’s ALD 26 September 2019).
16. There was no application to adduce oral evidence or to cross-examine any witness.

EVIDENCE

Factual evidence

17. Ms Maguire made three statements dated 27 July 2016, 7 February 2018 and 28 March 2019.

18. In her first statement, Ms Maguire said she first noticed her physical injury on 6 December 2013 when undertaking her usual duties. Ms Maguire said she experienced an onset of severe pain in her left shoulder blade. Ms Maguire had some time off work and when she attempted to return experienced a further exacerbation on pain.

Ms Maguire said:

“...I started to have a mental breakdown and emotional breakdown. My whole identity is wrapped up in my work. The added layer of complexity is that I am from a deaf family...The fact that my body is failing me...added a layer of complexity...I became emotionally distressed that I may not be able to assist them. I had to withdraw from all my family things but it took away not only my working life but my entire being. In my immediate family I am the only person who can hear. I’m effectively their link to the outside world...” (ARD page 1).

19. In her statement dated 7 February 2018, Ms Maguire said she continued to have severe physical symptoms and was being treated for chronic left side pain and somatic symptom disorder by her general practitioner, Dr Elana Roseth. Ms Maguire said she had also been treated by psychologist, Carl Neilson, and a psychiatrist, Dr Selwyn Smith. Ms Maguire said:

“I feel the psychiatric condition is a combination from the way I was treated by the Deaf Society combined with the stress of the workplace. So, in my opinion it is a primary psychiatric condition that results from the workplace as opposed to a psychiatric injury that results from the effects of pain” (ARD page 2).

20. In her statement dated 28 March 2019, Ms Maguire detailed numerous instances of the stressful work she had undertaken and its effect on her. Ms Maguire continued to undertake the work until 2016. She said the work caused her to feel distressed and unsupported by the respondent.

21. The respondent relied upon statements from its Chief Executive Officer, Leonie Jackson. Ms Jackson started working with the respondent in May 2015, many years after Ms Maguire commenced employment (Reply page 165). Ms Jackson said that support was offered to all interpreters through debriefing sessions and access to counsellors through an Employee Assistance Program (EAP). Ms Jackson confirmed that Ms Maguire had worked on a number of the assignments referred to by her in the statement evidence, but did not agree with all of the information provided (ARD page 15).

Medical evidence

22. Prior to moving to the North coast, Ms Maguire had attended the Dee Why General Practice since 2007. The clinical records documented a number of instances where Ms Maguire had reported stress arising from both work and personal matters.

23. For example, an entry in the clinical records on 19 November 2012 recorded that Ms Maguire reported concerns about her son and working whilst taking medication. The note records:

“Knows she has PTSD...Sometimes thinks she is sick/cancer. Gets a feeling circulating through her body. Last lasts minutes. Not daily, maybe a couple of times a week, year or two...incredible stress in life. Work, family drug addicts’ kids, taking kids of parents for DOCS etc...not much respite....so wound up with everything that she can’t relax...sees counsellor weekly...Drug addict sons out of the home. Doesn’t give them money anymore. Does visit them when they are in

hospital. Jake – drug induced psychosis ended up in high risk...” (ARD page 466 - 467).

24. On 16 December 2013, Ms Maguire reported to her general practitioner pain in her left shoulder extending down her arm, which had been unbearable over the last two weeks (ARD page 470).
25. On 21 January 2014, Ms Maguire reported to her general practitioner that her physical injury had improved and she would be returning to work. The clinical note also recorded that Ms Maguire had to take out an apprehended violence order against her son (ARD page 471).
26. A note made by the general practitioner on 28 February 2014 detailed that Ms Maguire had a long discussion about significant past personal stressors and her family history background. The note records over the last few years Ms Maguire was “facing up to how things were” (ARD page 472).
27. A note made by the general practitioner on 14 October 2014 records:

“Has taken a week off work. One month ago – had to interpret for DOCS taking kids after shaking kid...big court...Feels she needs to debrief. Nothing happened. Was offered to go to some sort of counsellor. Said she would go and see her own counsellor. Has spent the last half of her sessions in the last year dealing with work...Thinks management don't deal with things well...No one is managing the place. Most junior person is telling everyone what to do. Got to the point that she was too overwhelmed. Went to the CEO...Feels resentful, unappreciated... Wondering if they are trying to get rid of her. Feels her skills aren't up for it anymore which is ridiculous...Will write an email to Boss. Would like to be put on jobs that don't involve courts or funerals” (ARD page 474 - 475).
28. Following her physical injury, Ms Maguire was referred to a sports and exercise physician, Dr Diana Robinson. In a report dated 4 February 2015 Dr Robinson recorded the history of the onset of pain in Ms Maguire's left arm and neck in mid-2013. Dr Robinson said since June 2014 Ms Maguire had been very busy at work which was very stressful dealing with a number of DOCS issues. Dr Robinson said:

“... [the work] involved repeated visits to court over shaken baby syndrome, removal of children, sexual assault and other significant stressful issues. She ultimately had to work in the adolescent psychiatric unit interpreting for her brother when his daughter was admitted to a psychiatric unit. She found this very stressful as it produced conflicting emotions. At the time she developed worsening, left interscapular and left interior shoulder pain which radiated into the left arm and wrist. She would take Panadol and rest the area but found that when she woke up in the morning the neck pain and shoulder pain would be worse...” (ARD page 339).
29. Dr Robinson said Ms Maguire had a rib ring dysfunction and opined that a combination of factors had caused her syndrome, including a poor posture and the chronic stress she had experienced at work (ARD page 340).
30. A note made by the general practitioner on 3 August 2015 records:

“[Ms Maguire] needs to address the fact that the issues aren't just physical – they are mental and emotional as well. e.g. one of the jobs she did was her brother's daughter (non-death) in the psychiatric hospital. Realises she shouldn't have done it b/c to close...” (ARD page 480).

31. On 10 September 2015, Ms Maguire saw Dr Tim Lu, rheumatologist and consultant physician. Dr Lu recorded Ms Maguire had developed a recurrence of pain in June 2015 in the left shoulder girdle after a particularly demanding job in a juvenile psychiatric institution after which she felt mentally and physically exhausted and was teary at times (ARD page 345).
32. A note made by the general practitioner on 14 September 2015 records:

“Long discussion re Endep, SEs – dry mouth, fireworks and brain. More anxious than before. Thinking a lot about the jobs she has done...” (ARD page 483).
33. On 18 April 2016, a medical case conference took place. During the conference Dr Robinson reported that a large component of Ms Maguire’s physical symptoms resulted from stress associated with in her role and this required addressing to promote her recovery. Dr Robinson recommended Ms Maguire attend counselling sessions with a clinical psychologist to assist with the anxiety and stress associated with the work-related injury (Reply page 343).
34. In a report dated 14 June 2016, Dr Robinson observed Ms Maguire’s anxiety was reduced and she had benefited from sessions with the psychologist. Dr Robinson said:

“Michelle notes that Pamela has been able to validate her feelings about certain issues in her life and help to see her situation much more clearly. Michelle, on the basis of this, is now considering her options moving into the future. This, in general involves the fact that both her work life and her family life is very closely integrated and that this may not be the best thing psychologically for Michelle” (Reply page 445).
35. On 26 October 2016, Dr Roseth referred Ms Maguire to Dr Selwyn Smith for psychiatric review. In her letter to Dr Smith, Dr Roseth reported Ms Maguire had a long history of anxiety and had seen a psychologist over many years, particularly in relation to dealing with her children who had drug and alcohol issues.
36. Dr Roseth said Ms Maguire was disappointed in the way her work had treated her not finding any suitable duties, had come to realise that she may not work in another job after over 30 years and was scared about finding alternative work. Dr Roseth said:

“One of the frustrations is that she has no real definite diagnosis is all of the therapists given different diagnoses...Her anxiety is most about dealing with health professionals now and what is going to happen with her work. I believe she really has a chronic pain syndrome going on...

...Michelle has come in today essentially saying she believes she has no capacity to work both because of her physical symptoms and emotional symptoms. She feels she has no ability to concentrate or learn anything new. I have changed her workers comp certificate to “no capacity” but expect the insurance company to very quickly query this.”
37. Dr Roseth’s letter listed a prior medical history of anxiety and insomnia, as well as a number of other medical issues (ARD page 370 - 372).
38. Ms Maguire saw Dr Michael Shatwell, orthopaedic surgeon, at the request of the respondent for an assessment of her physical injuries. In report dated 17 November 2016 Dr Shatwell said:

“There is no musculoskeletal explanation for Ms Maguire’s symptoms. I consider Ms Maguire’s symptoms relate to stress. I consider she is physically fit for her usual work. I do not consider she requires restrictions related to any injury. She should be able to return to her usual duties without physical restrictions. The limitation of her capacity for work is related to the stressful nature of the situations she has been exposed to” (Reply page 404).

39. In a report dated 12 December 2016, Dr Selwyn Smith recorded that Ms Maguire being diagnosed with a number of physical conditions including the thoracic rib ring syndrome. Dr Smith said Ms Maguire reported feeling increasingly vulnerable in the work setting (ARD page 373).

40. Dr Smith recorded Ms Maguire’s family history, including concerns regarding her children, but said she was able to cope with these concerns (ARD page 374).

41. Dr Smith said:

“[Ms Maguire] ...displays clinical evidence of a somatic symptom disorder (DSM-5 diagnostic criteria (or a chronic pain disorder (DSM-IV diagnostic criteria). She is significantly focused on somatic symptoms that are disproportionate and persistent. She has a high level of anxiety about her health. She experiences predominant pain. In addition, she displays diagnostic criteria for a Major Depressive Disorder” (ARD page 374).

42. In a report dated 12 December 2016, Dr Smith diagnosed Ms Maguire with somatic symptom disorder (chronic pain disorder) in association with major depressive disorder. Dr Smith said:

“I deem her condition to be a result of difficulties coping in the work setting. In all probability given her background history she is vulnerable to experience emotional decompensation in the presence of psychosocial stressors of significance” (Reply page 280).

43. Dr Smith reviewed Ms Maguire again on 2 February 2017. Dr Smith noted Ms Maguire continued to display a marked degree of chronic pain with restriction of movement and symptoms relating to her major depressive disorder (ARD page 375).

44. On 20 February 2017, Ms Maguire saw Dr Doran Samuel, clinical and forensic psychiatrist, for the purposes of an injury management consultation. In a report dated 22 February 2017 Dr Samuel recorded that Ms Maguire had told him she felt “traumatised by the whole thing...my job and what’s happened to me since I’ve been off work”. Dr Samuel said that he and Dr Roseth had concluded Ms Maguire suffered from a somatoform disorder and her condition was not work related (ARD page 435 - 436).

45. In a report dated 17 March 2017, Dr Smith confirmed Ms Maguire continued to demonstrate diagnostic criteria for a somatic symptom disorder as well as a major depressive disorder (ARD page 377).

46. On or around 31 August 2017, Ms Maguire started seeing Carl Neilson, psychologist. Mr Neilson diagnosed Ms Maguire with an adjustment disorder with depressed and anxious mood and said Ms Maguire’s condition was caused by a number of stressful incidents at work culminating on 8 June 2015, when she was unable to work. Mr Neilson said there was an absence of any pre-existing psychological condition (ARD page 440).

47. In a report dated 12 February 2018, Mr Neilson opined the primary diagnosis was an Adjustment Disorder with anxious and depressed mood which had resulted from the stressful situations Ms Maguire had been placed in. Mr Neilson said that Ms Maguire also had a somatoform disorder, which had resulted from her being “burnt out” at work.

48. In a report dated 14 February 2018, Dr Smith said:

“[Ms Maguire] ...experienced a marked deterioration in her psychiatric disorder against a background of her exposure to significant work-related difficulties in dealing with death. In all probability this resulted in an exacerbation of her underlying somatic symptom disorder in association with the development of a major depressive disorder (ARD page 378).

...it is my opinion that her psychological diagnosis and the associated symptoms she suffers are predominantly a result of the physical injury that she sustained during the course of her employment...I disagree with Mr Neilson that she has a separate injury. The two conditions namely Somatic Symptom Disorder and Major Depressive Disorder closely linked.”

49. Dr Smith agreed with Dr Roseth’s diagnosis of somatic symptom disorder:

“In my opinion her symptoms are far more significant than an acute adjustment disorder. A somatic symptom disorder is a formal psychiatric disorder characterised by inordinate focus on physical symptoms in association with pain. It is frequently associated with the depressive condition” (ARD page 389).

50. In a report dated 28 September 2017, Ms Maguire’s psychologist, Carl Neilson, diagnosed her as suffering with an adjustment disorder with depressed and anxious mood (ARD page 382).

51. Ms Maguire saw Dr Endrey-Walder, general and trauma surgeon, in December 2017. In a report dated 7 December 2017 Dr Endrey-Walder recorded Ms Maguire’s history of development of neck and shoulder pain and said:

“Various diagnosis had been formulated by the doctors, and one appreciates that it is difficult to formulate a precise diagnosis on account of the widespread nature of the pain described...

Basically, this lady had developed soft tissue sensitisation of muscles at the left side of her neck and over the left shoulder girdle, and this remained with her in a chronic fashion” (ARD page 176).

52. In a report dated 20 April 2018, Dr Shatwell said there was no definite diagnosis of musculoskeletal disorder to explain Ms Maguire’s current condition. Dr Shatwell said Ms Maguire’s symptoms were stress related and not caused by any simple musculoskeletal disease. Dr Shatwell said there was no physical cause to explain Ms Maguire’s symptoms:

“Her symptomatology is bizarre and cannot be explained on any medical basis. There is no evidence on reading the file regarding her physical problems that there is a physical cause for her symptomatology” (Reply page 726 - 729).

53. Ms Maguire saw Thomas O’Neill, psychologist, on 12 March 2018. In a detailed report Mr O’Neill said there were significant other factors both past and current that were prolonging distress and unlikely to respond to psychological treatment. He noted that Ms Maguire was fixated on resolution of her workers compensation claim.

54. Mr O'Neill said there would be some vulnerability in Ms Maguire's make-up and her family of origin, the extra responsibility she took on as the only verbal member of the family, and having to develop her career in education by herself with what appeared to have been minimal support.
55. Mr O'Neill said Ms Maguire had denied ever being diagnosed with any serious psychiatric disturbance or requiring any prior psychological or psychiatric support, which he observed was inconsistent with information provided by Dr Roseth. Mr O'Neill said people with families with hearing impairment often do have associated psychological vulnerabilities (ARD page 442).
56. Mr O'Neill said Ms Maguire had described ongoing grievances and distress associated with the respondent:
- "She felt that the Deaf Society did not provide her with the emotional support dealing with traumatic incidents in the workplace. She was very upset that she was not contacted for over two years following submission of her claim. Said any communication with her employer is now perceived as threatening or involved blaming her in some way...There was a quagmire of complexities and embellishment in community relationships with continue to feed distress given her significant and long history of the organisation" (ARD page 443).
57. In respect of clinical diagnosis Mr O'Neill said:
- "...there is confusion as the actual formulation and defined injury, which is complicated by an individual who herself as a family origin vulnerability, has worked her whole life with a vulnerable population, has a noted long history of anxiety in previous treatment identified by the nominated treating doctor, has experienced significant family stressors in the year leading up to her work absence involving her son, in particular his incarceration, as well as more recently the death of her brother in law. A lot of these issues appear to have been minimised in the process of assessments throughout the journey of this claim...The interweave of these factors make concluding diagnoses difficult". (ARD page 451)
58. In a further report dated 23 May 2019, Mr Neilson repeated the history obtained from Ms Maguire, including referring to an assignment interpreting for Ms Maguire's niece after admission to a psychiatric facility, which had impacted on her due to concerns the negative repercussions for declining the job (ARD page 385). Mr Neilson reported that Ms Maguire had five children all of whom she had good relationships with. Mr Neilson confirmed his diagnosis of a chronic adjustment disorder with depressed and anxious mood. He said:
- "Mrs Maguire's condition is a primary psychological condition "by default" given there is no empirical evidence to suggest she is suffering with any physiological condition to date despite extensive investigation. Mrs Maguire's *self-reported* physiological symptoms are *secondary* to her psychological injury and a commensurate with Somatic Pain Disorder symptoms." (ARD page 386) [*emphasis in original*].
59. Mr Neilson said on the balance of probabilities Ms Maguire's condition had been sustained due to various workplace incidents until 8 June 2015 when she became psychologically unfit for work (ARD page 387).

Forensic medical reports

Dr Way

60. Ms Maguire relied upon by a series of forensic medical reports from Dr Raymond Tint Way, consultant psychiatrist and psychotherapist. Dr Way's reports are summarised below:
- (a) Dr Way recorded that Ms Maguire had worked in emotionally draining work and had a strong sense of justice for the deaf community. Dr Way recorded the respondent had failed to provide debriefing sessions or emotional support when she complained to them about stressful experiences that she had encountered (ARD page 181);
 - (b) In respect of the Ms Maguire's past psychiatric history, Dr Way recorded there was no previous history of major depression or psychiatric admission and that she had seen a general practitioner on one occasion who had prescribed Zoloft for anxiety symptoms but she ceased taking the drug after a period of two months;
 - (c) Dr Way said Ms Maguire's had become teary when speaking about the lack of emotional support from the respondent (ARD page 183);
 - (d) Dr Way opined that Ms Maguire had suffered psychological injury in the context of the cumulative effects of dealing with difficult emotional issues of deaf people without appropriate training or support from her employer;
 - (e) Dr Way said Ms Maguire had a sensitivity to the emotional needs of deaf people and she developed psychological distress and somatic symptoms with chronic pain as she become overloaded with work and little support. Dr Way said Ms Maguire's symptoms became chronic as her emotional conflict with her employer remained unresolved;
 - (f) Dr Way diagnosed chronic adjustment disorder with depressed mood and anxiety and separate chronic pain disorder (ARD page 183);
 - (g) Dr Way opined that Ms Maguire's work and the lack of support had contributed to the onset of her condition and was a substantial contributing factor to her injury (ARD page 184);
 - (h) Dr Way said the unresolved conflict and lack of emotional support from the Ms Maguire's superiors perpetuated the ongoing chronic symptoms of anxiety and depression (ARD page 189);
 - (i) Dr Way opined that employment was the main contributing factor to Ms Maguire's psychological injury because the nature and conditions of her employment involved constant exposure to extreme stress and trauma of the events she was required to attend without adequate supervision and support (ARD page 190);
 - (j) Dr Way said that, if stressors or their consequences persist, an adjustment disorder may continue to be present longer than six months and become chronic. Dr Way said when he reviewed Ms Maguire on 21 January 2019, she continued to report significant symptoms of anxiety and depression and was still distressed by work-related issues (applicant's ALD 20 August 2019 page 2);

- (k) Dr Way said Dr Smith appeared not to have adequately explored the series of traumatic and stressful events Ms Maguire had to deal with in her employment which had a cumulative effect on the development of her chronic anxiety and depressive symptoms (ARD page 191);
- (l) Dr Way said Dr Graham Vickery, psychiatrist and pain management consultant, who assessed Ms Maguire on behalf of the respondent, had placed an emphasis on Ms Maguire's family history which had resulted in her seeing a psychologist for many years, but did not discuss in any detail the cumulative effect of the stressful events at the respondent's workplace or the perceived lack of support which had caused her chronic symptoms of anxiety, depression and difficulty coping (ARD page 191);
- (m) Dr Way said that both Drs Vickery and Smith did not cover the significant predisposing factors of Ms Maguire's psychological condition, which caused her to be overwhelmed with emotions and played a significant role in the development of her chronic symptoms (ARD page 191);
- (n) Dr Way disagreed with Dr Vickery's opinion that Ms Maguire had suffered from non-work-related secondary somatic symptom disorder. He said a chronic pain disorder is not a primary condition (ARD page 192). Dr Way said Ms Maguire's chronic pain was a work-related primary injury (Applicant's ALD 20 August 2019 page 1).

Dr Vickery

61. The respondent relied upon a series of reports from Dr Vickery. Dr Vickery's reports are summarised below:

- (a) Dr Vickery said Ms Maguire initially experienced physical symptoms in December 2013 and was diagnosed with an overuse injury. The physical injury came on in the context of a high-pressure court job. Ms Maguire experienced a relapse of pain in June 2016, again after difficult work (ARD page 391);
- (b) Dr Vickery recorded that Ms Maguire had undertaken counselling and that she had come to terms with the stressors of her childhood (ARD page 392);
- (c) Dr Vickery said was significant there was a pre-existing history of insomnia and anxiety which Ms Maguire did not disclose to him during the assessment (ARD page 393);
- (d) Dr Vickery said it was also significant that Ms Maguire had experienced a relapse in December 2016 associated with the loss of her rehabilitation consultant and upon being notified of termination of her employment (ARD page 395);
- (e) Dr Vickery diagnosed a Somatoform Chronic Pain Disorder with psychological factors or Somatic Symptom Disorder, Generalised Anxiety Disorder, Acute Adjustment Disorder and Irritable Bowel Syndrome (ARD page 395);
- (f) Dr Vickery said Ms Maguire's presentation was consistent with Somatoform Chronic Pain Disorder, which involved pain perception with comorbid symptoms of depression and anxiety. The diagnosis of Somatoform Chronic Pain Disorder was consistent with the opinion of

Dr Shatwell who had found no explanation for Ms Maguire's physical symptoms (ARD page 418, 431);

- (g) Ms Maguire's employment was not the substantial contributing factor to the Somatoform Chronic Pain Disorder;
- (h) Ms Maguire suffered from pre-existing Generalised Anxiety Disorder. The employment was not a substantial contributing factor to this disorder. It was "constitutional" in nature (ARD page 398);
- (i) Ms Maguire's Acute Adjustment Disorder was related to the loss of a rehabilitation consultant and being notified of termination of employment in late 2016 (ARD page 398);
- (j) Ms Maguire's Generalised Anxiety Disorder may have been aggravated by her employment however her condition could also have been responsible for the perception of her being under pressure. Any work-related aggravation ceased when Ms Maguire reported being 90% recovered (ARD page 399 - 400);
- (k) Dr Vickery opined that Ms Maguire's psychiatric conditions were primarily constitutional, pre-existing and related to long-standing and ongoing significant personal stressors. There was no objective indication that Ms Maguire's psychiatric conditions was primarily work-related in nature (ARD page 406);
- (l) The clinical record in 2007 mentioning "hypochondriac thoughts" was consistent with a diagnosis of Somatic Symptom Disorder. It was probable that Ms Maguire's Somatic Symptom Disorder was pre-existing (ARD page 409);
- (m) The absence of any comment made by Mr Nielson in his report in relation to Ms Maguire's extensive pre-existing psychological condition invalidated his opinion that Ms Maguire's condition was an adjustment disorder (Reply page 708);
- (n) Similarly, Dr Way appeared to be unaware of Ms Maguire's significant pre-existing personal stressors and the pre-existing history of chronic anxiety documented by Dr Roseth and Dr Endrey-Walder for which she had undertaken counselling over many years. Dr Vickery said the absence of any reference to Ms Maguire's significant pre-existing condition and the subsequent personal stressors invalidated Dr Way's diagnostic formulation (Respondent's ALD 26 September 2019);
- (o) Dr Vickery said the diagnosis of chronic adjustment disorder with depressed mood and anxiety and chronic pain disorder was not tenable because Ms Maguire had no contact with the respondent for over six months. There had been no work stressors for over three years. During his consultations with Ms Maguire she had not mentioned any work-related triggers. The persistent stressors were not related to the stressful work but to progressing the workers compensation (ARD page 430);
- (p) Ms Maguire's condition was consistent with the progression of a long-standing pre-existing generalised anxiety disorder in the context of multiple personal stressors, and her current psychological injury was no longer the result of her employment (ARD page 431);

- (q) Ms Maguire's injury was related to her personal perception of events and in particular to her Somatoform Pain Disorder which has been subsequently determined to be non-work-related;
- (r) Ms Maguire had not suffered a primary psychological injury where the nature and conditions of her employment was the main contributing factor to the injury. Dr Vickery said Ms Maguire's chronic somatoform injury was sustained secondary to her alleged physical injuries (Reply page 707).

REASONS

Did Ms Maguire suffer a primary psychological injury in the form of chronic adjustment disorder with depressed mood and anxiety (chronic anxiety and depression)?

- 62. Ms Maguire has the onus of proving that she suffered a primary psychological injury in the form of chronic adjustment disorder with depressed mood and anxiety (chronic anxiety and depression).
- 63. The standard of proof is the balance of probabilities (see *Nguyen v Cosmopolitan Homes (NSW) Pty Ltd* [2008] NSWCA 246).
- 64. Section 4(a) of the 1987 Act provides personal injury means injury arising out of or in the course of employment. Section 4(b) provides that a personal injury includes a disease contracted in the course of employment, but only if the employment was the main contributing factor to contracting the disease.
- 65. There can be no doubt that a recognised psychological condition, such as a chronic adjustment disorder, is a disease.
- 66. Lump sum compensation is not payable for permanent impairment that results for a secondary psychological injury (section 65A(1) of the 1987 Act).
- 67. Where a psychiatric injury is alleged a worker must prove their nervous system was affected and that a physiological effect was induced, not a mere emotional impulse. Frustration and emotional upset do not constitute injury. A fixation on litigation is not compensable. A subsequent rationalisation of the earlier innocuous events, which rationalisation leads to psychiatric illness, is also not compensable (see *Stewart v NSW Police Service* [1998] NSWCCR 57).
- 68. It is well recognised that a physical injury or psychological condition can have multiple causes (*Migge v Wormald Bros Industries Ltd* (1973) 47 ALJR 236; *Pyrmont Publishing Co Pty Ltd v Peters* (1972) 46 WCR 27; *Cluff v Dorahy Bros (Wholesale) Pty Ltd* (1979) 53 WCR 167; *ACQ Pty Ltd v Cook* [2009] HCA 28 at [25] and [27]; [2009] HCA 28; 237 CLR 656).
- 69. Whether an injury was caused by work is a question of fact to be determined on the basis of the evidence. A "common sense" approach is to be taken to determining questions of causation, taking into account the expert opinion evidence (*Kooragang Cement Pty Ltd v Bates Kirby* (1994) 35 NSWLR 452; *Lithgow City Council v Jackson* [2011] HCA 36).
- 70. Ms Maguire submitted that she had suffered a primary psychological injury, that being chronic adjustment disorder with depressed mood and anxiety (chronic anxiety and depression). Ms Maguire did not seek to challenge the diagnosis of a somatoform disorder but submitted there was a separate primary injury that resulted from the work. This was a sensible approach given the weight of medical evidence supported the

existence of such disorder. In her submissions, Ms Maguire emphasised the stressful nature of the work to which she was exposed and submitted she had a predisposition to injury due to her personal background.

71. The respondent did not submit that Ms Maguire's work was not of the type capable of causing psychological injury. The respondent's submissions focussed on whether the medical evidence supported a finding of a chronic adjustment disorder and whether it could be considered Ms Maguire's employment was the main contributing factor to the development of the disorder.
72. Ms Maguire was employed since the mid-80s. Her work, by its nature, involved exposure to traumatic and stressful events which had the potential to impact on her psyche. Although Ms Jackson said certain events occurred differently, the nature of the work is not directly challenged. Ms Jackson's evidence is also of limited value because she only started working with the respondent from May 2015.
73. There is no evidence before me of the respondent's systems or processes for managing stress arising from the workplace over the entire duration of Ms Maguire's employment. I accept, that from at least May 2015 onwards, the respondent has the systems mentioned by Ms Jackson (the EAP and voluntary debriefing sessions). However, it is important to note that it is Ms Maguire's perception of a lack of support from her employment is sufficient to satisfy the test of injury. There is no requirement that Ms Maguire's perception pass a threshold of reasonableness (see *Attorney General's Department v K* [2010] NSWCCPD 76 (21 July 2010) (*Attorney General's Department v K*)).
74. There are contemporaneous documents that support Ms Maguire's complaints about the stressful nature of the work. The clinical records of Dr Roseth of 19 November 2012, 14 October 2014 and 3 August 2015 refer to particular instances of difficult case work. I accept the complaint of 19 November 2012 is intermingled with reports personal stressors. However, the last two records focus specifically on work-related issues. The reports of Drs Robinson and Lu in February and September 2015 support the stressful nature of the work in part brought about the physical symptoms. Further, in her performance reviews from 2013 Ms Maguire repeatedly stated she found the nature of the work stressful (Reply pages 196, 205, 218). These records add support to Ms Maguire's claim of a primary psychological injury.
75. There is also a reference to Ms Maguire spending a large amount of time with her prior psychologist discussing work issues. Taking into account the inherent nature of the work and the documented references to stress, I find that the exposure to the work events over a period of about 30 years had had the capacity to cause Ms Maguire a primary psychological injury. I reject the respondent's submission that Ms Maguire has unconsciously recreated a cause of action.
76. Ms Maguire submitted that she was vulnerable to suffering a work-related psychological injury due to her personal background and sense of justice for deaf people. I accept this submission. It is consistent with Ms Maguire's evidence and the observations of Dr Smith and Mr O'Neill. There is an "egg-shell psyche" principle (see *Attorney General's Department v K*).
77. It is also relevant that Ms Maguire experienced stress arising from her personal life and the in the context of receipt of her physical injuries (see ARD page 15 and the observations of Dr Roseth at ARD pages 370 to 371 and Mr O'Neil at ARD page 448). The distinction between symptoms in response to the physical injury and symptoms resulting from exposure to the traumatic events at work is a matter for expert evidence.

78. The fact that there was an intensification of symptoms around the time of physical injury, and after the injury, does not mean that Ms Maguire did not suffer a disease-type psychological injury as a result of the nature and conditions of her work. The fact of other stressors is not determinative to the issue of whether Ms Maguire suffered a primary psychological injury, noting that the development of a psychological disorder can have multiple causes.
79. The respondent's submissions also focussed on medical causation, in particular whether I could be satisfied on the medical opinion evidence whether Ms Maguire's condition had been caused by her work. The respondent said Ms Maguire had argued the case on the basis of a specific psychological injury, being the disorder diagnosed by Dr Way, and not a primary psychological injury in the general sense. However, the respondent also accepted that the diagnosis of psychological injury was essentially a matter of clinical judgment based on the diagnostic guidelines. The guidelines are not a cookbook. The exercise of clinical judgment may justify giving certain diagnoses to an individual even though their clinical presentation falls just short of meeting the full criteria for the diagnosis as long as the symptoms that are present are persistent and severe (see *New South Wales v Seedsman* [2000] NSWCA 119 at [114]–[116]; *Department of Corrective Services v Bowditch* [2007] NSWCCPD 244 at [116]). Therefore, the fact of competing diagnoses is to be expected in complex matters and differences in medical opinion is not something that in itself would disentitle an applicant to compensation so long as the opinion on diagnosis is given in a reasonable climate.
80. The issue of whether Ms Maguire suffered a primary psychological injury in the form of chronic adjustment disorder with depressed mood and anxiety (chronic anxiety and depression) is to be determined primarily by reference to the medical evidence.
81. The weight afforded to expert medical evidence is to be determined by having regard to the correspondence of the opinion provided with the facts proved by admissible evidence (*OneSteel Reinforcing Pty Ltd v Sutton* [2012] NSWCA 282; *Hancock v East Coast Timber Products Pty Ltd* (at [77])).
82. The expert opinion evidence in Ms Maguire's medical case consisted of Dr Way and Mr Neilson.
83. I am satisfied that Dr Way had a fair history of Ms Maguire's prior mental health issues and the personal stressors. Although Dr Way did not specifically mention Ms Maguire's prior psychological history or the personal stressors in any detail, he was provided with a detailed letter of instruction from her solicitors setting out these matters and drawing his attention to the competing opinions of other (applicant's ALD 7 August 2019 page 10 – 14).
84. In my view Dr Way placed appropriate emphasis on the duration and nature of the employment. The work-related stressors were not trivial or inconsequential matters. They were matters to which Ms Maguire was exposed to on a regular basis over a period of about 30 years of employment. Dr Way's reference to a failure by the respondent to respond to complaints about the stress, is in part supported by the clinical note of 14 October 2014 and Ms Maguire's evidence of the subsequent work undertaken.
85. Dr Way did not disagree that Ms Maguire suffered from a pain centric disorder. He diagnosed a separate condition, that being a chronic adjustment disorder. Dr Way accepted Ms Maguire's physical injuries impacted on her psyche. Dr Way's opinion was based on accepting Ms Maguire suffered from actual physical injuries to her neck and shoulder, as opposed to the pain being a mere manifestation of her psychological

condition. Dr Way's acceptance of a physical injury is consistent with the decision made by the respondent to accept liability for a physical injury.

86. Dr Way's diagnosis of two separate conditions is consistent with the diagnosis of Dr Smith. As pointed out by Ms Maguire, Dr Smith diagnosed two conditions, a somatoform disorder and major depressive disorder, the symptoms of which were both persistent and severe.
87. I find Dr Smith's opinions difficult to reconcile. On one hand Dr Smith appears to say Ms Maguire's had an underlying somatoform disorder which was exacerbated by the nature of her work and caused the development of a separate condition, being a major depressive disorder (ARD page 378). An exacerbation of an underlying condition and a development of a separate condition would be a primary psychological injury caused by work. On the other hand, Dr Smith says the diagnosis and symptoms are predominantly result of Ms Maguire's physical injury. In effect, this would mean the condition would be a secondary psychological injury that has arisen as a consequence of the physical injury.
88. Dr Smith disagreed with the diagnosis of an adjustment disorder and rejected Mr Neilson's opinion that Ms Maguire had a separate injury, stating "The two conditions namely Somatic Symptom Disorder and Major Depressive Disorder closely linked." However, Dr Smith's comment does not sit comfortably with his diagnosis of two separate conditions. It is not possible to follow Dr Smith's path of reasoning. In the circumstances, I do not place weight on his opinion on diagnosis and causation, other than the identification of two separate conditions.
89. Dr Way justified his diagnosis of a chronic adjustment disorder by stating Ms Maguire continued to display a depressed mood and anxiety in January 2019 and remained distressed by "work related issues". Although Dr Way did not identify the work-related issues that Ms Maguire continued to be distressed by, I accept these were matters that were either directly related to, or consequential of, the work undertaken by the Ms Maguire. Ms Maguire has given some evidence of rumination on the difficult casework undertaken. Mr O'Neill recorded a focus on both past and present issues. There may have been other stressors, but the development of a psychological condition, can have multiple causes.
90. Dr Way's opinion is supported by Mr Neilson.
91. Similarly, to Dr Way, Mr Neilson acknowledged the existence of a pain disorder. He agreed with Dr Roseth that Ms Maguire suffered from a somatoform disorder. Mr Neilson diagnosed a separate chronic adjustment disorder.
92. In my view, less weight should be given to Mr Neilson's opinion. On the face of the documents Mr Neilson does not appear to have been provided with an accurate history. He said there was no pre-existing psychological condition (ARD page 440). He also recorded Ms Maguire had good relationships with her children, which is inconsistent with other evidence.
93. Mr Neilson's consultation notes are of no assistance. They repeat the same entries for each consultation rather than identifying any specific matters discussed.
94. Dr Vickery initially diagnosed Ms Maguire with a number of conditions including somatoform disorder, Generalised Anxiety Disorder and Acute Adjustment Disorder.
95. Dr Vickery said the adjustment disorder was the result of loss of Ms Maguire's rehabilitation consultant. This event is not recorded in any documents, including Ms Maguire's statements. In my view, it is more likely that the adjustment disorder

resulted from the multiple workplace stressors Ms Maguire was exposed to during her lengthy employment, as opined by Dr Way, as opposed to a particular event.

96. I accept the Ms Maguire's submission that Dr Vickery does not give adequate weight to the multiplicity of stressful incidents she was exposed to during her employment with the respondent. Dr Vickery also did not consider Ms Maguire's pre-disposition to a psychological injury due to her personal background. I accept Ms Maguire's submission that Dr Vickery placed excessive weight on personal stressors in the circumstances where there was evidence which supported that she had come to terms with at least some of the problems (ARD page 374, 472). I prefer the opinion of Dr Way, that the adjustment disorder resulted from the nature and conditions of Ms Maguire's employment as opposed to the loss of her rehabilitation consultant.
97. Whilst acknowledging the diagnosis of adjustment disorder, Dr Vickery said the effects of that disorder have ceased. He said Ms Maguire's presentation was consistent with her longstanding generalised anxiety disorder (Respondent's AALD 26 September 2019).
98. Whether the effects of the adjustment disorder have ceased is a matter for an AMS. Once the nature of the injury has been determined, it for the AMS to determine the degree of whole person impairment that has resulted from the injury. It would be open to the AMS to determine that no whole person impairment has resulted from the injury (see *Jaffarie v Quality Castings Pty Ltd* [2014] NSWCCPD 79 at [259] (*Jaffarie*)).
99. Both Dr Samuell and Dr Roseth said Ms Maguire suffered from a somatoform disorder. This is not inconsistent with the opinions of Dr Way and Mr Neilson. In my view, both Drs Samuell and Roseth did not separately consider the question of whether Ms Maguire had suffered a primary psychological injury due to the nature of her employment. Dr Roseth had recorded matters that indicated Ms Maguire's work played a part in the development of her psychological presentation, however in my view she did not specifically consider whether Ms Maguire had developed a separate condition distinguishable from the somatoform disorder. Dr Samuel's report does not set out the history that was provided to him or any basis for his "agreement" with Dr Roseth on the diagnosis of somatoform disorder.
100. In his comprehensive report Mr O'Neill did not make any firm diagnosis. He observed the multi-factorial nature of Mr Maguire's injury and the complexity in distinguishing between the work and personal contributing factors.
101. Having regard to the above matters, I am satisfied on the balance of probabilities that Ms Maguire suffered a primary psychological injury in the form of a chronic adjustment disorder. In making this finding I rely upon the following matters:
 - (a) I accept Ms Maguire's evidence that her work was demanding and stressful. The work was undertaken over 30 odd years and exposed her to vicarious trauma on a regular basis. There are adequate contemporaneous records documenting stress arising from the work;
 - (b) I accept Ms Maguire was susceptible to suffering a primary injury from work due to her personal background and circumstances;
 - (c) I accept that Ms Maguire perceived there was a lack of support from the respondent, noting the very long history of employment and that Ms Jackson was only employed in May 2015. Ms Maguire's perception about there being a lack of support is relevant;

- (d) I am satisfied Dr Way's opinion was given in a reasonable climate and I find his opinion persuasive. Dr Way's opinion is consistent with Ms Maguire having suffering an actual physical injury, as opined by Dr Endrey-Walder, as oppose to her injury being a manifestation of her psychological condition;
- (e) For the above reasons, I find the opinion of Dr Smith difficult to reconcile;
- (f) I am not wholly persuaded by the opinion of Mr Neilson because he did not appear to have an accurate history of Ms Maguire's prior psychological problems. Nevertheless, Mr Neilson's opinion that the nature of the work has caused the psychological condition is consistent with the opinion of Dr Way;
- (g) I consider the opinions of Dr Roseth and Dr Samuell do not adequately deal with the issue of whether Ms Maguire suffered a primary psychological injury separate to her pain condition or somatoform disorder;
- (h) Dr Vickery identified a separate work-related adjustment disorder. I am not persuaded by Dr Vickery's opinion on the cause of this disorder. I prefer the opinion of Dr Way that the disorder was caused by exposure to traumatic events over the course of the employment. To the extent that Dr Vickery says the effects of the adjustment disorder have ceased, I consider this to be question properly determined by an AMS on assessment of the degree of whole person impairment (*Jaffarie* at [259]).

Was Ms Maguire's work the main contributing factor to the development of the chronic adjustment disorder?

- 102. In order for Ms Maguire to succeed she must also prove her employment was the main contributing factor to the development of the chronic adjustment disorder.
- 103. The main contributing factor is the "chief" or "principal" factor. If there are other contributing factors of more or equal importance, the main contributing factor cannot be the employment.
- 104. The "employment" means the actual work Ms Maguire was required to carry out as well as matters incidental to the employment (*Federal Broom v Semlitch* [1964] HCA 34; *Dayton v Coles Supermarket Pty Ltd* [2000] NSWCC 14).
- 105. Whether work was the "main contributing factor" requires an analysis of the causal factors and the extent of their connection to the injury.
- 106. On this issue, Ms Maguire principally relied upon her own evidence, the opinion of Dr Way and Dr Smith's notation that she had come to terms with personal stressors.
- 107. The respondent submitted I could not be satisfied work was the main contributing factor due to the significant competing causes of Ms Maguire's psychological presentation. It was submitted the main contributing factor was the pre-existing psychological state or the effects of the physical injury. The respondent submitted the onset of the psychological symptoms was after the physical injury, which suggested the main cause of any psychological injury was the physical injury itself.
- 108. There is no doubt that at the time of physical injury, from December 2013, Ms Maguire had an exacerbation of psychological symptoms. However, it does not follow that Ms Maguire was asymptomatic prior to her physical injury. I note the psychological

injury claimed is a disease process which, according to Dr Way, was the result of work-related stressors over a number of years.

109. I accept there are reports of significant personal stressors over the years and references to prior counselling. However, in my view the evidence supports that Ms Maguire was coming to terms with these matters over time. This is supported by the clinical notes of Dr Roseth and the comment from Dr Smith in his report of 12 December 2016 (ARD page 374 472).
110. There are non-work-related personal stressors. Ms Maguire has a complex history of past psychological symptoms and has received treatment for same over a number of years. There are also the symptoms that arise directly from the physical injury, in particular the distress suffered as a result of Ms Maguire's perception of no longer being able to assist her family.
111. However, these matters must to be viewed in the context of the significant work stressors over the course of 30 odd years of employment, as well as Ms Maguire's predisposition to psychological injury because of her unique personal background. The work-related stressors recoded in Ms Maguire's statements are not trivial matters. They caused distress and Ms Maguire said she could not get them out of her mind.
112. Having regard matters, I accept the opinion of Dr Way that Ms Maguire's employment was the main contributing factor to her psychological injuries as the nature of her employment involved exposure to extreme stress and trauma (ARD page 190). In my view, Dr Vickery has not adequately considered the nature or duration of the employment and or its capacity to cause injury. Dr Vickery unreasonably discounts the nature of the work and places emphasis on personal non-work-related stressors.
113. I am therefore satisfied on the balance of probabilities that Ms Maguire's employment was the main contributing factor to contracting the chronic adjustment disorder.
114. There will be an award for Ms Maguire on the claim for a primary psychological injury in the form of chronic adjustment disorder with depressed mood and anxiety (chronic anxiety and depression). The matter will be remitted to an AMS for assessment of the degree of permanent impairment, in accordance with the order made above.

