

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: 3921-19
Applicant: Adam McKinlay
Respondent: Woolstar Pty Limited
Date of Determination: 14 November 2019
Citation: [2019] NSWCC 365

The Commission determines:

1. The respondent has not established a defence under section 11A of the *Workers Compensation Act 1987*.
2. Pursuant to section 4(b)(ii) of the *Workers Compensation Act 1987* the applicant sustained a psychological injury in the course of his employment with the respondent, with his employment with the respondent being the main contributing factor to the aggravation or exacerbation of his disease.
3. The respondent is to pay Mr McKinlay weekly compensation pursuant to section 37 of the *Workers Compensation Act 1987* from 22 February 2019 and continuing at the rate of \$806 per week.

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

Josephine Bamber
Senior 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 JOSEPHINE BAMBER, SENIOR ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

Sarojini Naiker
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Adam McKinlay commenced work for Woolstar Pty Limited (the respondent) in June 2008 at the Wyong Regional Distribution Centre as a storeman, initially as a casual and then on a permanent basis. Over the years of his employment Mr McKinlay has experienced a series of work-related physical injuries, these included to his left arm in December 2008 when he cut a tendon muscle down to the bone with a Stanley knife resulting in microsurgery, which was repeated in 2009 together with a left carpal tunnel release. In 2011, he underwent cortisone injections into his neck at C4 and C5 and thereafter surgery on the neck and to release pressure on his shoulder. In 2016, he underwent an operation for tendonitis in his right middle finger and in early 2018 surgery on the right wrist to re-attach a tendon. He states that after each surgery he had time off then returned to perform suitable duties leading to his pre-injury duties as a storeman. Mr McKinlay also experienced psychological symptoms in 2013 from his original tendon injury.
2. However, in these proceedings Mr McKinlay alleges he suffered a further psychological injury due to the “nature and conditions” of his employment from in or about January 2017 to 7 July 2018, with a deemed date of 7 July 2018. Part 4 of his Application to Resolve a Dispute (ARD) was amended accordingly with the deletion of the dates appearing in Part 4 of “Mid 2013, Mar 2018 & July 2018”. The type of injury was alleged to be an aggravation, acceleration, exacerbation or deterioration of the pre-existing condition.
3. The respondent did not oppose these amendments but disputed “injury” under section 4 of the *Workers Compensation Act 1987* (the 1987 Act) from the nature and conditions of employment. However, the respondent accepted there was a psychiatric condition caused on 7 July 2018 from the employer’s disciplinary process and relies on a defence under section 11A of the 1987 Act.
4. The claim for compensation made in these proceedings is confined to one for weekly compensation. The ARD was amended with it being agreed the pre-injury average weekly earnings (PIAWE) figure is \$1,007.50 per week and 80% of that is \$806 per week. The claim is from 22 February 2019 and continuing under section 37 of the 1987 Act. The respondent agreed if the applicant is successful there is no issue about Mr McKinlay’s capacity for employment, as he is totally incapacitated. Therefore, under sections 32A and 37 he would have “no current capacity for employment.”

PROCEDURE BEFORE THE COMMISSION

5. This matter was listed for conciliation/arbitration hearing on 3 October 2019. Eraine Grotte, counsel, instructed by John Peisley, appeared for Mr McKinlay and Joshua Berin, counsel, appeared for the respondent.
6. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary evidence

7. The following documents were in evidence before the Commission and taken into account in making this determination:

- (a) ARD and attached documents including a USB stick containing a copy of CCTV video, and
- (b) Reply and attached documents.

Oral evidence

- 8. There was no oral evidence. Both counsel made oral submissions. A written transcript (T) has been made from the sound recording.

FINDINGS AND REASONS

Legal principles

- 9. Notwithstanding that in Mr McKinlay's case the respondent has conceded that he suffers from a work related psychological injury, he may be prevented from receiving any compensation if the respondent establishes a defence under section 11A of the 1987 Act.
- 10. Section 11A of the 1987 Act provides:
 - “(1) No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.”
- 11. The respondent has the onus of establishing a defence under section 11A of the 1987 Act. There are two aspects of section 11A that a respondent must establish to succeed in such a defence. Firstly, the injury has to be “wholly or predominantly caused” by the respondent employer's actions regarding one of the aspects referred to in section 11A. In Mr McKinlay's matter the respondent is relying on discipline.
- 12. If the respondent can establish the “wholly or predominantly caused” aspect, then it needs to secondly establish that the respondent's actions were “reasonable”.
- 13. In *Hamad v Q Catering Limited*¹ the legal principles were discussed in relation to the “wholly or predominantly caused” aspect of section 11A. At [45] DP Snell stated,
 - “The causal test in s 11A(1) is ‘different, and more difficult’, in that the test does not involve proof of ‘personal injury arising out of or in the course of employment’ (the s 4(a) test), or that employment was a ‘substantial contributing factor’ to the injury (the s 9A test), but rather whether the injury was ‘wholly or predominantly caused’ by the relevant action. It is to be proved on the balance of probabilities; normal principles governing proof of causation apply, but subject to the fact that what must be established is a different statutory test to those in ss 4 and 9A. And the onus falls on the employer, rather than the worker.”
- 14. Snell DP also considered the extent to which an arbitrator can make commonsense findings. He referred to various legal authorities, which found there are limits on the use of commonsense reasoning and that it is restricted to matters within the realm of common knowledge and reasoning.

¹ [2017] NSWCCPD 6, *Hamad*

15. At [85] Snell DP found,

“The Arbitrator was entitled to have regard to the sequence of events; he was entitled to have regard to his common knowledge and experience of ordinary life. However, as the Arbitrator previously observed at [62] of his reasons, a series of events can have a cumulative effect, and may be causative of a psychiatric condition which does not manifest itself until a later time. That does not mean that the earlier events in the series are not causative (see the discussion in *Secretary, Department of Family and Community Services v Colleen Jones by Executor of her Estate Carol Hewston* [2016] NSWCCPD 63 at [33]- [45]).”

16. Snell DP added at [88],

“The extent to which aspects of the appellant’s history contributed to causing the psychological injury was not, in the circumstances, something which could be decided in the absence of medical evidence. There may be cases in which causation of a psychological injury can be established without specific medical evidence, for example where there is a single instance of major psychological trauma, with no other competing factors. The need for medical evidence, dealing with the causation issue in s11A(1) of the 1987 Act, will depend on the facts and circumstances of the individual case. In the current case, as in most, there are a number of potentially causative factors raised in the appellant’s statement and the medical histories. Proof of whether those factors, which potentially provide a defence under s 11A(1), were the whole or predominant cause of the psychological injury, required medical evidence on that topic. The extent of any causal contribution, from matters not constituting actions or proposed actions by the respondent with respect to discipline, could not be resolved on the basis of the Arbitrator’s common knowledge and experience.”

17. The Court of Appeal’s decision in *Northern NSW Local Health Network v Heggie*² contains the relevant legal principles in relation to whether an employer’s conduct is reasonable. At [59] it was stated:

“The following propositions are consistent both with the statutory language and the authorities that have construed s 11A(1) of the WC Act:

- (i) A broad view is to be taken of the expression ‘action with respect to discipline’. It is capable of extending to the entire process involved in disciplinary action, including the course of an investigation.
- (ii) Nonetheless, for s 11A(1) to apply, the psychological injury must be wholly or predominantly caused by reasonable action taken or proposed to be taken **by or on behalf of the employer**.
- (iii) An employer bears the burden of proving that the action with respect to discipline was reasonable.
- (iv) The test of reasonableness is objective. It is not enough that the employer believed in good faith that the action with respect to discipline that caused psychological injury was reasonable. Nor is it necessarily enough that the employer believed that it was compelled to act as it did in the interests of discipline.
- (v) Where the psychological injury sustained by the worker is wholly or predominantly caused by action with respect to discipline taken by the employer, it is the reasonableness of **that action** that must be assessed.

² [2013] NSWCA 255 *Heggie*

Thus, for example, if an employee is suspended on full pay and suspension causes the relevant psychological injury, it is the reasonableness of the suspension that must be assessed, not the reasonableness of other disciplinary action taken by the employer that is not causally related to the psychological injury.

- (vi) The assessment of reasonableness should take into account the rights of the employee, but the extent to which these rights are to be given weight in a particular case depends on the circumstances.
- (vii) If an Arbitrator does not apply a wrong test, his or her decision that an action with respect to discipline is or is not reasonable is one of fact.” (bold in the original)

18. Therefore, as a first step, it is necessary to identify the cause of the psychological condition suffered by Mr McKinlay. This is a significant area of dispute between the parties. The respondent’s position is that Mr McKinlay’s psychological injury was wholly or predominantly caused by the disciplinary process commenced by the employer after an incident at the turnstile on 18 June 2018 when Mr McKinlay reported he had jarred his wrist.
19. Mr McKinlay, on the other hand, asserts his psychological injury arose from causes broader than that referenced by the respondent.

Mr McKinlay’s statements

20. Mr McKinlay has proved two statements dated 9 and 12 April 2019. In his first statement, he describes the following matters and his reaction to them:
- (a) His relationship with Pam Speers - he states that she is the return to work person and would push him to undertake work that was not suitable and she would not talk to him in a polite manner. In March 2018, he had an argument with Ms Speers which he says was about Ms Speers seeking to increase his workload back to picking which he says was only partially medically suitable to him. He says after this his anxiety and depression reappeared.
 - (b) His relationship with Heather Knox - he states she is the Team Leader and they had a difference of opinion in 2017 and she had not spoken to him since until an episode described below.
 - (c) In June 2018, he was exiting the workplace through turnstiles at about 2.00 pm to go to an appointment with Kath Powers his psychologist. He states,
 - “the turnstile jammed slightly and I jarred my right wrist while I was pushing the turnstile. It was just a normal push with my left hand, there was no real force behind it but my right hand was in the way as well and I believe the movement just strained the wrist.”
 - He says Wayne Knight was walking towards the turnstiles and saw him react to the pain and said, “what did you do, hurt your wrist again?” and he responded “yes”.
 - He says he rang Lyn Hopper from Worker’s Health straightaway and he also tried to ring Peter Crompton to report the incident.
 - He says he attended Dr Aaron Yomona and told him he had jarred his wrist. He already had an appointment to see him then for treatment of the wrist.

- On return to work he saw Ms Knox in the equipment hand out room who spoke to him with words in a short, abrupt manner to the effect of “you need to get out of here”. He said there was such tension between them and he felt like the walls were closing in on him. He felt his face go red and he could not think clearly. He went to the Men’s Locker room and Ms Knox followed him calling out his name. He sat down for five minutes and then went outside and Ms Knox was still there. He then went to the lunch room and rang Lyn Hopper and told her what happened. She told him to calm down and he felt a bit better. He went downstairs and spoke to Rod Feeney, who in turn arranged a meeting straight away in Meeting room 5.
 - After leaving the meeting Mr McKinlay spoke to Dennis and told him about jarring his wrist earlier, by then the pain had died down. Dennis entered the information into a Pulse report on the computer.
- (d) Meeting in June 2018 - Mr McKinlay relates that, one week after the above events, Jarrod Kirk, his team’s operations manager, asked Mr McKinlay to go to the Logistic Manager’s office. He told him he needed union representation and so Dave Willard came to the meeting. Mr McKinlay says he did not know what it was about. Also present was Ashley Cole, his team leader, who took notes.
- Mr McKinlay recounts in his statement what he says happened at the meeting, that Mr Kirk asked him about the incident with the turnstiles and what he had reported to Dennis. He says they showed him the CCTV footage of him going through the turnstiles and then the video end. Mr McKinlay says it did not show him immediately after he exited when he began shaking his right hand and supporting his right arm with his left arm. He said he asked to see the video after but was told they did not have that.
 - Mr McKinlay says he was trying to explain it was his wrist that jarred but they said Dennis reported the gate had jarred not his wrist. He says he does not agree that the turnstile jarred, just that his wrist jarred. He said Mr Kirk told him to put in a written statement about what happened that day.
 - Mr McKinlay said he told Mr Kirk that he felt uncomfortable giving a statement as a week had passed and he felt his memory of the incident may be inaccurate as he has a bad memory and he did not want to put down something that could be a mistake. He asked them to ring Lyn Hopper as he had told her on the day what happened.
 - Mr McKinlay says he was sent out of the meeting and that at some stage he was told by Mr Kirk that it was “a reasonable business request” for him to make a statement. Mr McKinlay refused to make a statement and was told he was suspended for a week pending investigation and he was escorted off the site.
- (e) Mr McKinlay says he rang Lyn Hopper who said no one had been in touch with her. She informed Mr McKinlay that she had typed an email to Pam Speers on the day Mr McKinlay spoke to her after the turnstile incident. A copy was sent to Mr McKinlay and he says he felt it was a good record so sent it to the union delegate Justin Seeve. About a week later a union delegate told Mr McKinlay to go to work the following Monday for a meeting.

- (f) Mr McKinlay says he is aware on that Monday the union delegates Allan Gault and Fred Smed met with Kylie Anderson, from HR Wyong Regional Distribution Centre, that the official suspension of Mr McKinlay was because he had not complied with a reasonable business request.
- (g) Mr McKinlay then attended the workplace where the acting Logistics Manager Wayne asked him if he had read a letter about the meeting. Mr McKinlay says he told him that he could not open the email sent to him and so Wayne printed the letter off which he and the union delegates read. Mr McKinlay said the letter outlined claims against him about "honesty and integrity".
- (h) The meeting was then conducted with union delegates Justin Seeve, Allan Gault and Dave Willard, as well as Wayne and Alisha from People Services. Mr McKinlay recounts the following about that meeting:

"Alisha asked two questions, one was about my understanding of the Code of Conduct and the other was for me to tell her what had happened on the day I jarred my wrist. I told her I couldn't remember one hundred percent what had happened but I did tell her about reporting the incident to Lyn and that Lyn had recorded the information in an email. Allan then asked Alisha why had the suspension reason changed from 'a reasonable business request' to 'honesty and integrity'.

Alisha said she didn't know and said she thought it had always been about honesty and integrity. Either Allan or one of the other delegates asked for the full CCTV footage. I can't remember who said what but the full CCTV footage was not shown. Alisha told me that she was conducting an investigation and that I was to be suspended again.

I told Alisha that I was struggling mentally and requested a fast investigation so that I could return to work and move on with life. Alisha said she would do what she could."

- (i) Mr McKinlay states on the following Monday he attended on Dr Paul, Brisbane Water Private Hospital and after he told him how he felt, Dr Paul admitted him to Gosford Public Hospital by ambulance under the Mental Health Act. Mr McKinlay stayed there for seven days. On the Thursday of that week Allan Gault contacted him to say the suspension had been lifted and he could return to work when well enough.
- (j) The following Monday Mr McKinlay returned to work after seeing Dr Yomona and met Ms Anderson, Logistics Manager Dan and the union representatives Messrs Gault, Gillard and Seeve. Ms Anderson gave Mr McKinlay a letter, which was an outcome letter from the meeting with Alicia [sic Alicea] and it was about honest and integrity. Mr Gault and Mr Seeve asked about the change from a reasonable business request to honesty and integrity. Ms Anderson said it was always about honesty and integrity. She was asked and replied that she had not received any email from Lyn Hopper. She was asked if the CCTV footage could be shown and she said no. Mr McKinlay says he felt frustrated and felt it was unfair. He says he was physically exhausted from tension and tightness in the muscles in his throat and shoulders. He had a headache and his hands were shaking.

- (k) Mr McKinlay describes the symptoms he experienced after that meeting as follows:

“About an hour after that meeting, I felt that I couldn't deal with things and I was physically unwell with the symptoms I described from the meeting continuing. I went straight home and went to bed.

I went back to work the next day and managed to stay for the whole shift.

On my next shift, which was a Saturday, I parked in the car park. As soon as I got out of the car in the parking area and began to walk toward the RDC, I began to feel stressed, anxious, worried, nervous and I felt pure rage.

I knew I couldn't stay at work in that state. I went to the team leader on duty Ashley Cole and I said I could not stay. Ashley asked, 'What do I put down?' I said, 'Mentally unwell'. He said, 'I can't put that.' I said, 'Put what you want' and I left.”

- (l) Mr McKinlay states that he was never interviewed by Alisha for the investigation and was only asked two questions. He says he was never given a full copy of the CCTV footage. He expresses that he feels poorly treated particularly in light of his long service for the respondent and that he has had so many injuries and surgeries. He says he has had no contact from the respondent's insurer or other management since his last shift there.

21. In Mr McKinlay's second statement he denies parts of the respondent's witnesses' statements, so I will deal with this later in these reasons when I summarise the respondent's witnesses' statements. I also note Mr McKinlay gave a statement to the insurance investigators, but only a draft copy is available, it has not been signed by him.

Wayne Penton

22. Wayne Penton is the Regional Distribution Centre (RDC) Operations Manager at Woolworths, Wyong. Mr Penton has given a statement dated 8 November 2018 to the respondent's insurer's investigators³. He states on 17 July 2018 he was acting in the role of Logistics Manager at the Wyong RDC. He says on that day he was asked to meet Alicea Certoma of People Services in the office of Kylie Anderson, but that Ms Anderson was absent at that time. Mr Penton states that Alicea asked him to attend a meeting with her and Mr McKinlay. Mr Penton says before the meeting Alicea told him that Mr McKinlay claimed to have aggravated a wrist injury while exiting the turnstiles but the CCTV footage did not support his claim. Mr Penton says Alicea showed him a letter that had been sent to Mr McKinlay which questioned his version of events and what he had disclosed to his doctor. Mr Penton said the letter also requested Mr McKinlay to provide further information if he wished to.
23. Mr Penton says Alicea showed him the CCTV footage which showed Mr McKinlay exiting the turnstile and talking to a couple of people outside the gate, he thinks they were Wayne King and Allan Gault. He chatted for about three minutes and then continued walking into the carpark. Mr Penton says there was no sign of any injury or reaction to injury.
24. Mr Penton states he went to meeting room 5 with Alicea and Mr McKinlay had two delegates who he believes were Allan Gault and Justin Seeve. Mr Penton asked Mr McKinlay if he had received the letter and he replied he had not and did not know why he had been called in. A copy of the letter was given to Mr McKinlay, who read it.

³ Reply pages 11-13

25. In paragraph 13 of his statement Mr Penton sets out his recollection of the meeting, stating:

“I recall Adam could not remember a lot of the detail which I felt was understandable as it had been a few weeks since the incident and my impression was that Adam had not thought it was a big deal. I recall Adam providing a version which reflected that he had exited the turnstile and the turnstile had jammed which caused the jar on his wrist. I do not believe Adam was shown the CCTV footage.”

26. There are also quite a number of matters that Mr Penton says he cannot recall, but he does recall Mr McKinlay telling Alicea that he was struggling mentally and spoke about his anxiety and that he was going to his doctor and that Mr McKinlay saying words to the effect that “I won’t tell him anything because I just want to get back to work”. Mr Penton says he cannot recall Alicea telling Mr McKinlay he was to be suspended again.

27. Mr McKinlay in his second statement takes issue with some of the detail in Mr Penton’s statement. He says at the time of that meeting he was stressed and confused and it was a month since the 18 June turnstile incident.

Dennis Azinovic

28. Dennis Azinovic has provided a statement to the insurance investigators dated 6 November 2018⁴. He is the Training Team Leader at Woolworths Wyong RDC. He was Mr McKinlay’s sponsor. He said a sponsor is given to a staff member who is on a return to work program, so he was aware that Mr McKinlay had a wrist injury.

“On 18/6/18, Adam approached me around the Equipment handout area. He told me that he re-aggravated his right wrist. I took Adam to the first aid room and asked Adam to explain what had happened. Adam said he had a specialist appointment and a psychiatrist appointment that day. I took it that he had left and returned twice that day for each appointment. Adam said that as he was leaving work to go to an appointment, and going through the turnstile, the turnstile stopped suddenly and this put pressure on his wrist. He said words to the effect of ‘I put my hands on the turnstile and it didn’t move.’ As Adam was explaining it to me, I was trying to visualise the turnstile system. I am aware that when you scan your Woolworths card this releases the lock on the turnstile but this can have a short delay. An audible click occurs when the turnstile lock is released. I had not ever experienced the turnstile stopping mid cycle and assumed it had simply not unlocked. Adam mentioned that there wasn’t an initial pain but once he got to his car he felt the pain then. He then contacted the coordinator on site but advised he was on his way to an appointment and would talk to a Team Leader when he got back. Adam asked the coordinator to tell the Team Leader about his call.”

29. Mr Azinovic states he went to the computer in the first aid room and entered information in the Pulse injury reporting system. He says Mr McKinlay provided the details as he typed. He says he always asks someone reporting an incident for a statement as Pulse does not allow for sufficient details. He says Mr McKinlay said he would not provide a statement. Mr Azinovic said this did not surprise him as he felt it was Mr McKinlay’s usual behaviour because he always has a union representative with him at return to work meetings and refuses to sign plans without a union representative.

30. Mr Azinovic says his role as Team Leader, but also because he submitted the Pulse report, was to further investigate the injury report. So, he went to view the CCTV footage. He says it showed a different version to what Mr McKinlay had described. Mr Azinovic says it showed him retrieving his scan card from his pocket with his left hand, scan the reader and return his card to his pocket. Then push on the turnstile horizontal bar with his left hand only and pushing through in that way until exiting. He says there was no stopping or pausing. He says

⁴ Reply pages 14-18

after exiting Mr McKinlay took a few steps to his car which was parked near the turnstile, and he then paused and twisted to look back around at the turnstile and then he turned back to face his car and make a phone call. Mr Azinovic says he did not talk to anyone else and there was no one else around. He says he noticed that Mr McKinlay kept his right wrist held near his stomach and Mr Azinovic says he did not see his right hand come in contact with the turnstile.

31. Mr Azinovic later met with Mr McKinlay and Allan Gault in the warm meeting room and asked Mr McKinlay some questions. Mr McKinlay advised the turnstile incident happened about 3.00 pm or 4.00 pm on the way to his psychologist appointment. He advised the person he rang was the co-ordinator on site. He also rang his specialist but only spoke to the secretary who told him to put the splint back on. Mr Azinovic said Mr McKinlay clarified that the injury occurred at the start of the turnstile cycle when he had scanned the reader but pushed too early for the lock to be released.
32. Mr Azinovic said based on this he felt Mr McKinlay had given a false report and he reported the matter to Pam Speers. He says a few weeks later he gave a statement to the Safety Health and Environment (SHE) area and he gave Darryl Pemberton his copy of the CD of the CCTV footage.
33. Mr McKinlay in his second statement disputes that he was shown what Mr Azinovic typed and he did not receive a copy of the Pulse report.
34. The Notification report is in the Reply⁵. It has the incident date as 18 June 2018 and the report date as the same. The incident time is given as 13:15, which is not consistent with the time given to Mr Azinovic, of 3.00 or 4.00 pm, in the afternoon. It is stated "Adam McKinlay was using the exit turnstile and jarred his right wrist. Adam had scanned his card and attempted to move the gate but it was still locked." An investigation is noted on the form noting that,

"CCTV footage shows team members using the gate (prior to Adam), & there are no issues noted; Adam does not appear to stop or prop while exiting the gates and does not show any emotion or reaction when he exits".
35. On the form, it is noted the investigation was completed on 13 August 2018.

Ashley Cole

36. Ashley Cole is a Team Leader at the Woolworths Wyong RDC. He gave a statement to the insurance investigator dated 13 November 2018. He says he made the statement with notes he made from the meeting. Those handwritten notes are in the Reply they are hard to read⁶ however up to paragraph 13 the statement appears to be consistent with the written notes, excepting the notes do not mention at the outset that the union representative David Willard was present. The date is not clear in the handwritten notes but there seems to be a consensus from the other witnesses this meeting took place on 7 July 2018.
37. In paragraph 13 of the statement Mr Cole sets out what the CCTV footage showed, but this is not included in his handwritten notes of the meeting. Presumably Mr Cole has taken this part of his statement from memory some four months later. After describing the footage Mr Cole says "I cannot recall which hand Adam scanned his card but I am aware that he pushed the turnstile with his uninjured hand. I cannot recall if this was the left or right hand but I was aware at the time." He adds that his injured hand remained tucked in around his front torso while he was navigating the turnstile. The turnstile did not appear to stall. He says, "Adam did not show any sign of being injured either when going through the turnstile or afterward."

⁵ Reply pages 41-46

⁶ Reply pages 6-9

38. However, Mr Cole states that Mr McKinlay then said, “take a closer look at it. It hurt when I went through. That’s why I reported it. Another camera angle would show the after effects”. Mr Kirk then asked Mr McKinlay was happened after this and Mr McKinlay replied “You will see me in pain after the fact”. Mr Cole states that he was not able to see that Mr McKinlay was in pain. In paragraph 19 of his statement Mr Cole says, “During the meeting, I recall Adam asking If the video went longer but we only had what had been burnt onto the CD which ended with Adam standing near his car.”
39. Mr Cole then records the following interaction between Mr Kirk and Mr McKinlay,
"I understand that Dennis has requested a statement that you have declined to provide,' Adam laughed and said, 'Round two hey?' Adam then said, 'I don't remember, I don't even remember yesterday. Is this to add more nails in my coffin?' Jarrod said, 'Can you provide a statement? It is a reasonable management request.' Adam replied, 'Yeah, why are you crossing your T's and dotting your I's? Last time I did not have to. Is it in legislation? If so, I will do so if required by legislation.'"
40. Mr Cole notes that Mr Willard commented “Why has it taken so long?” and that Mr Kirk did not respond.
41. In Mr Cole’s statement, he says Mr McKinlay’s tone became disrespectful, later he laughed and his tone of voice got louder.
42. In paragraph 18 of his statement Mr Cole says Mr Kirk said, “at this time, we are questioning your honesty and integrity and will suspend you pending further investigation and information”. However, this is not in his handwritten notes. The handwritten notes end with Mr Kirk stating, that he was asking a reasonable request as we would with any investigation when an incident has occurred. The hand-written notes do not record an end time nor are they signed by Mr Cole. At the end of his statement he says he signed off on them at the conclusion of the meeting.
43. Mr McKinlay in his second statement takes issue with many things in Mr Cole’s statement and in particular refers to paragraph 19 where he says the CD ended with Adam standing near his car. Mr McKinlay says the incident on the CD did not end then, the extended footage appears to show him in pain and even opening and closing my car door with my left hand in pain.⁷

Jared Kirk

44. Mr Kirk has given a statement to the insurance investigator, but it is only in draft. Mr Kirk describes the meeting as not a formal meeting and a chat. In paragraph 18 he refers to asking for a written statement again from Mr McKinlay as it was a reasonable management request and upon Mr McKinlay’s refusal telling him he would be suspended with pay until further advised. He makes no mention of raising honesty and integrity as asserted by Mr Cole.
45. Mr McKinlay says he has read this unsigned statement of Mr Kirk. He says, “I may not have pushed the gate with my right hand but when the gate jarred my right hand was in contact with the gate and the movement did cause injury.” Mr McKinlay also states “the footage clearly showed my stopping outside the gate as I was in pain and then moving to my car ‘in view’ of the camera”⁸.

⁷ ARD page 10

⁸ ARD page 11

Allan Gault

46. The index in the ARD refers to the handwritten notes and statement dated 12 March 2019 as being from Allan Gault, the union representative. None are signed. He says he found out on 9 July that Mr McKinlay had been suspended on 7 July for failure to respond to a reasonable business request and on 17 July the meeting conducted by Wayne Penton and Alicea was to gather more information about Mr McKinlay's honesty and integrity about the turnstiles incident on 18 June. He says the questions revolved around Code of Conduct, understanding the requirements of honesty and integrity and potential outcome of truth v lies.

Letter dated 6 August 2018

47. On 6 August 2018, Mr Daniel Haney, the Supply Chain Manager, RDC Wyong, wrote to Mr McKinlay. In this letter, it is stated that it was written to confirm the outcome of the meeting with Wayne Penton and Alicea Certoma on 17 July 2018.

48. It is noted that,

“As outlined in a letter sent to you dated 11 July 2018, the meeting was held to discuss the following matter:

1. On Monday 18 June 2018 you reported that you injured your wrist while exiting the site at the exit turnstile, You reported that the turnstile jammed and you jarred your wrist while trying to exit. Upon reviewing the CCTV footage, which was shown to you during a meeting held on Saturday, 7 July 2018, the footage does not support the version of events that you detailed when reporting the injury, Due to this, we have concerns surrounding the honesty and integrity of the alleged injury that you reported.”

49. Reference was also made to minutes of a meeting on 19 June 2018 with Dennis Azinovic and Allan Gault, the pulse report and the CCTV footage shown in the meeting of 17 July 2018. It was denied that the CCTV footage showed Mr McKinlay in pain as he was pacing and holding his wrist. So, it was found that Mr McKinlay was dishonest in some of the details surrounding the injury reported on 18 June 2018. It was noted that this letter constituted a formal warning and the need to adhere to the Woolworths Code of Conduct or any Policy otherwise he could be subject to further formal disciplinary process, up to and including termination of his employment.

Dr Yomona

50. Dr Aaron Zea Yomona, general practitioner, in report dated 1 December 2017 writes to the case manager at EML answering their questions⁹ It is somewhat difficult to glean the meaning of his answers without knowing the questions. The doctor refers to the date 21 November 2017 and to “addition of exacerbation of anxiety/depression secondary to work injury and slow recovery post-surgery plus impact of current work-related injury related medical issues impacting his life”. The doctor refers to the weeks leading up to the November 2017 right wrist surgery.
51. In the Reply is a copy of the clinical notes from Dr Yomona's practice, Northlakes Medical Centre¹⁰. On 13 July 2017 Dr Carol Tung of the Practice records that Mr McKinlay was having issues with his manager, Pam Speers, stating she baits him and does not take his condition into account. It was noted his hours of work were 12.00 pm to 5.00 pm, but Ms Speers wants him to work 4.30 pm to 9.30 pm and that with the cold weather this causes

⁹ ARD page 99

¹⁰ Reply pages 81-127

more pain and discomfort to his hand. It is also noted that Ms Speers stresses him out and he is not eating properly. Other complaints about duties that Ms Speers asks him to perform are recorded. On 25 July 2017 Dr Tung noted there was to be a case conference with Mr McKinlay and representatives of his work but it was cancelled and Mr McKinlay said the issues about hours and work duties had been sorted out. Apparently, Olivia, case manager for the insurer, was acting as liaison between Mr McKinlay and Ms Speers. Dr Tung also recorded that Mr McKinlay was not on speaking terms with Ms Speers and he felt she was hindering his progress regarding return to work. It was noted the doctor was going to discuss with the physiotherapist if Mr McKinlay could return to picking duties¹¹.

52. On 24 August 2017, the doctor had a consultation with Veronica from rehab and was told they had not got Mr McKinlay to start picking due to lost paperwork and a trainer was not available. Apparently, there needed to be a trial of picking before he could be certified to be upgraded. Throughout September 2017 the doctor's notes record trial to increased work duties but in October 2017 there is reference to carpal tunnel and triggering of right third finger.
53. On 21 November 2017, Dr Yomona noted surgery was to take place in two days and that Mr McKinlay was feeling up and down because he thought he would be completely healed by now. He noted the prior history of anxiety/depression.
54. On 13 December 2017, Dr Yomona consulted with Mr McKinlay and Lyn Hopper, the rehabilitation provider. It was noted that Mr McKinlay was happy with the result of the surgery. His mental state was considered and it was noted by the doctor that he was feeling quite anxious about going back to work, but the psychologist had recommended it, at reduced hours¹².
55. On 22 December 2017, the doctor noted that Mr McKinlay had been at work and was happy to increase to five hours per day. He had some pain in the right wrist and wanted some medication to take when he got home from work.
56. On 5 January 2018, Dr Yomona noted that Mr McKinlay wanted to try pain management for his right hand as Tramadol was not helping much and due to his anxiety/depression he was not sleeping much. Lyrica was prescribed to be taken on days he was not working as somnolence at work could be a side effect¹³. Thereafter several further consultations take place dealing with the right wrist.
57. On 29 January 2018, Dr Yomona notes that the head of HR rang Mr McKinlay five days ago saying he had seen signs of patient not being 100% regarding his mental health and his wrist pain¹⁴. The doctor notes that Mr McKinlay reports he has been in pain, but did not want to tell him how severe it was as he wants to keep his work hours.
58. Dr Yomona records the surgery took place on 2 February 2018 and by the consultation on 12 March 2018 he agreed with the proposed return to work plan, noting it was flexible depending on Mr McKinlay's recovery. However, on 21 March 2018 the doctor notes on examination the right forearm muscles look quite atrophied and his mental state was not being helped by alleged calls from work. On 28 March 2018 Dr Yomona notes that Mr McKinlay has seen Kathleen Power psychologist and that things were too much for him at the moment. Stress factors in the family are also mentioned¹⁵.

¹¹ Reply page 102

¹² Reply page 108

¹³ Reply pages 109/110

¹⁴ ARD page 110

¹⁵ Reply page 113

59. On 11 April 2018, Dr Yomona records that Mr McKinlay is happy to start driving a forklift and his Sertraline medication was helping his mental state. On 24 April 2018, it is noted that he was coping with work duties and his wrist pain was manageable. He was still struggling with his mental health. By mid May 2018 he was handling full hours with restricted duties. On 4 June 2018, it was noted his mental health was still up and down.
60. On 18 June 2018, Dr Yomona records that Mr McKinlay was going through security at work and jarred his wrist. He was on the way to his psychologist. It is noted that he said when it happened his wrist pain was 8-9/10 and now it was down to 3/10. The doctor noted that pronation feels tight and triggers the pain whereas yesterday he was fine with pronation. Reference is made to Lynne Hopper and that the plan is still on target to return to pre-injury duties in one to two weeks' time.
61. On 26 June 2018, Dr Yomona notes Mr McKinlay is a bit down and that work does not understand his mental health. He says he is having some delusions that people at their job are not supporting him or doing things against him. A referral was given to a psychiatrist. It was noted he was to see Dr Meads about his wrist.
62. On 17 July 2018, Dr Yomona notes that Mr McKinlay says he was suspended on 7 July in relation to the incident with his hand being jarred. He said he felt his suspension was unfair.
63. Further consultations are recorded in the notes and read by me, but are not summarised. On 5 October 2018, Dr Yomona spoke to Pam Speers and it is recorded she wanted to know if the claims had been separated now. Dr Yomona states

"I tell her that the mental health claim we have agreed that it is not stemming from the physical injury but due to worsening of his mental health from the moment he was suspended on 7th July".

64. Dr Yomona has made further notes in his record up to 30 October 2018 which I have read but do not need to summarise.

Kathleen Power

65. Kathleen Power is a psychologist who has been treating Mr McKinlay since 22 February 2016. Her notes are in the ARD and only brief details are recorded against each session. On 18 June 2018, she records that they talked about the pain in Mr McKinlay's wrist, that he seems to have re-injured and he will go to see his general practitioner. Thereafter, there are many entries referring to his mental health, anger and feeling out of control and references to his feelings about Woolworths.

Dr Dominic Paul

66. Dr Dominic Paul is Mr McKinlay's treating psychiatrist and several reports are available from him including dated 23 July 2018 x 2, 13 August 2018 x 2, 5 December 2018, 11 February 2019. He also is the author of a certificate under the *Mental Health Act 2007* dated 23 July 2018. Mr McKinlay was admitted as an involuntary inpatient to Brisbane Waters Private Hospital from 23 July to 30 July 2018. The contents of Dr Paul's reports and the Discharge Summary from the Hospital have been read and considered by me and refer to Mr McKinlay having been suspicious that he may be monitored by CCTV at work in the context of his wrist injury. He also reported feelings of persecution from those at work. Dr Paul in the report dated 23 July 2018 to the Hospital noted that Mr McKinlay had been suspended from work three weeks earlier and he thought his boss was out to get him. This was also conveyed to EML in report dated 13 August 2018.

Dr Baker

67. Dr Baker is a consultant psychiatrist who has reported on a medico-legal basis for Mr McKinlay in reports dated 14 December 2018 and 19 July 2019. Dr Baker's initial report is very detailed regarding Mr McKinlay's current level of functioning. I have read the same but do not need to summarise the same in these reasons, except to note the doctor opines that Mr McKinlay is totally unfit for employment. The doctor also has a very detailed personal, medical and work history. In his history of the workplace injury he refers to incidents of mental illness including in April 2017 and February 2018 and that two weeks after being suspended from work he was admitted as an involuntary patient to hospital on 23 July 2018.

68. In relation to the incident in April 2017, it was significant as Mr McKinlay was admitted to Wyong Hospital Emergency department with self-inflicted cuts with a knife and the mental health team attended and psychiatric treatment commenced. It is noted that Mr McKinlay advised Dr Baker that

“his condition deteriorated with increased anticipatory anxiety, agitation, palpitations and irritability as he attempted to attend work each day. He stated that he felt increasingly denigrated, bullied and humiliated by his team's operational manager.”

69. Dr Baker has the history that Mr McKinlay stated that he had difficulties with his senior management in relation to his return to work after injuring his right hand and that he was worried that the employer was monitoring his work activities via CCTV. The doctor noted that he was unable to explain why he had been suspended from work. He noted that Mr McKinlay suffered from increasing ideas of hopelessness and worthlessness and his depressed mood became so severe he required hospitalisation and treatment.

70. Dr Baker diagnosed that Mr McKinlay was suffering from a Major Depressive Disorder - severe single episode - with anxious distress and that his employment substantially contributed to his primary psychiatric injury.

71. In his second report, Dr Baker considers the statements of Wayne Penton and Jarrad Kirk and the report of Dr Vickery dated 12 December 2018. He also records a history from Mr McKinlay as follows:

“Mr McKinlay said he was trying to return to work and perform to the best of his ability. He said that he had ‘video footage of him passing through the turnstile on 18 June 2018’. He said he had to use a swipe card and push through the turnstile. As he was doing this, he said he re-injured his right wrist. Mr McKinley said that the gate jarred his right wrist. He said that the gate was known to be faulty. He said that he did not expect to jar and re-injured his right wrist when he was passing through the gate at the time that he re-injured himself at work. Mr McKinlay reported that he immediately experienced pain in his right wrist on pushing through the turnstile. He said that he was naturally right-hand dominant. He reported the matter to his supervisor. He was fearful of losing his work if he was unable to continue. He said that he transferred duties of opening and closing doors, and other tasks he would normally use his right wrist for to his left hand.

Mr McKinley reported that he was on light duties. He would turn up to work but be given no specific job. He said that he became the focus of management and other workers humiliating comments and denigration of him. He said that they would frequently ask him ‘Why was he not working today’ and then answer their own question with, ‘The turnstile jarred again’ before laughing at him. Mr McKinlay said that he had an MRI scan and an attempted tendon relocation as a surgical treatment which was unsuccessful.

Mr McKinlay said that he attended a meeting with senior managers and a union delegate about the turnstile incident. He said that the senior managers told him if he did not change his written statement he would be suspended. He said that he felt he had been bullied and forced into changing his view. He said that he was suspended by his employer because he was said to have 'failed to follow a reasonable business request'. He said he felt as if management were trying to deceive and trick him so that they could then accuse him of lying in writing."

72. Dr Baker did not change his views about diagnosis or fitness for work and he confirmed his view that the employment and incidents in relation to the questions raised in Mr McKinlay's solicitor's letter did substantially contribute to his primary psychiatric injury.

Dr Vickery

73. Dr Vickery, consultant psychiatrist, has provided a medico-legal report for the insurer dated 12 December 2018. He diagnosed Major Depressive Disorder, Paranoid Disorder and Substance Abuse-alcohol. He concludes that the psychiatric injury was an aggravation/exacerbation of a pre-existing psychiatric illness in the context of performance review and disciplinary action by his employer.¹⁶
74. He considers that Mr McKinlay is not fit for work. In his history Dr Vickery refers to some of the physical injuries suffered by Mr McKinlay and then states that Mr McKinlay was admitted to Gosford Hospital Psychiatric Unit in June 2018. This is incorrect. Mr McKinlay was admitted as an involuntary patient on 23 July 2018.
75. Dr Vickery quotes Mr McKinlay telling him "I was at work and I re-aggravated my right wrist injury when I was going through a turnstile and I was accused of lying and when they couldn't get me for that I was accused of something else". Dr Vickery does note that Mr McKinlay was suspended from work on 7 July 2018. He does not note it was only for two days.
76. While Dr Vickery does not take a history about the second suspension, he does refer to the warning letter dated 6 August 2018, and the further meeting on 17 July 2018 which is mentioned in that letter.
77. Dr Vickery opines that "the predominant if not the whole cause of injury was disciplinary action taken against the worker in respect of performance review." But he does not specify exactly what action of the employer he is referring to.

Other reports

78. The ARD contains reports from Dr Guirgis dated 17 October 2018 and 12 June 2019 and Dr Harrington dated 19 December 2018, 30 January 2019 and 15 February 2019 and a number of certificates of capacity all of which have been read by me but do not assist with the determination in this matter.

Wholly or predominantly caused

79. The respondent's counsel submitted that nothing that happens after 7 July 2018 is relevant. He submits the reason for this is because Mr McKinlay relies on injury being a nature and conditions claim with a deemed date of 7 July 2018 and also because the respondent relies on the injury being due to reasonable actions by the employer in relation to discipline on 7 July 2018. Mr McKinlay's counsel does not address this submission.

¹⁶ Reply page 79

80. However, Mr Kirk, who was the person in charge at the meeting on 7 July 2018, describes the meeting as a “chat” and “not a formal meeting”. This brings into question, in my mind, as to whether that meeting falls within the concept of discipline in section 11A. Counsel relied on *Heggie* to submit that discipline includes the investigation.¹⁷ Mr McKinlay’s counsel agreed the employer was entitled to investigate the report of injury on 18 June 2018, but submits that there is evidence to support the psychological injury was caused by the nature and conditions of employment. In any event, she submits that the way the investigation was conducted was not reasonable.
81. Dealing with the meeting on 7 July 2018, when one compares the statements of Mr Cole and Mr Kirk there is a discrepancy. Mr Kirk says the request for the written statement at the meeting was a reasonable business request, whereas Mr Cole in his statement to the insurer’s investigator adds that Mr Kirk also said they were questioning Mr McKinlay’s honesty and integrity. Mr Kirk does not refer to this and it does not appear in Mr Cole’s handwritten contemporaneous notes of the meeting.
82. The respondent has the onus of proof and such a discrepancy is not explained. I find such a discrepancy is of concern when the respondent is basing its defence on this one meeting being the whole or predominant cause of Mr McKinlay developing his psychological injury.
83. The respondent submitted that the treating medical records do not disclose any other incidents at work to form part of a nature and conditions type claim. He acknowledged there was a reference in Dr Baker’s report to the event in April 2017, which I have summarised above. Counsel submitted that event is outside the range that is pleaded in the amendments made to the ARD. But that is not correct, the date of injury was amended to refer to nature and conditions claimed from “in or on or about January 2017 to 7 July 2018”. This was recorded in my notes of the proceedings and appears in the transcript, but to be completely sure I have listened to the sound recording and Ms Grotte clearly refers to this period when seeking to amend the ARD and again when amending the type of injury.
84. Based on Dr Baker’s history the episode in April 2017 is related to Mr McKinlay’s work, but does not fall within section 11A as it seems based on interpersonal conflict.
85. Mr McKinlay’s counsel relied on both the history in Dr Baker’s reports and the general practice notes to argue that he developed a psychological injury based on a culmination of events and finally what happened on 7 July 2018¹⁸. She submitted that the causative factors culminating in the injury began much earlier and so the injury was not wholly or predominantly caused by the meeting on 7 July 2018.
86. In support of this submission, Mr McKinlay’s counsel refers to:
- (a) the consultation with Dr Tung on 13 July 2017 where issues with Pam Speers were noted; that she baits him, stresses him out and so he is not eating properly;
 - (b) that Dr Tung noted Mr McKinlay was not on speaking terms with Ms Speers and he felt she was hindering his progress towards return to work;
 - (c) on 13 December 2017, it was noted he was feeling quite anxious about returning to work;
 - (d) on 5 January 2018, it was noted that Tramadol was not helping and due to his anxiety/depression he was not sleeping much;

¹⁷ T 29.29

¹⁸ T 32.20ff

- (e) on 21 March 2018, it was noted that his mental health not being helped by calls from work, with the doctor recommending work not call him unless strictly necessary, and
- (f) in April 2018, he was taking Sertraline and increased the dose himself.

87. The respondent's counsel submits that Dr Baker is vague when he refers to difficulties with senior management on his return to work. The respondent's counsel also submitted that Dr Baker refers to the suspension from work two weeks prior to being admitted to the psychiatric hospital. However, the respondent's counsel does not make it clear in his submissions that Mr McKinlay was suspended in the meeting on 7 July 2018 for two days and then further suspended in the meeting on 17 July 2018.
88. The respondent submits that the treating medical evidence does not support a nature and conditions type injury, but it does support that the incident on 7 July 2018 was a significant matter for Mr McKinlay. However, the respondent does not deal with the evidence listed above.
89. The respondent's counsel submitted that Dr Vickery only refers to the meeting on 7 July 2018¹⁹ in his history. But this is not correct, as noted above in my summary of his report, in his history he refers to the letter dated 6 August 2018, which was a formal warning and which in turn referred to the second meeting on 17 July 2018.
90. The respondent relies on the decision in *Hamad* and submits there is clear medical evidence from Dr Vickery to support the contention the psychological injury suffered by Mr McKinlay was wholly or predominantly due to the disciplinary action of the meeting on 7 July 2018. In light of the matters I have noted above about Dr Vickery's report, I do not accept this submission.
91. I find that I cannot accept that the respondent has discharged its onus of proof that the psychological injury, it agrees Mr McKinlay has, was wholly or predominantly caused by the meeting on 7 July 2018 and in particular the suspension given in that meeting for two days. Dr Vickery has the timeline wrong as to when Mr McKinlay was admitted to Hospital. He cites it was in June 2018 and places it before the suspension of employment on 7 July 2018. Dr Vickery also does not refer to the entries listed above in the general practice notes. In *Hamad* Snell DP refers to the need for medical evidence to deal with potentially causative factors. I find that Dr Vickery's opinion does not deal with the potentially causative factors. To my mind this is crucial in a case where a worker, such as Mr McKinlay, was already receiving medication for psychiatric symptoms before 7 July 2018.
92. The matters listed above refer to a relationship with Mr McKinlay's work and are not confined to 7 July 2018.
93. I have viewed the CCTV footage and it does not end as Mr McKinlay exits the turnstile or when standing by his car. The video shows Mr McKinlay's progress through the turnstile, but it is taken from the rear and so it is hard to see if his right arm touched the turnstile. What is clear, however, that Mr McKinlay gets into his car, is seated in the driver's seat and then leans over his body with his left hand to close the car door. He does not use his right hand.
94. Having not established the wholly or predominant aspect of section 11A, the respondent has not succeeded with its section 11A defence and it is not necessary that I deal with the issue of reasonableness. Therefore, I have not referred to the differing evidence about the CCTV footage. It is not relevant to the wholly or predominant question.

¹⁹ T24.27

Nature and conditions injury

95. The way the case was run before me was somewhat unusual in that the respondent conceded that Mr McKinlay had a psychological injury, but disputed that it was caused by the nature and conditions of employment. The claim was pleaded originally as a nature and conditions claim, but amended to deal with the period from January 2017 to 7 July 2018. The section 78 notice dated 8 February 2019 only dealt with the section 11A defence.
96. The respondent's counsel stated in these circumstances he disputed injury under section 4 of the 1987 Act. There was no objection by Mr McKinlay's counsel to this position. To the extent it is necessary, leave is granted under section 289A(4) of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) to raise this as a dispute.
97. As noted in *Hamad* the causation test under section 4 differs to that in section 11A. As Mr McKinlay relies on aggravation of a disease, section 4(b)(ii) of the 1987 Act contains the relevant definition of injury, which requires the employment to be the main contributing factor to the aggravation etc of the disease.
98. Dr Yomona in his report dated 1 December 2017 to the insurer refers to Mr McKinlay being diagnosed with anxiety/depression two to three years ago and the psychologist, Ms Power's notes in 2016 provide evidence of the earlier psychological condition. There is a year's gap in Ms Power's treatment from 28 June 2016 to 7 June 2017. When these entries are considered with the general practitioner's notes I find that there appears to be an exacerbation or aggravation of his psychological state. The entries in the general practice notes, listed above, refer to interpersonal conflict at work with Ms Speers and issues on return to work, these factors led to the prescribing of Sertraline. I accept the submissions of Mr McKinlay's counsel that this treating evidence supports a finding of a nature and conditions type injury that is work related, and an exacerbation of his earlier psychological state. The events relied upon by counsel are in the period from January 2017 to 7 July 2018 and so include Mr McKinlay's reaction to the meeting on 7 July 2018. Dr Baker's history of the workplace injury starts in about April 2017 and includes the meeting in July 2018.
99. The evidence from Mr McKinlay refers to conflict with Ms Speers and Ms Knox. Mr McKinlay relates that before he reported the turnstile incident he saw Ms Knox in the equipment hand out room and there was tension between them such that he felt the walls were closing in on him and he could not think clearly. This is before the meeting on 7 July 2018. I find that this medical evidence and the facts related by Mr McKinlay establish that employment was the main contributing factor to the exacerbation or aggravation of his psychological disease. Therefore, I find that Mr McKinlay has established injury under section 4(b)(ii).
100. Mr McKinlay's entitlement to weekly compensation is not in issue as the parties agree he has no current capacity for employment. Accordingly, I order that the respondent is to pay Mr McKinlay weekly compensation pursuant to section 37 of the 1987 Act from 22 February 2019 and continuing at the rate of \$806 per week.