

WORKERS COMPENSATION COMMISSION

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

Matter Number:	M1-3607/19
Appellant:	Joseph Daniel Barresi
Respondent:	Electrolux Home Products Limited
Date of Decision:	18 March 2020
Citation:	[2020] NSWCCMA 56

Appeal Panel:	
Arbitrator:	Jane Peacock
Approved Medical Specialist:	Professor Nicholas Glozier
Approved Medical Specialist:	Dr Michael Hong

BACKGROUND TO THE APPLICATION TO APPEAL

1. On 5 November 2019, Mr Joseph Barresi (the appellant) lodged an Application to Appeal Against the Decision of Approved Medical Specialist. The medical dispute was assessed by Dr Wayne Mason, an Approved Medical Specialist (AMS), who issued a Medical Assessment Certificate (MAC) on 4 October 2019.
2. The appellant relies on the following grounds of appeal under s 327(3) of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act):
 - the assessment was made on the basis of incorrect criteria, and
 - the MAC contains a demonstrable error.
3. The Registrar is satisfied that, on the face of the application, at least one ground of appeal has been made out. The Appeal Panel has conducted a review of the original medical assessment but limited to the ground(s) of appeal on which the appeal is made.
4. The Workers compensation medical dispute assessment guidelines set out the practice and procedure in relation to the medical appeal process under s 328 of the 1998 Act. An Appeal Panel determines its own procedures in accordance with the Workers compensation medical dispute assessment guidelines.
5. The assessment of permanent impairment is conducted in accordance with the *NSW Workers Compensation Guidelines for the Evaluation of Permanent Impairment, 4th ed* 1 April 2016 (the Guidelines) and the *American Medical Association Guides to the Evaluation of Permanent Impairment, 5th ed* (AMA 5).
6. It is noted that by order of the delegate of the Registrar the period of time to lodge an appeal was extended and the matter referred to the Appeal Panel.

PRELIMINARY REVIEW

7. The Appeal Panel conducted a preliminary review of the original medical assessment in the absence of the parties and in accordance with the Workers compensation medical dispute assessment guidelines.

8. As a result of the Appeal Panel's preliminary review, the Appeal Panel determined that it was not necessary for the worker to undergo a further medical examination.

EVIDENCE

Documentary evidence

9. 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

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

SUBMISSIONS

11. Both parties made written submissions. They are not repeated in full but have been considered by the Appeal Panel.

FINDINGS AND REASONS

12. 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.
13. In *Campbelltown City Council v Vogan* [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.

14. The matter was referred by the Registrar to the AMS as follows:

"The following matters have been referred for assessment (s 319 of the 1998 Act):

Date of injury: 14 June 1995

Body parts referred: Psychological/Psychiatric Disorder

Method of assessment: Whole Person Impairment"

15. The AMS issued a MAC certifying as follows:

Body Part or system	Date of Injury	Chapter, page and paragraph number in NSW workers compensation guidelines	Chapter, page, paragraph, figure and table numbers in AMA5 Guides	% WPI	WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality (expressed as a fraction)	Sub-total/s % WPI (after any deductions in column 6)
Psychological injury/Mind	14 June 1995	Chapter 11, Pages 60-68	Chapter 14	17%	0%	17%
Total % WPI (the Combined Table values of all sub-totals)					17%	

16. The assessment was based on an assessment by the AMS conducted under the permanent impairment ratings scale (PIRS), as set out in the following table:

Table 11.8: PIRS Rating Form

Name	Joseph Daniel BARRESI	Claim reference number (if known)	3607/19
DOB	17 June 1973	Age at time of injury	22 years
Date of Injury	14 June 1995	Occupation at time of injury	Process worker
Date of Assessment	20 September 2019	Marital Status before injury	Single

Psychiatric diagnoses	1. Post-Traumatic Stress Disorder
Psychiatric treatment	Yes
Is impairment permanent?	Yes

PIRS Category	Class	Reason for Decision
Self-Care and personal hygiene	3	Mr Barresi said he showers once every three weeks, maybe slightly more frequently in summer. His wife makes him change his clothes or otherwise he would not bother. He said he eats too much, particularly fast food, and currently weighs 107 kg. He is moderately impaired.

PIRS Category	Class	Reason for Decision
Social and recreational activities	3	Mr Barresi said he will go for a drive with his wife and they tend to purchase fast food and eat it at a pleasant spot, such as a park. He said he lives through other people by watching things he used to enjoy on You Tube. These include hunting, sport and stories about Greece. He said if people come to the house he hides in his room. He cannot bear his children making a noise. He said he is always angry. He is especially unable to deal with crowds and if he is in that sort of situation it begins to sound to him like people are mumbling and he becomes claustrophobic and has to rush out. He said he may go to the supermarket with his wife but often has to leave. He described losing many of his friends and finds it very difficult to cope with his ageing parents because he cannot meet their needs. From a psychological point of view, Mr Barresi is moderately impaired.
Travel	2	Mr Barresi said he can drive locally on his own if he has to do so but prefers not. He could drive from Orange to Bathurst, a distance of approximately 60 kilometres, if his wife was present in the car with him. He said he could not fly alone or use public transport alone. He is mildly impaired.
Social functioning	2	Mr Barresi said his relationship with his wife was strong and she confirmed this. He said he becomes angry with her and the children which she again confirmed. He told me he would "neck himself" without her. Their intimate relationship exists but is inconsistent. He is mildly impaired.
Concentration, persistence and pace	3	Mr Barresi said he no longer does any drawing or painting because he cannot concentrate or persist with the task. He said he is able to watch various things that interest him on You Tube but his concentration span is limited to five minutes. He and his wife share the financial management of the family but he can pay bills on his phone. He has a TV/computer set up in his bedroom which is on most of the time. He said his son bought him an X-box but he does not use it. His ability to focus and remember throughout the interview was impaired. He is moderately impaired.
Employability	3	Mr Barresi said he is unable to work and hardly contributes to domestic chores. He said occasionally he will put the garbage out. He is apparently significantly impaired due to pain. From a psychiatric point of view he is moderately impaired.

Score

Median Class

2	2	3	3	3	3
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3

Aggregate Score Impairment

Total %

2	+2	+3	+3	+3	+3
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=16	17%
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17. The worker appealed.
18. The complaints on appeal concern the assessments made by the AMS under the PIRS in respect of two of the categories, namely social functioning and employability.
19. In summary, the appellant submitted that the AMS erred as follows:
 - In his assessment of class 2 for social functioning
 - In his assessment of class 3 for employability.
20. In summary the respondent submitted that the AMS did not apply incorrect criteria nor did he make a demonstrable error and that the MAC should be confirmed.
21. The role of the AMS is to conduct an independent assessment on the day of examination. The AMS is required to take a history, conduct a mental state examination, make a psychiatric diagnosis and have due regard to other evidence and other medical opinion that is before the AMS. The AMS must bring his clinical expertise to bear and exercise his clinical judgement when making an assessment of impairment under the PIRS categories. The assessment is not to be based upon self-report alone. An appeal panel cannot disturb ratings under the PIRS scale for mere difference of opinion but must be satisfied as to error.
22. The AMS took a history of injury broadly consistent with the other evidence that was before him as follows:

“Mr Barresi was employed on the refrigerator production line as a process worker. He said he was taken from his normal position because the production line was being upgraded and was sent to an area where the refrigerators came off the production line and were packed for transport. He said he stood on the conveyor to turn an approaching refrigerator around a corner. As he stepped off the shoe of his left foot got caught in the gap between the roller and a wooden slat and he was dragged in to half-way up his calf. He said no one knew how to stop the conveyor belt even though the kill switch was close by. He described feeling overwhelmed and a having a sense of panic about his foot being dragged in and the fact that he could not get it out. He also began to experience intense pain. He said he fell onto the conveyor belt as the fridge came towards him. He described it as a surreal nightmare. He said he knocked the approaching refrigerator off the track and then he felt rage. He said someone did come who knew how to hit the stop button but his leg was then trapped for 30 minutes while waiting for a crew from maintenance to arrive. He said people stood around looking at him and he was screaming in the pain at the foreman, pleading to be released. He said one girl tried to comfort him; he lashed out at her and then apologised.

He was eventually released and he said he was not bleeding but a muscle had extruded from his ankle. He was loaded face down onto a golf cart and then left outside in the freezing rain waiting for an ambulance for 30 minutes. He said he was given no blanket.

Mr Barresi said he was taken to Orange Base Hospital. He had suffered a degloving injury. Dead tissue was debrided and replaced with a skin graft. He was in hospital initially for eleven days and when the skin graft failed, he was re-admitted for another debridement and a second skin graft at which time he was hospitalised for 45 days. After this he had no further surgery but complained his employer was trying to force him to go back to work.

I asked about his psychiatric symptoms at that time. Mr Barresi said he was in “*survival mode*”. He was totally panicked and was having constant nightmares in which he was reliving the event of being trapped and trying to make it turn out differently. He said his sleep was very disrupted. He was very angry because he had been a physically active person involved in soccer, karate, archery and basketball and was not able to participate in any of those. He said he was reliving the events of the work accident both during the day when he was awake and in nightmares during the night.

He said he developed significant claustrophobic symptoms. He could not tolerate being in a small room and at times could not tolerate having sheets on him or even clothing.

He said he was single at the time, although dating a girlfriend, and was discharged from hospital to his parents’ home heavily sedated on opiate medication.

Mr Barresi attempted a return to work on light duties and was put in a separate large shed on the first day but he immediately felt claustrophobic. He could not continue and said at that time he was fighting with his rehabilitation provider. He was then given outside work on the bin run where he was expected to collect wheelie bins weighing up to 150 kg and lift them into a vehicle. He said he hurt his back after two or three weeks and could not continue.

He then did no work for three months and went back on light duties of four hours per day but was unable to handle loud noises and small spaces. He said they put him in a small room with loud machinery and he was unable to last four hours. He said because of that he was sacked. I asked him about other attempts at work. He said he attempted in 1996 to take a position with Austar installing satellite dishes but because of his claustrophobia could not crawl under houses or into ceilings. He lasted only two days.

In 1997, Mr Barresi attempted a signwriting course at TAFE which was a continuation of a short course he had done in 1993. He said he completed two years doing both Certificate I and Certificate II but he was not able to complete Certificate III. He said the reason for this is that he was struggling with his memory and was unable to deal with the theoretical side of the course, although he was okay with the practical. He said he had informed the teacher that he had found another student cheating and as a consequence was alienated from the class and he left the course.

I asked Mr Barresi about treatment. He was rather vague with regard to detail. He said he believes he saw one psychiatrist in 2004 or 2005 who gave him anti-depressants. He said he developed side effects and did not continue with them. He then said he had consulted with Dr Sophia Lahz for a period of time prior to the MAC she provided. He said she suggested a drug but he did not take it.

Mr Barresi then attended counselling at the Community Mental Health Service in Orange (Cadia House) for a couple of weeks. He said the person he saw was watching the clock and looking at him with a blank stare so he did not return. He then went to another psychological counselling service called LikeMind in Lords Place, Orange. He said he had to recount the same story which made him relive it all over again so he stopped going.

Mr Barresi said he completed an eight-week pain management program with the Pain Clinic in Orange. He said he was taught to pace himself but made no progress with this. He referred to the fact that he developed chronic regional pain syndrome in his left leg and this significantly limits his activities. When he spends a month or two in pain and just manages to get it better, he attempts to mobilise himself and said the chronic regional pain syndrome then moves to the right leg and he has to do the whole thing over again with the other leg.

At the current time, Mr Barresi is not receiving any specific psychological or psychiatric treatment, apart from the antidepressant agent dothiepin; he was not sure if this was for depression or pain modulation.

- **Present treatment:**

Mr Barresi is not attending any form of psychological treatment.

Mr Barresi's current medications consist of Codeine Phosphate, 30 mg, two tablets three times daily, a Lidocaine patch, and Endone 5 mg for the treatment of excessive pain which he uses either twice weekly or up to twice daily.

In addition, Mr Barresi said he is taking the anti-depressant Dothiepin, 25 mg daily. He was unclear if this was a pain modulating medication or provided as an anti-depressant.

- **Present symptoms:**

Mr Barresi said whenever he sees any of the people who were involved in the accident, he starts to experience rage. He said they look at him like they looked at him when he was trapped. When I asked what he meant by this, he said he believed they were looking at him like he was a "*piece of shit*". He said this gives him the jitters and he becomes extremely anxious and immediately goes home. He said he is totally unable to sleep and relives the incident until the next trigger comes along which makes it even worse. He said his sense of claustrophobia is so bad that he can relive feeling trapped even while he is being intimate with his wife. He then added that he has had difficulties with impotence.

On direct questioning Mr Barresi endorsed symptoms of nightmares, intrusive recollections of the accident during the day, hypervigilance, an exaggerated startle response, avoidance of people, irritability and anger especially with his young children, avoidance of people and total lack of enjoyment of any activities in his life. When I asked directly if he was suicidal, he said he was not but he does wish he was dead. He described this as "*wanting out*". He said he cannot deal with the pain going on and off in his feet. He said as soon as he feels good the CRPS flares up. He said he cannot deal with his young daughters when they come home from school and he is losing all his friends because he is too negative and they are unable to listen to him and take him seriously. At this point, Mr Barresi told me he had attempted suicide in 2002 by taking an overdose of Phenergan."

23. The AMS took a history of the appellant's self-report of impact on activities of daily living as follows:

- **Social activities/ADL:**

Mr Barresi is a 46-year-old man who was born in Australia to Sicilian migrant parents. His parents live in Orange, moving there from Sydney when he was 10. He is the youngest of 3 children with a 66-year-old brother in Germany and a 56-year-old sister in Sydney. He first married after the subject accident and has 2 sons now in their twenties; the marriage ended in acrimony in 2002. He met his wife Vicky, 31 years of age, in 2003, they moved in together in 2005 and married in 2009. They have daughters age 13, 12 and 8. When asked about difficulties with the law Mr Barresi was convicted of assault in 1996 but received a good behaviour bond.

Mr Barresi said he receives \$345 per week on the Disability Support Pension for both physical and mental conditions. His 31-year-old wife, Vicky, receives a Carer's Pension and the family receive tax benefits A and B. He lives in rented accommodation in Orange with his 20-year-old son Lachlan from his previous marriage. The older boy, Jonathan, had moved out. His three daughters with Vicky aged 13, 12 and 8 live in the home. Mr Barresi said he does very little and is out of bed for approximately only four hours per day. He spends the rest of the time on the bed in his bedroom. He said in the afternoon he does pick the children up from school and occasionally may accompany his wife when she takes them to school. He said he does not help with the domestic chores or the lawns because of pain. He said the chronic regional pain syndrome is usually in his left foot but is now going to his right foot and he can be laid up in bed for anywhere between one and four months with the pain in either foot.

Self-care and personal hygiene: Mr Barresi said he showers once every three weeks, maybe slightly more frequently in summer. His wife makes him change his clothes or otherwise he would not bother. He said he eats too much, particularly fast food, and currently weighs 107 kg. He is moderately impaired.

Social and recreational activities: Mr Barresi said he will go for a drive with his wife and they tend to purchase fast food and eat it at a pleasant spot such as a park. He said he lives through other people by watching things he used to enjoy doing on You Tube. These include hunting, sport and stories about Greece. He said if people come to the house he hides in his room. He cannot bear his children making a noise. He said he is always angry. He is especially unable to deal with crowds and if he is in that sort of situation it begins to sound to him like people are mumbling and he becomes claustrophobic and has to rush out in a panic. He said he may go to the supermarket with his wife but often has to leave. He described losing many of his friends and finds it very difficult to cope with his ageing parents because he cannot meet their needs. From a psychological point of view, Mr Barresi is moderately impaired.

Travel: Mr Barresi said he can drive locally on his own if he has to do so but prefers not. He could drive from Orange to Bathurst, a distance of approximately 60 kilometres, if his wife was present in the car with him. He said he could not fly alone or use public transport alone. He is mildly impaired.

Social functioning: Mr Barresi said his relationship with his wife was strong and she confirmed this. He said he becomes angry with her and the children which she again confirmed. He told me he would "*neck himself*" without her. Their intimate relationship exists but is inconsistent. He is mildly impaired.

Concentration, persistence and pace: Mr Barresi said he no longer does any drawing or painting because he cannot concentrate or persist with the task. He said he is able to watch various things that interest him on You Tube but his concentration span is limited to five minutes. He and his wife share the financial management of the family but he can pay bills on his phone. He has a TV/computer set up in his bedroom which is on most of the time. He said his son bought him an Xbox but he does not use it. His ability to focus and remember throughout the interview was obviously impaired. He is moderately impaired.

Employability: Mr Barresi said he is unable to work and hardly contributes to domestic chores. He said occasionally he will put the garbage out. He is apparently significantly impaired due to pain. From a psychiatric point of view he is moderately impaired.

24. He conducted a mental state examination, the findings of which are recorded as follows and about which there is no complaint on appeal:

“Mr Barresi is a 46-year-old man whose appearance is consistent with his stated age. Mr Barresi was scruffily dressed and unshaven but he was not malodorous. He was identified from his photograph on NSW Driver’s Licence No. 07510956 in the same name.

Mr Barresi was cooperative with the interview and initially presented himself in a straightforward manner displaying a full range of affect, including humour. He was not depressed in appearance but he became acutely distressed when recounting the work accident and the subsequent ongoing pain. There was a mildly histrionic quality to the history he provided and he elaborated on details of his injury with a rather dramatic flair. When he became significantly distressed his wife comforted him by putting her arms around him and at one point told me he was trembling, although this was not visibly obvious. The symptoms he presented were certainly consistent with Post-Traumatic Stress Disorder, including episodes of dissociation when he appeared not to be fully present. I note some symptoms he described were not consistent with the history of injury, such as his chronic regional pain syndrome changing limbs. He was fully oriented in time, person and place and displayed no evidence of organic or psychotic psychopathology.”

25. He summarised the diagnosis and injury as follows:

“Mr Barresi suffered a significant injury to his lower left leg when it was dragged into a roller during his employment with Email Australia in June 1995. This was followed by four separate surgical procedures over two hospital admissions. Mr Barresi said it interfered with his ability to participate in physical activities.

A number of short-lived attempts at returning to work were unsuccessful because of his psychological symptoms. He then attempted to retrain as a signwriter but this failed because he could not satisfy the theoretical component of his course. Since then he has led the life of a total invalid, spending 20 hours of every 24 in bed. Attempts to mobilise him have not been successful. He has attended various psychiatric consultations and attempts at psychological counselling to no avail. He has completed a course in chronic pain management in Orange which also appears not to have been successful.

Mr Barresi described the immediate onset of symptoms consistent with Post-Traumatic Stress Disorder following the subject work injury and these symptoms have continued over the years and were present at interview. The majority of psychological and psychiatric opinion provided in the documentation arrives at the same conclusion. I note he has been variously diagnosed as suffering from a Major Depressive Disorder. I did not form the conclusion that he was depressed to that degree. While he spoke of not wanting to live, there was no active suicidal intent nor evidence of melancholia. He was able to engage in the interview in a lively, straightforward way.

While there are elements of depression present, I believe these can be subsumed under the diagnosis of Post-Traumatic Stress Disorder. I therefore diagnose a Post-Traumatic Stress Disorder caused directly by the subject work injury.

I note the presence of a significant pain disorder which contributes to his limitations and some degree of abnormal illness behaviour.”

26. The AMS regarded the appellant as consistent in his presentation noting as follows:

“Mr Barresi’s presentation was consistent with most of the documentation presented. I found his description of his chronic regional pain syndrome migrating from leg to leg medically implausible, but I leave any conclusion in this regard to a pain management specialist.”

27. The AMS assessed the appellant under the PIRS. Two categories, namely social functioning and employability are the subject of the appellant’s complaint.

28. In respect of social functioning, the PIRS is set out in Table 11.4 as follows:

Table 11.4: Psychiatric impairment rating scale – social functioning

Class 1	No deficit, or minor deficit attributable to the normal variation in the general population: No difficulty in forming and sustaining relationships (eg a partner, close friendships lasting years).
Class 2	Mild impairment: existing relationships strained. Tension and arguments with partner or close family member, loss of some friendships.
Class 3	Moderate impairment: previously established relationships severely strained, evidenced by periods of separation or domestic violence. Spouse, relatives or community services looking after children.
Class 4	Severe impairment: unable to form or sustain long term relationships. Pre-existing relationships ended (eg lost partner, close friends). Unable to care for dependants (eg own children, elderly parent).
Class 5	Totally impaired: unable to function within society. Living away from populated areas, actively avoiding social contact.

29. The AMS ascribed Class 2 (mild impairment) for social functioning and reasoned as follows:

“Mr Barresi said his relationship with his wife was strong and she confirmed this. He said he becomes angry with her and the children which she again confirmed. He told me he would “neck himself” without her. Their intimate relationship exists but is inconsistent. He is mildly impaired.”

30. The panel can discern no error in the Class 2 mild impairment assessed by the AMS. The Panel notes that the AMS has provided reasons for ascribing Class 2 which are consistent with the history taken from the appellant and the other evidence that was before him. The panel notes that the appellant has met and married his second wife since injury, whilst having the same chronic psychiatric illness he has now. There are three children of the marriage. There are older children from his first marriage with whom he maintains a relationship. The relationship with his wife is strong, has endured for over decade, and is not characterised by violence or separation. Whilst the appellant is noted to get angry from time to time with his wife and the children, the appellant clearly fits within the criteria for assessment as class 2 mild impairment. The panel can discern no error and will confirm this aspect of the assessment.

31. The PIRS criteria for assessment of employability are to be found in table 11.6. as follows:

Table 11.6: Psychiatric impairment rating scale – employability

Class 1	No deficit, or minor deficit attributable to the normal variation in the general population. Able to work full time. Duties and performance are consistent with the injured worker’s education and training. The person is able to cope with the normal demands of the job.
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Class 2	Mild impairment. Able to work full time but in a different environment from that of the pre-injury job. The duties require comparable skill and intellect as those of the pre-injury job. Can work in the same position, but no more than 20 hours per week (e.g. no longer happy to work with specific persons, or work in a specific location due to travel required).
Class 3	Moderate impairment: cannot work at all in same position. Can perform less than 20 hours per week in a different position, which requires less skill or is qualitatively different (e.g. less stressful).
Class 4	Severe impairment: cannot work more than one or two days at a time, less than 20 hours per fortnight. Pace is reduced, attendance is erratic.
Class 5	Totally impaired: Cannot work at all.

32. The AMS assessed class 3 (moderate impairment) and explained his reasons as follows:

“Mr Barresi said he is unable to work and hardly contributes to domestic chores. He said occasionally he will put the garbage out. He is apparently significantly impaired due to pain. From a psychiatric point of view he is moderately impaired”.

33. When assessing employability, the AMS had to deal with the impairment he found to result from the psychiatric injury and not the physical injury which the appellant continues to suffer from and which impacts his employability.

34. Dr Bisht assessed Mr Barresi at 4, severely, and A/Professor Robertson rated 5, completely impaired. The AMS, whilst he had regard to the other evidence before him, did not provide sufficient explanation for his differing rating.

35. The AMS noted that pain can affect Mr Barresi’s employability, and there is an element of abnormal illness behaviour, however the AMS does not provide further explanation on how the effects of pain behaviour is separated from Mr Barresi’s psychological capacity. The AMS noted “A number of short lived attempts at returning to work were unsuccessful because of his psychological symptoms. He then attempted to retrain as a signwriter but this failed because he could not satisfy the theoretical component of his course”. The AMS notes that Mr Barresi’s presentation was consistent with the documentation, and that “these symptoms have continued over the years and were present at interview”. He recorded chronic anger, noise intolerance (even of his own children), panic, flight and avoidance of public settings, that “his ability to focus and remember throughout the interview was obviously impaired” and there were “episodes of dissociation when he appeared not to be fully present”.

36. Accepting that Mr Barresi’s attempts to return to work at a lower level and on light duties were unsuccessful as a result of his psychological symptoms, the continuing presence of the same symptoms, and evidence in the assessment of impairment of both cognition and consciousness, the AMS has erred by making rating of 3 (indicative of the capacity to be employed consistently at least part time) reasoned solely on the basis of “He is apparently significantly impaired due to pain. From a psychiatric point of view he is moderately impaired”.

37. The evidence before the AMS, and his own assessment, clearly demonstrate the appellant goes beyond the criteria for a moderate impairment in this category. The appellant fits the criteria for class 4 severe impairment because the evidence shows that the appellant made “a number of short lived attempts at returning to work which were unsuccessful” by reason of his chronic psychiatric injury. The panel accepts that Mr Barresi does attend to some household chores, which is indicative of a low level of productivity, and the AMS identified “some degree of abnormal illness behaviour” which cannot be included in the assessment of impairment and a rating 5 would be incorrect. The panel will revoke this aspect of the assessment and assess Class 4 for employability.

38. Accordingly, the score is:

Median score is:

2,2,3,3,3,4 which gives a median of 3.

Aggregate score impairment is $2 + 2 + 3 + 3 + 3 + 4 = 17$ which equates to 19 % WPI

39. Accordingly, the Panel will revoke the Medical Assessment Certificated dated 4 October 2019 and issue a new Medical Assessment Certificate in accordance with this statement of reasons. A new Medical Assessment Certificate is attached to this statement of reasons.

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

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar



WORKERS COMPENSATION COMMISSION

APPEAL PANEL MEDICAL ASSESSMENT CERTIFICATE

Injuries received after 1 January 2002

Matter Number: 3607/19
Applicant: Joseph Daniel Barresi
Respondent: Electrolux Home Products Pty Ltd

This Certificate is issued pursuant to s 328(5) of the *Workplace Injury Management and Workers Compensation Act 1998*.

The Appeal Panel revokes the Medical Assessment Certificate of Dr Wayne Mason and issues this new Medical Assessment Certificate as to the matters set out in the Table below:

Table - Whole Person Impairment (WPI)

Body Part or system	Date of Injury	Chapter, page and paragraph number in NSW workers compensation guidelines	Chapter, page, paragraph, figure and table numbers in AMA5 Guides	% WPI	WPI deductions pursuant to S323 for pre-existing injury, condition or abnormality (expressed as a fraction)	Sub-total/s % WPI (after any deductions in column 6)
Psychological injury/Mind	14 June 1995	Chapter 11, Pages 60-68	Chapter 14	19	0%	19
Total % WPI (the Combined Table values of all sub-totals)						19

Jane Peacock
Arbitrator

Professor Nicholas Glozier
Approved Medical Specialist

Dr Michael Hong
Approved Medical Specialist

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

G Bhasin

Gurmeet Bhasin
Dispute Services Officer
As delegate of the Registrar

