

WORKERS COMPENSATION COMMISSION

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

Matter Number: M1-6051/19
Appellant: Thi Narinh Aimee-Linh Ly
Respondent: APB Employment Pty Ltd
Date of Decision: 10 July 2020
Citation: [2020] NSWCCMA 125

Appeal Panel:
Arbitrator: John Wynyard
Approved Medical Specialist: Dr Douglas Andrews
Approved Medical Specialist: Dr Nicholas Glozier

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 13 March 2020, Thi Narinh Aimee-Linh Ly, the appellant, lodged an Application to Appeal Against the Decision of an Approved Medical Specialist. The medical dispute was assessed by Dr Bradley Ng, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 17 February 2020.
2. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):
 - the assessment was made on the basis of incorrect criteria,
 - the MAC contains a demonstrable error.
3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.
4. The WorkCover Medical Assessment Guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the WorkCover Medical Assessment Guidelines.
5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment*, 4th ed 1 April 2016 (the Guides) and the *American Medical Association Guides to the Evaluation of Permanent Impairment*, 5th ed (AMA 5). "WPI" is a reference to whole person impairment.

RELEVANT FACTUAL BACKGROUND

6. On 12 December 2019, an amended referral for assessment was made by the delegate for the Registrar to the AMS seeking an assessment of WPI caused by a psychological injury which was deemed to have happened on 18 December 2017.

7. The AMS found Ms Ly was to be suffering a Panic Disorder with agoraphobia together with an Adjustment Disorder with depressed mood. This was caused by bullying and harassment at the hands of her work colleagues following a promotion to the position of Training Co-Ordinator, which was specifically created for her.
8. That promotion created envy in the male dominated industry Ms Ly was working in, and she was verbally abused and/or ignored by her supervisors. Her car was vandalised and there was one episode of inappropriate sexual comment. A picture of Ms Ly as First Aid and Fire Warden was vandalised. She became quite distressed, and felt suicidal. There was no response to complaints that she made.
9. She ceased work, but did not seek any medical treatment for her condition. Soon after ceasing work she moved to Japan with her husband, who was studying teaching at Kyoto University. She spends most of her time now in Japan but returns occasionally for assessments and treatment.
10. She saw a psychologist Kerry Watson on a monthly basis but sometimes with long breaks in between. She also saw a psychiatrist in Liverpool about one month after ceasing work. The monthly appointments became three monthly, and she was seeing her psychologist through Skype.
11. She described her present symptoms as including as feeling broken and paranoid. She had a low sex drive and she was frequently suicidal, having made a number of suicide attempts including trying to drown herself and running into traffic. Just when those attempts occurred was not clear and she had never been admitted to hospital. She claimed that she catastrophised everything, she suffered panic, nausea and dizziness sometimes with ringing in her ears. She described herself as being confused as being either in a rage or a fog. She said she had visual hallucinations of people or shapes. She had excessive sleep. She gained 25 kg as she was inactive.
12. The AMS certified an 8% WPI.

PRELIMINARY REVIEW

13. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the WorkCover Medical Assessment Guidelines.
14. The appellant requested a re-examination by an AMS who is a member of the Appeal Panel. The application is refused as the Panel has not found that the AMS has fallen into any relevant error.

EVIDENCE

Documentary evidence

15. The Appeal Panel has before it all the documents that were sent to the AMS for the original medical assessment and has taken them into account in making this determination.

Medical Assessment Certificate

16. The parts of the medical certificate given by the AMS that are relevant to the appeal are set out, where relevant, in the body of this decision.

SUBMISSIONS

17. Both parties made written submissions. They have been considered by the Appeal Panel.

FINDINGS AND REASONS

18. The procedures on appeal are contained in s 328 of the 1998 Act. The appeal is to be by way of review of the original medical assessment, but the review is limited to the grounds of appeal on which the appeal is made.
19. In *Campbelltown City Council v Vegan* [2006] NSWCA 284 the Court of Appeal held that the Appeal Panel is obliged to give reasons. Where there are disputes of fact it may be necessary to refer to evidence or other material on which findings are based, but the extent to which this is necessary will vary from case to case. Where more than one conclusion is open, it will be necessary to explain why one conclusion is preferred. On the other hand, the reasons need not be extensive or provide a detailed explanation of the criteria applied by the medical professionals in reaching a professional judgement.
20. The appellant submitted that the AMS had fallen into error in his assessment of the categories of social and recreational activities, travel, and social functioning within the Psychiatric Impairment Rating Scales (PIRS). Ms Ly also submitted that from an overall consideration of the facts, the median class score was too low. Before addressing the individual submissions, it is convenient to consider the guidelines concerning the assessment of psychiatric/psychological injury.

The Psychiatric Impairment Rating Scale (PIRS)

21. The Psychiatric Impairment Rating Scale is established as the rating criteria for assessing psychiatric/psychological impairment, by virtue of Chapter 11 of the Guides. Chapter 11 sets out six Tables, being categories of behaviour to be considered, each divided into five classes, ranging in seriousness from 1 to 5. Class 1 relates to a situation where there is no psychological deficit, or a minor deficit attributable to the normal variation in the general population. Class 5 pertains to a person who is totally impaired.
22. Chapter 11.12¹ provides:

“Impairment in each area is rated using class descriptors. Classes range from 1 to 5, in accordance with severity. The standard form must be used when scoring the PIRS. The examples of activities are examples only. The assessing psychiatrist should take account of the person’s cultural background. Consider activities that are usual for the person’s age, sex and cultural norms.”
23. The assessor is required to classify each category, and to apply the resulting scores as set out in Chapter 11².
24. The assessment of psychiatric disorder has been considered in a number of cases. In *Ferguson v State of New South Wales*³ Campbell J was concerned the case where the Medical Appeal Panel had revoked the MAC on the basis that the finding by the AMS had been glaringly improbable. His Honour found that the Panel had fallen into jurisdictional error. He said at [23]:

“By reference to *NSW Police Force v Daniel Wark* [2012] NSWCCMA 36, the Appeal Panel directed itself that in questions of classification under the PIRS:

¹ Guides page 55

² See 11.15-11.21 at Guides p 65 and Table 11.7 at Guides page 66

³ [2017] NSWSC 887 (*Ferguson*)

‘... the pre-eminence of the clinical observations cannot be underrated. The judgment as to the significance or otherwise of the matters raised in the consultation is very much a matter for assessment by the clinician with the responsibility of conducting his/her enquiries with the applicant face to face’.

24. The Appeal Panel accepted that intervention was only justified: if the categorisation was glaringly improbable; if it could be demonstrated that the AMS was unaware of significant factual matters; if a clear misunderstanding could be demonstrated; or if an unsupportable reasoning process could be made out. I understood that all of these matters were regarded by the Appeal Panel as interpretations of the statutory grounds of applying incorrect criteria or demonstrable error. One takes from this that the Appeal Panel understood that more than a mere difference of opinion on a subject about which reasonable minds may differ is required to establish error in the statutory sense.
25. The Appeal Panel also, with respect, correctly recorded that in accordance with Chapter 11.12 of the Guides ‘the assessment is to be made upon the behavioural consequences of psychiatric disorder, and that each category within the PIRS evaluates a particular area of functional impairment’: Appeal Panel reasons at [37]. The descriptors, or examples, describing each class of impairment in the various categories are ‘examples only’: see *Jenkins v Ambulance Service of New South Wales*⁴. The Appeal Panel said ‘they provide a guide which can be consulted as a general indicator of the level of behaviour that might generally be expected’: Appeal Panel reasons at [37].”
25. In *Glenn William Parker v Select Civil Pty Ltd*,⁵ another case regarding assessment of psychiatric disorder, Harrison AsJ cited [23] of *Ferguson* with approval at [65]. Her Honour said at [66]:

“In relation to classes of PIRS there has to be more than a difference of opinion on a subject about which reasonable minds may differ to establish error in the statutory sense. (*Ferguson* [24]).....”
26. In *Jenkins* Garling J said at [73]:

“It was a matter for the clinical judgment of the AMS to determine whether the impairment with respect to employability was at the moderate level, as he did, or at some other level. But, in seeking judicial review, a mere disagreement about the level of impairment is not sufficient to demonstrate error of a kind susceptible to judicial review.”

Issues raised by the appellant

27. Taking these principles into consideration, we now turn to the individual issues raised by the appellant.

⁴ [2015] NSWSC 633 (*Jenkins*)

⁵ [2018] NSWSC 140 (*Parker*)

Social and recreational activities (Table 11.2)

28. The AMS allowed an assessment Class 2 in regard to social and recreational activities. Class 2 in this category is described as follows⁶:

“Class 2 Mild impairment: occasionally goes out to such events eg without needing a support person, but does not become actively involved (eg dancing, cheering favourite team).”

29. The descriptors for a Class 3 assessment are:

“Class 3 Moderate impairment: rarely goes out to such events, and mostly when prompted by family or close friend. Will not go out without a support person. Not actively involved, remains quiet and withdrawn.”

30. The AMS said⁷:

“Ms Ly is able to leave the house now and appreciates that it is out of her comfort zone. She is able to go to Buddhist temples and go cycling with her husband and visit friends. The amount of activities has decreased over time and are limited in their scope. Hence she would qualify for mild impairment.”

Submissions

31. The appellant made factual allegations that she claimed the AMS had not taken into account when assessing this category.

32. The matters alleged were:

- The appellant remained socially isolated and ostracized from her work colleagues and continued to experience feelings of being unsafe with any/all contact from her former employer.
- The appellant uses avoidance techniques in respect of any social gatherings which the worker uses regularly to combat her ever present anxiety.
- The appellant is never at ease and feels the need to find an exit from social events due to anxiety.

33. The appellant is living at present in Kyoto to be with her husband who works there. It was alleged however that she was also in Japan for her personal safety as she remains continually anxious when in Sydney. It was alleged that these matters constituted a significant loss of interest by Ms Ly in her usual activities and consequent social isolation. Proper consideration of them would have resulted in a finding that the impairment was moderate, it was argued. The appellant made reference to some examples within the Guides for a Class 3 impairment, submitting that a Class 3 impairment was the “best-fit” category in relation to the “obvious” entitlement of the social and recreational activities.

34. The appellant referred to the ‘severe impairment’ finding made by the AMS with regard to the PIRS category of “employment”. It was alleged that it logically followed that Ms Ly’s ‘social and recreational activities’ category had also been impacted by the same impairment.

⁶ Guides page 56

⁷ Appeal papers page 21

35. The respondent made some pertinent submissions regarding the status of the PIRS assessment generally, which reflected out preliminary comments above. In relation to the particular category, the respondent referred to the history taken by the AMS that the appellant was able to go to the Temple by herself and ride a bicycle with her husband. She was able to go out by herself and shop for groceries using the subway to do so, and the respondent also noted that she was able to go to her friends' place by herself. It was submitted that the assessment was within acceptable parameters and did not offend against the legal test applicable to appeals of this nature.

Travel (Table 11.3)

36. The descriptors for a Class 1 assessment are:

“Class 1 No deficit, or minor deficit attributable to the normal variation in the general population: Can travel to new environments without supervision.”

37. The descriptors for a Class 2 assessment are:

“Class 2 Mild impairment: can travel without support person, but only in a familiar area such as local shops, visiting a neighbour.”

38. The AMS, in ascribing a Class 1 value, said:⁸

“Although there is anxiety, Ms Ly can travel. She lives in Japan and travels to Australia. She is able to ride a bicycle. She is able to drive a car for short distances. She is able to use Uber. There is no impairment with travel per se, despite anxiety.”

39. The appellant again made factual allegations that Ms Ly found that travel and movement provoked anxiety, dizziness, slight distortion, claustrophobia and other physical symptoms. It was noted that she had experienced chronic nausea and vomiting when her anxiety rapidly increased.
40. It is also alleged that she travelled to Australia “primarily” for the purpose of treatment.
41. These alleged facts were contrary to the finding by the AMS that there was no impairment in this category, it was argued. The appellant submitted that the AMS in fact noted that Ms Ly regularly suffered anxiety when travelling, and the question was asked rhetorically as to why, if there was no deficit, or a minor deficit, the appellant experienced the anxiety and severe physical symptomology that had been alleged.
42. The respondent replied that the appellant lives in Japan and travels to Australia by herself. Reference was made to the reports of both Dr Vickery and Dr Kohler that she was able to function independently when she travelled. There was no need for a support person, which is one of the examples given in Class 2, the respondent submitted.
43. Ms Ly had travelled to and from Australia on multiple occasions, and was independent in travelling when she did so. The respondent referred to the AMS's comments that whilst she might experience anxiety, the appellant was able to ride a bicycle in Japan, drive her car for short distances and drive a motor scooter. It was also noted that she was able to use the subway when visiting friends.
44. In the circumstances the assessment was within the permissible range open to the AMS and again did not infringe the legal tests we have referred above.

⁸ Appeal papers page 22

Social functioning (Table 11.4)

45. The descriptors for a Class 2 value are:

“Class 2 Mild impairment: existing relationships strained. Tension and arguments with partner or close family member, loss of some friendships.”

46. The descriptors for a class 3 value are:

“Moderate impairment: previously established relationships severely strained, evidenced by periods of separation or domestic violence. Spouse, relatives or community services looking after children.”

47. The AMS ascribed a class 2 value, saying:⁹

“Ms Ly has lost friends by moving to Japan. She has slowly expanded her circle, mainly through her husband. She has one close friend in Japan.

She has good relationship with her parents and own family in Australia. She has a good relationship with her husband's parents and family. She describes a strained relationship with her husband but there have been no periods of separation and no violence. Hence this qualifies as mild impairment.”

48. The appellant again set out a number of bullet points that sought to distil the evidence. Ms Ly had lost friends, she constantly told her doctors that she was worried about the strained relationship with her husband, she had endured significant abuse and personal indignation recorded in the medical opinions including the vandalism of her car, the defacing of the photograph and attacks on social media.
49. The appellant submitted that she was frequently suicidal and there had been several attempts, one being more recent.
50. The allegation was made that she did not leave the house and that she had to mentally prepare herself for any social gatherings, which were mainly with her husband.
51. It was finally alleged that she was highly reliant on support groups and other ways in coping with her “crippling anxiety”. It was submitted that under those circumstances an assessment of mild impairment was inappropriate and that a moderate impairment ought to have been prescribed.
52. The respondent referred to the stable marriage that had lasted some years. The respondent also referred to the findings by the AMS that showed good relationships with Ms Ly’s parents, her siblings, and her in-laws, and of her socialising in Japan. There was no evidence that suggested the examples within a class 3 category were applicable.

Median class score

53. The appellant conceded that the assessment process relied, more than any other field of medical science, on the clinical skill, judgment and expertise of the AMS, because there is no objective measure by which a psychiatric injury could be assessed. The appellant also conceded that examples given in the Guides were not supposed to be criteria but merely examples.

⁹ Appeal papers page 22

54. However, that said, the appellant submitted that there was a “rationale” which meant that one area of impairment was neither equivalent nor interchangeable with another, which appears contradictory to the appellant’s reasoning for a greater rating of impairment in social functioning on the basis of the rating of employability. Looked at as a whole, a medium class 2 score was “widely disproportionate” to the extent of Ms Ly’s injury. Reference was made to the suicidal ideation, anxiety, depression, lack of motivation and other symptoms alleged by the appellant and acknowledged by the AMS. In those circumstances the assessment of 8% WPI was “entirely out of keeping” with the symptomatology exhibited by the appellant.

Discussion

55. The appellant adopted the practice in her submissions of generally setting out allegations of fact regarding each category. Those allegations appear to have been distilled from the medical evidence generally, and no attempt has been made to refer each allegation to any particular finding or opinion. The appellant has not referred to the content of her statement, as it failed to supply any relevant factual material, as will be seen.

The evidence

56. We have considered the medical evidence before the AMS as to these allegations. Ms Ly retained Consultant Psychiatrist Dr Blagoje Kuljic as her treating psychiatrist, and used the services of psychologists Kerry Watson and Dr Terry Kohler. Her medico-legal referee was Dr Ben Teoh.
57. Ms Ly was assessed by Dr Kuljic on 9 February 2018. He took a consistent history of the circumstances in which the injury occurred. He reported that Ms Ly’s problems occurred over three and a half years of employment, and she had started feeling a psychological consequences over the past 18 months. She told Dr Kuljic that she would prefer to be dead and had suicidal thoughts of driving her car off a cliff. She had contacted Lifeline.
58. Dr Kuljic said that the appellant’s mood was anxiety most of the time and depressed when overthinking about problems¹⁰.
59. On 3 January 2019, Dr Kohler reported to the insurer as a Consultant Clinical Psychologist. He referred to a report dated September 2018 which diagnosed Ms Ly with Post Traumatic Stress Disorder, with symptoms of depressed mood (variable), anxiety, panic attacks, residual fear, intrusive thinking and memories, rumination, disturbed sleep, emotional hyper sensitivity and avoidant behaviour.
60. Dr Kohler had discussed the appellant’s case with her treating psychologist Ms Watson, and he recorded:¹¹

“Ms Watson explained that psychological treatment and management had been difficult and is complicated by the fact that Ms Ly now resides in Japan. While she sees Ms Ly for face-to-face treatment sessions every 4 to 6 weeks, the other treatment sessions have been provided through Skype.”

¹⁰ Appeal papers page 72

¹¹ Appeal papers page 279

61. Dr Kohler also made the following observations:¹²

“The fact that Ms Ly is currently residing in Japan is likely to have a significant impact on her rehabilitation and recovery. During the Independent Review, I obtained the impression that it is highly unlikely that Ms Ly would return to Australia. It is beyond the scope of this review to fully evaluate the impact of temperament and personality factors affecting Ms Ly's functioning, but there are indications that these factors are affecting her psychological condition and response to treatment.”

62. When Dr Ben Teoh, Consultant Psychiatrist, assessed Ms Ly on 19 January 2019 in order to prepare a medico-legal report, Ms Ly had returned to Sydney from Japan for the assessment. In taking a history from Ms Ly, Dr Teoh noted that she reported anxiety symptoms with tightness of chest, breathlessness, dizziness and nausea. She was tearful in talking about the bullying at work and an event in which a member of staff had posted a social media comment calling her a liar.
63. Dr Teoh noted that Ms Ly had become anxious at work and developed acute anxiety attacks with insomnia and nightmares. Nothing had been done about her complaints, Ms Ly said, and her supervisor failed to look after her.
64. Ms Ly was scared about returning to work and had become “suspicious and worrying about her safety”. She admitted to a pre-occupation with negative thoughts, including fleeting suicidal ideation.
65. On 29 May 2019, Dr Peter Snowdon, psychiatrist, reported to the insurer as to Ms Ly's rehabilitation. He took a consistent history, and noted that Ms Ly's husband is an Anthropologist Linguist who moved to Kyoto University in November 2017 to complete a two-year Post-Doctorate degree. Ms Ly said that he speaks five languages, and would probably stay in Japan after completion of his degree.
66. Dr Snowdon thought to the best of his understanding, after specific questioning, that the only reason for Ms Ly's continued association with Australia was her claim. Ms Ly said that her main symptom was anxiety, which she particularly experienced when doing something out of her comfort zone, such as travelling by bus, or going to the shops alone. She attended social events with her husband, at his urging, but sometimes did so alone, such as dining with a friend. Travelling could make her nauseous, Dr Snowdon recorded, but she was able to ride her bicycle to temples, as she was a Buddhist. She also hiked, but never alone.
67. Dr Vickery reported as medico-legal referee for the respondent on 16 October 2019. He took a consistent history, noting that Ms Ly lodged a grievance on 17 December 2017 about some of the difficulties she encountered. He noted that Ms Ly was able to control her panic attacks but hallucinated that one of the perpetrators might have been in one of the parked cars outside her house. He quoted the passages from Dr Kohler's report that we have reproduced in [60] and [61], above.
68. A reference to avoidance techniques was mentioned by Dr Vickery, who said:¹³

“There is an avoidance of socialising however ‘I have been living in Japan and I've been going out to unfamiliar places’.”

¹² Appeal papers page 280

¹³ Appeal papers page 258

69. The other reference to avoidance was by the AMS, who noted that the appellant had left Australia altogether, only returning intermittently since 2017 or 2018. In giving his reasons he said:¹⁴

“She withdrew from the workplace and then left Australia altogether, only returning intermittently since 2017 or 2018. This is slightly unfortunate, given that this is avoidance by another name. Given such a long period of time, this avoidance is now entrenched and it is very difficult to see this improving. While moving to Japan with her husband may have been a priority, it has also led to some secondary relief of her anxiety symptoms through avoidance. ...”

70. It can be seen that Ms Ly’s condition has been thoroughly analysed by several medical experts, and that many of the symptoms alleged by the appellant have been consistently recorded.
71. The AMS commented on the reports of the expert evidence before him. He did not specifically mention the reports of Dr Kuljic or the psychologist, but it may be presumed that he had read their reports, such being an administrative action he was required to perform.¹⁵
72. As indicated, it was difficult to discern the precise evidentiary support for the appellant’s factual allegations regarding her symptoms. We assume that the appellant was not attempting to raise new facts that were not before the AMS. If that was the case, no application to admit fresh evidence containing the relevant evidence was made, and there is accordingly no support for such allegations.
73. The thrust of the appellant’s case was to establish that the classifications made in the impugned categories were more than a mere disagreement, but were improbable, given the alleged facts relied on. In as much as the appellant sought to demonstrate that the AMS did not ascribe to his findings of fact as much weight as the appellant would have preferred, nonetheless it is clear that he has considered them. The appellant accordingly has to demonstrate that the findings of the AMS were “more than a mere difference of opinion on a subject about which reasonable minds might differ”, to repeat Campbell J’s dicta in *Ferguson*, which we have referred to above.
74. We now turn to the individual grounds raised by the appellant.

Social and recreational activities

75. With regard to the Social and Recreational Activities category, the AMS has not been shown to have ignored any of the factual allegations referred to. It was alleged that Ms Ly was isolated and ostracised from her work colleagues. As the appellant now lives in Japan it would follow that she would have no contact with her work colleagues in Sydney, and that allegation clearly related to an earlier point in time. In any event, being ostracised is not an impairment suffered by the appellant, because it is something done by others to her. Similarly, the allegation that Ms Ly felt unsafe with contact from the respondent can only be of historical interest.
76. There is little support for the allegation that Ms Ly uses avoidance techniques at any social gathering. We did not find Ms Ly’s statement, dated 14 November 2019, to be of any assistance, as it consisted of a seven paragraph chronology regarding the making of the claim, and contained no evidence as to either the history of the injury,

¹⁴ Appeal papers page 18

¹⁵ As to the presumption of regularity, see *Jones v Registrar WCC* [2010] NSWSC 481 at [36-38] and [50]

the onset of her condition, the symptoms she complained of, or her treatment. Only the AMS and Dr Kohler mentioned avoidance techniques. The AMS found that living in Japan was avoidance “by another name”, and that it was beneficial in relieving her anxiety symptoms. Dr Kohler mentioned it as part of an array of symptoms that demonstrated a Post-Traumatic Stress Disorder, which is not the condition diagnosed by the AMS.

77. We were unable to locate the evidence which suggested that Ms Ly “feels the need” to find an exit from social events through anxiety, but her unease through anxiety was noted within the medical evidence. The AMS found that, nonetheless, Ms Ly was able to engage in the activities he identified.
78. There is no basis for the allegation that Ms Ly remains in Japan for her personal safety, and the panel could not identify how the country of residence is relevant to a rating of impairment in this category.
79. The appellant was unable to demonstrate that she had raised a demonstrable error or the application of incorrect criteria. None of the matters raised in this category suggested anything more than a disagreement about the level of impairment. The assessment was not glaringly improbable, nor was it made in ignorance of significant factual matters by the AMS. No misunderstanding has been demonstrated by the AMS as to the evidence before him, nor as to the task he was required to perform. Indeed the AMS has compiled a thorough report and explained his reasoning and conclusions clearly. His reasoning has been supported by reference to relevant facts and reports, and the information elicited in his assessment.
80. This ground is accordingly rejected.

Travel

81. The emphasis in the appellant’s submissions sought to reinforce those parts of the medical evidence that suggested that when Ms Ly travelled, she became anxious. Ms Ly conceded that she travelled backwards and forwards from Japan, and the evidence established that she could ride a bicycle, drive a car and indeed travel by Uber. The classification within each category refers not to whether a person suffers any symptoms in that particular area of functional impairment, but rather as to whether the psychiatric condition and its symptoms impair the functional capacity in that category. Thus, it is the fact that Ms Ly can travel as she does that is determinative. In the appellant’s case, Ms Ly is capable of travelling between the two countries often, without the need for a support person and beyond the familiar areas such as her local shops, e.g. into the Adelaide CBD. Whilst reasonable minds might differ as to whether a “mild” evaluation should have been made, the assessment by the AMS cannot be said to be erroneous. It must be remembered that he had the benefit of the face-to-face assessment with the concomitant advantage of being able to obtain specific details from the appellant as to these various categories.
82. Again, the appellant can only rely on the histories taken from the medical practitioners in the absence of any useful evidence in her statement. Further, the respondent referred to evidence that counterbalanced the allegations made, as it did in relation to the social functioning and recreational activities category.
83. This ground, too, is simply cavilling with the assessment, and is rejected.

Social functioning

84. The appellant again used the technique in her submissions of selecting general allegations without identifying their source to show that she had a stronger basis for challenging this assessment than simply suggesting that the AMS might have made a more favourable evaluation.

85. It is hardly surprising that Ms Ly may have lost friends, and the submission rather lost sight of the fact that she has been living in Japan for some years now. The alleged difficulties in her relationship with her husband do not resonate with the examples given for a class 3 assessment, which speaks of the severely strained relationships being evidenced by periods of separation or domestic violence. Notwithstanding the selective nature of the facts relied upon, there have been no descriptions of that level of strain in Ms Ly's relationship with her husband.
86. The matters raised by the appellant were addressed by the AMS. He was aware of the histories regarding Ms Ly's emotional fragility, including her suicide attempts (which are not relevant to assessing impairment in this category), the other symptoms she described within his report, and her reports of abuse by ex-colleagues, who presumably would not be counted among her friends. We would observe again that the assessment was made following an in-person interview. The appellant made no attempt to describe any of her alleged difficulties in her statement and her attempt to introduce them by use of the phrase "as per the medical reports" is so general that it carries little weight. It may be assumed that the AMS obtained some clarification in his evaluation, and accordingly made his assessment. The appellant has done no more than to submit that the AMS fell into error because he did not regard with the same significance, those matters that concerned the appellant. In the circumstances of this case, that amounts to no more than a difference of opinion
87. This ground too is rejected.

Median class score

88. We note the appellant's submission that the overall median class 2 was disproportionate to the extent of Ms Ly's injury, on the assumption ('rationale') that areas of impairment were not interchangeable or equivalent. This submission again conflates symptoms with impairment. In view of our determination, it is not necessary to address this submission.
89. However, should a determination be necessary, we would observe that there is no guideline or authority for the proposition that an assessment can be increased for any reason beyond the method set out in Chapter 11 of the Guides, within which an 'overall' assessment is not contemplated. The submission is rejected. In doing so, we neither accept nor reject the assumption upon which it was based.
90. For these reasons, the Appeal Panel has determined that the MAC issued on 17 February 2020 should be confirmed.

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

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar

