

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 91/20  
**Applicant:** Aashis Shrestha  
**Respondent:** RSL Care RDNS Ltd  
**Date of Determination:** 30 March 2020  
**Citation:** [2020] NSWCC 98

The Commission determines:

1. The applicant sustained a primary psychological injury on 7 March 2018 in the course of his employment with the respondent.
2. The applicant sustained a secondary psychological injury as a consequence of a physical injury he sustained on 7 March 2018 in the course of his employment with the respondent.

The Commission orders:

1. This matter is remitted to the Registrar for referral to an Approved Medical Specialist (AMS) as follows:

Date of injury:	7 March 2018
Body Parts:	Primary psychological injury
Method of Assessment:	Whole Person Impairment

2. The following documents are to be referred to the AMS:
  - (a) Application to Resolve a Dispute and attachments;
  - (b) Reply and attachments;
  - (c) The Statement of Reasons from this Certificate of Determination.

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

John Isaksen  
**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 JOHN ISAKSEN, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

L Golic

Lucy Golic  
Dispute Services Officer  
**As delegate of the Registrar**



## STATEMENT OF REASONS

### BACKGROUND

1. The applicant, Aashis Shrestha, sustained an injury to the head on 7 March 2018 when he was struck by a dementia patient whilst employed as an Assistant in Nursing with the respondent, RSL Care RDNS Ltd.
2. The applicant claims that in addition to injuries and conditions that he has sustained to various parts of his body, he also sustained a primary psychological injury as a result of the incident on 7 March 2018.
3. The applicant claims 26% whole person impairment for primary psychological injury as a result of injury sustained on 7 March 2018.
4. The respondent disputes that the applicant sustained a primary and/or secondary psychological injury as a result of the incident on 7 March 2018.

### ISSUES FOR DETERMINATION

5. The parties agree that the following issues remain in dispute:
  - (a) Whether the applicant sustained a psychological injury as a result of injury sustained on 7 March 2018 (sections 4 and 11A(3) of the *Workers Compensation Act 1987* (the 1987 Act));
  - (b) Whether any psychological injury that was sustained by the applicant on 7 March 2018 is a primary psychological injury and/or secondary psychological injury (section 65A of the 1987 Act).

### PROCEDURE BEFORE THE COMMISSION

6. The parties attended a conference and hearing on 20 March 2020. 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.
7. Mr Beran appeared for the applicant. Mr Tony Baker appeared for the respondent, instructed by Mr Webb.
8. The Application to Resolve a Dispute (ARD) claimed both physical and psychological injuries as a result of the incident on 7 March 2018 and sought weekly payments of compensation, past and future medical expenses, a lump sum payment of 26% whole person impairment for primary psychological injury, and 43% whole person impairment for injury to the central nervous system. All those claims were withdrawn at the commencement of the hearing with the exception of the claim for 26% whole person impairment for primary psychological injury.
9. Mr Beran for the applicant made an objection to a neuropsychological report of Dr Lonie dated 11 December 2019 being admitted into evidence as it was a forensic medical report from a doctor who had not treated the applicant. The report was addressed to Employers Mutual Limited (EML), the insurer of the respondent, however the applicant did attend Dr Lonie upon a referral by his general practitioner and the report was addressed to EML because they had agreed to pay for the consultation. Mr Beran also submitted that the report was in the form of an assessment rather than a record of actual treatment.

10. I allowed the report into evidence on the basis that it was a report from a doctor who had treated the applicant. I considered that the referral to Dr Lonie for neuropsychological testing was for the purposes of treatment and analogous to a person being referred for radiology, and that the report did not therefore come within the restrictions provided by Regulation 44 of the Workers Compensation Regulation 2016.
11. Due to the circumstances regarding the coronavirus pandemic, the applicant chose not to attend the hearing and no objection to that was taken by the respondent. I did enquire from Mr Beran at the commencement of the hearing as to whether the applicant wished to be connected by telephone so that he could hear the submissions and provide any further instructions if necessary. Mr Beran obtained instructions that it was not necessary for the applicant to be linked to the hearing by telephone. The hearing proceeded in the absence of the applicant.

## **EVIDENCE**

### **Documentary evidence**

12. The following documents were in evidence before the Commission and taken into account in making this determination:
  - (a) The ARD and attached documents;
  - (b) Reply and attached documents.

### **Oral evidence**

13. There was no application to cross examine the applicant or to adduce oral evidence.

## **FINDINGS AND REASONS**

### **The applicant's case**

14. In a statement provided to an agent for EML and dated 10 October 2018, the applicant states that on 7 March 2018 he was working at Cabrini Residential Aged Care Facility at Westmead (Cabrini). He had knelt down to remove the pants and pad of a resident who was sitting on a commode. The applicant knew the resident as 'Joseph'. The applicant states that he had cleaned Joseph and was putting some clean pants on Joseph when the applicant was struck on the right side of the head by a walking stick which Joseph had in his hands.
15. The applicant states that the blow to the head was like being punched very hard with a closed fist. He states that he lost consciousness for about 30 seconds. The applicant states that he was given an ice pack and applied it to his head for about 30 minutes. He states that he went back to his work to feed the residents and then finished his shift.
16. The applicant states that he did not work the next two days as they were rostered days off. He states that he returned to his normal duties, which involved three days of nursing duties and two days of organising recreational activities for the residents, except for the days of 19 and 21 March 2018, when he was off work due to flu like symptoms and a headache. The applicant states that while undertaking his work duties he felt pain in the head, shoulders and neck, and sometimes had a headache.

17. The applicant states that his symptoms got progressively worse and he also began to get pain in the lower back, knee and hips. He states that it took him six months to lodge a workers compensation claim because he thought he had a cold and flu and that it would go away. The only reference to any psychological problems arising from the subject incident in the statement dated 10 October 2018 is of a referral to Dr Nada Coorey, "a Psychiatrist", by the applicant's general practitioner, and the applicant stating: "I do not believe there are any non-work-related factors that could have caused or contributed to my current physical or psychological condition."
18. The applicant ceased work on 27 September 2018 after he attended his general practitioner, Dr Balasingham. This was the first time the applicant had sought medical treatment for injuries resulting from the incident on 7 March 2018. The applicant has not returned to work since.
19. In a further statement dated 14 August 2019, the applicant states:

"Following the incident where I was assaulted at work, my behaviour concentration has significantly changed. I am agitated and angry. Sometimes I can't control my anger. I was never like this before this incident. My relationship with my family has completely collapsed. I am sometimes even causing myself pain and damage walls around the home. I am constantly depressed and have anxiety. I have poor appetite. I have constant flashbacks of the incident."
20. The applicant also states that the subject incident has severely affected his family and social life. He states that he has not been able to look after his wife and two small children and that it has completely strained his relationship with them.
21. The applicant also states that about one month after the work injury he began to get ringing in both ears.
22. The clinical notes from Dr Balasingham are somewhat confusing in that the same entry on 27 September 2018 includes the applicant having a throbbing headache lasting four to five hours but "No history of head injury, no neck pain." However, the notes for the same date also include: "Head injury 7<sup>th</sup> March", "Was unconscious", "Was dazed", and "Getting irritated quickly" and "PTSD". A Certificate of Capacity for that same day lists the diagnosis of injury as: "Head injury, Post-Concussion Syndrome, Depression, PTSD, poor concentration, Neck injury, Shoulder injury."
23. The next entry by Dr Balasingham on 2 October 2018 is far more extensive. In addition to various physical ailments complained of by the applicant there are entries of: "Cannot focus, Losing interest, Memory loss, Fatigue, Anxious, Nervous, Depressed...PTSD...flashbacks." On that day Dr Balasingham writes a referral to "Dr Nada Coorey" for opinion and management of Anxiety, Depression, PTSD.
24. There is a report from Ms Coorey, Psychoanalyst and Psychologist, dated 26 February 2019. She writes that at the time of that report she had seen the applicant on a weekly basis from 12 October 2018 to the end of November 2018 and on a twice weekly basis from mid-January 2019.
25. Ms Coorey records the incident on 7 March 2018 when the applicant was struck on the head with a walking stick by a dementia patient whilst at work. She records that he was unconscious for about a minute following the incident at work.

26. Ms Coorey records that the applicant was embarrassed by the incident and kept the knowledge of the incident from others, including his wife. She records that the applicant wanted to keep a positive attitude at work because he was proud of his work.
27. Ms Coorey records that the applicant was not aware of the significance of seeking medical treatment as an early intervention or preventative approach.
28. Ms Coorey records that within three weeks of the incident the applicant began to suffer nightmares, waking at all hours of the night. She also records an intensifying of pain over the ensuing months at the site on his head where he was struck, and in his neck, shoulders and back. She also records the onset of ringing in the applicant's ears.
29. Ms Coorey records that the constancy of pain was destabilising for the applicant and his deteriorating physical condition intensified his depressive anxieties. She records that the constant pain often keeps the applicant awake, as do concerns about his future. She records that the applicant continues to report night terrors, "with nightmares that threaten his physical integrity."
30. Ms Coorey records the applicant having feelings of loneliness, helplessness, and hopelessness. She also records the applicant having a dominant feeling of failure. Ms Coorey records that the applicant feels guilt and shame in that his wife now has to be the carer of their children and continue to maintain a paid job to provide for their family.
31. Ms Coorey records that the chronic pain the applicant has been experiencing has denied him the opportunity to be a father to his children and also caused him to lose his keen interest in music.
32. Ms Coorey writes:

"The Impact of events surrounding the injury sustained by Mr Shrestha has been extensive with multiple losses suffered. The losses are linked to the disruption in all aspects of his life: as a paid employee, a family man, a financial provider and a musician. The loss of income, the loss of interest his music and the loss of engagement with his children have had a most detrimental effect upon his psychological health."
33. Ms Coorey makes a diagnosis of Major Depressive Disorder, Severe, but also that he is now presenting with significant post traumatic symptoms, although his symptoms do not quite reach the threshold for PTSD.
34. Dr Hong, consultant psychiatrist, has provided a report at the request of the applicant's solicitors, dated 26 July 2019.
35. Dr Hong records details of the incident on 7 March 2018. He records that some time after the incident, the applicant's team leader or nurse manager raised concerns with how the applicant was presenting at work and asked him to attend a doctor.
36. Dr Hong records the applicant having significant changed behaviour since the incident, as well as memory and concentration problems.
37. Dr Hong records the applicant having no interest in doing anything anymore. He records that the applicant would scream at home and lose his temper, and that his family relationship has completely collapsed.

38. Dr Hong records a variety of psychological symptoms which include:
- Pervasive depressed mood
  - Dysregulated emotions with elements of anxiety, depression and anger
  - Disturbed sleep due to “anxiety” and nightmares
  - Sense of apprehension that would not go away
  - Panic attack-like symptoms
  - Easily startled by sudden noises and unexpected changes around him
  - Avoiding social situation due to anxieties
  - Flashbacks of the subject assault and nightmares related to the assault. Dr Hong records that these occur “always.”
39. Dr Hong writes that the applicant had not previously suffered psychological difficulties. Dr Hong writes that the applicant suffered persisting psychological symptoms after the incident but that the applicant “continued to go to work and was clearly struggling at work, and in the end he was asked by his employer to seek medical help.”
40. Dr Hong makes a diagnosis of the applicant having Post Traumatic Stress Disorder (PTSD) with depression and anxiety symptoms. He opines that this psychological disorder was caused by the incident on 7 March 2018 and notes that the applicant’s symptoms occurred immediately after the assault and have persisted to the present day. Dr Hong makes an assessment of 26% whole person impairment for which results from this injury.
41. Mr Beran for the applicant concedes that some of the symptoms described by Ms Coorey, and the cause of those symptoms, are likely to be regarded as a secondary psychological injury as defined in section 65A (5) of the 1987 Act. However, the applicant does describe some symptoms that are consistent with a primary psychological injury and that is supported by the opinions of Dr Balasingham, Ms Coorey and Dr Hong.
42. Mr Beran submits that although there was a delay of some six months in the applicant seeking medical treatment and that he continued undertaking his normal duties with the respondent, including participating in and seeming to enjoy some functions at Cabrini, it is not unusual for a person to put on a ‘brave face’ for a prolonged period of time before medical treatment is sought, especially if it is of a psychological nature.

### **The respondent’s case**

43. There are statements in evidence from work colleagues of the applicant, being Vivian John dated 15 October 2018, Priya Joshi dated 15 October 2018, and Yvonne Crosby dated 16 October 2018.
44. Vivian John states that she is a registered nurse. She states that she was made aware of the incident involving the applicant and ‘Joseph’ because the applicant came to her to report what had occurred. Ms John states that in the days and months following the incident, the applicant continued to perform his normal duties including giving massages to the residents, handing out medication, taking residents through their exercises, feeding the residents, and playing them music on a guitar. She states that since the incident the applicant never complained to her of any physical injury or illness due to the incident.
45. Priya Joshi states that she is a registered nurse. She states that the applicant came to her and Yvonne Crosby to report being struck on the head with a walking stick by a resident. She states that she got an ice pack for the applicant. She also states that she offered to drive the applicant to his doctor or arrange a taxi but that the applicant continued on with his shift.
46. Ms Joshi states that in June 2018, the applicant participated in an Indian day and in August 2018 participated in a Nepalese day, and on both occasions was seen dancing.

47. Ms Joshi states that following the incident on 7 March 2018, the applicant did not show any signs or symptoms that he was unwell and did not appear to be suffering any physical injury or illness.
48. Yvonne Crosby states that she was the Acting Residential Manager at Cabrini from 5 December 2017 to 29 June 2018. She states that her memory of the incident on 7 March 2018 is vague. She recalls that she instructed a registered nurse to get an ice pack for the applicant but that otherwise the applicant said he was okay. She states that the applicant was offered to be taken to a doctor but that he declined that offer.
49. Ms Crosby states until she completed her secondment on 29 June 2018, that the applicant continued to undertake his normal duties.
50. Ms Crosby has provided photos of the applicant at functions at Cabrini in June and July 2018 which show the applicant present at those functions.
51. There is a document in evidence which records the applicant having completed some 17 courses relevant to his work with the respondent after the incident on 7 March 2018.
52. There is a file note from the respondent that is in evidence and which is dated 25 March 2018 which notes that the staff member who was hit by Joseph was 'ok, nil c/o pain or discomfort.'
53. The applicant was examined by Dr Whetton, psychiatrist, at the request of the solicitors for the respondent and has provided a report dated 29 May 2019.
54. Dr Whetton records a history of the incident on 7 March 2018. He records that following the incident the applicant felt uncomfortable in the neck and began to develop back pain, headaches and shoulder pain. Dr Whetton records that the applicant thought the pain would go away.
55. Dr Whetton records that psychological symptoms were developing and he was angry and irritated, punching and screaming during the night, and was having bad dreams. He records that culturally the applicant's whole family, being himself, his wife and two children, would sleep in the same room but because of his disturbed sleep the rest of the family have re-located to another room.
56. Dr Whetton records that the applicant's sleep is also disturbed because of pain in his neck, shoulder, lower back and head. Dr Whetton records that the applicant does not want to live anymore and that he cries and bangs his head against the wall and "does violent things."
57. Dr Whetton concludes:

"His history does not follow any logical sequence that his current state could be related to in the alleged injury of March 2018. He does give symptoms of anxiety and depression. If his reporting of these symptoms is accurate they are not considered related to the workplace injury. Overall, his presentation was unconvincing of his suffering from a psychiatric illness."

Dr Whetton makes no psychiatric diagnosis based upon the alleged workplace injury.

58. Mr Baker identifies numerous inconsistencies and concerns in the evidence that has been made available in this dispute, which include, but are not limited to, the following:
- (a) The applicant stating that he did not seek medical treatment for some six months following the incident because he had the cold and flu over that period of time, when the applicant would have been well aware that he should be reporting such symptoms to his employer and probably not working at all given that he worked in aged care facility;
  - (b) That the applicant undertook his normal duties as an assistant in nursing and had no time off work for some six months following the incident, except for two days which he attributed to the flu;
  - (c) The evidence of Ms John that the applicant did not complain of any physical injury or illness after the incident and the observations of Ms Joshi that the applicant did not show any signs or symptoms after the incident that he was unwell;
  - (d) The history taken by Dr Suruliraj, ear, nose and throat surgeon, of the applicant having ringing in the right ear only for six weeks prior to his first consultation on 19 November 2018, whereas the applicant stated that the ringing in his ears started about one month after the incident;
  - (e) The findings made by Dr Lonie, clinical neuropsychologist, in her report dated 11 December 2018, that were indicative of reduced test taking effort by the applicant;
  - (f) The detail given by the applicant to Dr Whetton that between the time of the incident and ceasing work, the applicant's wife would massage his neck, whereas Dr Coorey records that the applicant kept the knowledge of the incident from others, including his wife.
59. Mr Baker submits that the opinion of Dr Hong cannot be relied upon because it based on false premises including that the applicant's psychological symptoms commenced immediately after the assault, that the applicant was "clearly struggling at work", and that a supervisor had raised concerns about the applicant's presentation and should consult a doctor, when none of that is supported by the evidence.
60. Mr Baker submits that the opinion of Ms Coorey should be approached with caution as it is clear that she writes as an advocate for the applicant. For instance, she supports some serious complaints made by the applicant regarding the investigator retained on behalf of the respondent to obtain a statement from him, even though the applicant had stated in that statement that he had no concerns about how the statement had been taken.

## **Determination**

61. The task before me is to determine whether the applicant sustained a psychological injury as a result of the incident when the resident 'Joseph' struck the applicant on the head with a walking stick on 7 March 2018. If so, it is then necessary to determine if the applicant has received a primary and/or secondary psychological injury.
62. Section 11A (3) of the 1987 Act provides:

"(3) A psychological injury is an injury (as defined in section 4) that is a psychological or psychiatric disorder. The term extends to include the physiological effect on the nervous system."



63. There is a good deal of evidence to support a finding that the applicant has not sustained any psychological injury as a result of the incident on 7 March 2018. The applicant did not need to seek medical treatment for some six months following the incident. The applicant continued to undertake his normal duties over that six month period. The applicant was able to complete some 17 courses relevant to his work within that same period of time.
64. One work colleague states that since the incident the applicant never complained to her of any physical injury or illness due to the incident. Another work colleague states that following the incident on 7 March 2018, the applicant did not show any signs or symptoms that he was unwell and did not appear to be suffering any physical injury or illness. The applicant seems at ease in the photos which include him at functions at Cabrini subsequent to the subject incident.
65. The applicant has not provided any response to this evidence, even though he has had the opportunity to do so. His evidence is merely that he struggled over that six month period. He states he thought that he had ongoing cold and flu symptoms, which would go away, which might seem reasonable as a response to his physical ailments, but it is difficult to relate that explanation to any psychological symptoms he was experiencing in that same period.
66. There is no evidence from the applicant's wife regarding her observations of her husband's psychological condition following the incident. While there are inconsistencies in the evidence as when the applicant informed his wife as to what occurred, his wife is now surely aware of the condition he is in and yet there is no evidence from her that might assist in the determination which I have to make.
67. However, I consider that Mr Beran makes a telling submission that it is not unusual for a person to put on a 'brave face' or put up an appearance for long periods of time despite that person suffering his or her own psychological symptoms and difficulties, and that this can explain the lack of evidence of the applicant's psychological problems during that first six month period following the incident.
68. The applicant provides little assistance from his own evidence on this issue. There is no evidence in his first statement dated 10 October 2018 of the psychological effect the incident had upon him either soon after the incident itself or over the ensuing six months. In his statement dated 14 August 2019, the applicant states that since the incident his "behaviour concentration" has significantly changed and he is agitated and angry. However, he does not identify when that "behaviour concentration" changed, or when he commenced to be agitated and angry and in what circumstances.
69. Ms Coorey has been the only medical professional to provide extensive treatment for the applicant's psychological condition. From my reading of her report dated 26 February 2019, the principal factors effecting the applicant's psychological condition are the chronic pain that he has been experiencing throughout various parts of his body; the embarrassment of the impact upon his life from being struck on the head by an elderly man; a dominant feeling of failure; feelings of loneliness, helplessness, and hopelessness; and the financial impact the consequences of the incident has had upon him and his family. These symptoms are all a consequence of the physical injury of the applicant being struck by the resident. They are consistent with the diagnosis made by Ms Coorey of Major Depressive Disorder, Severe.
70. There is little detail in Ms Coorey's report of symptoms which can be directly attributable to the assault itself. Ms Coorey writes that the applicant "is now presenting with posttraumatic symptoms" but I could not locate much of those symptoms in her report. She does record that within three weeks of the incident the applicant began to suffer nightmares, waking at all hours of the night, and she does opine that his symptoms are heading towards the threshold for PTSD.

71. I agree with the submission made by Mr Baker that the opinion of Ms Coorey should be approached with caution as she is very much an advocate for the applicant. Nonetheless, Ms Coorey is a professional who has had seen the applicant from review of the List of Payments included in the ARD, on at least 17 occasions. Although she does not set out in detail the “posttraumatic symptoms” which the applicant presents with, she has nonetheless formed an opinion from her treatment that he may reach a diagnosis of PTSD. I prefer the evidence and opinion of Ms Coorey because of her role of the applicant’s treating psychologist.
72. That the applicant does meet the diagnosis of PTSD is found in the opinion of Dr Hong. Dr Hong records symptoms that are consistent with PTSD, including the applicant being easily startled by sudden noises and unexpected changes, a sense of apprehension that will not go away, and flashbacks of the subject assault and nightmares related to the assault. There is little emphasis in his report on the factors of chronic pain, shame, failure, loneliness and financial difficulties that have been identified by Ms Coorey and which seem to lead her to diagnose Major Depressive Disorder, Severe, but that does not rule out a separate diagnosis that is made by Dr Hong of PTSD. Furthermore, and as I have already observed, Ms Coorey considered in February 2019 that the applicant was heading towards a diagnosis of PTSD.
73. Neither Ms Coorey or Dr Hong address whether the applicant was maintaining a brave face in the six months following the incident, but then both accept that the applicant began to experience psychological symptoms soon after the incident occurred.
74. I accept that the applicant did sustain a primary psychological injury that can be diagnosed as PTSD as a result of the incident which occurred on 7 March 2018. I accept this from the details he provided to Ms Coorey and Dr Hong that he was experiencing flashbacks and nightmares at least a few weeks after the incident. I accept there were further symptoms noted by Ms Coorey, and symptoms recorded by Dr Hong, which have been a result of the applicant being struck on the head by the elderly resident.
75. Furthermore, the applicant’s general practitioner, Dr Balasingham, also identified symptoms relevant to PTSD on the first two occasions he saw the applicant after the incident, such as flashbacks and being nervous, and his notes provide at least a provisional diagnosis of PTSD.
76. Ms John states that the applicant never complained to her of any physical injury or illness due to the incident and Ms Joshi states that the applicant did not show any signs or symptoms that he was unwell and did not appear to be suffering any physical injury or illness, but these are only observations. That the applicant never complained or showed outward signs of psychological problems does not mean that he was experiencing no problems at all.
77. Photos are only a record of a moment in time and in my view are not sufficient in themselves to draw a conclusion that the applicant was not suffering from at least some psychological symptoms, such as flashbacks or heightened anxiety, around the time the photos were taken.
78. Although there are inconsistencies in the evidence provided by the applicant and which have been identified by Mr Baker, I am satisfied from the applicant’s own evidence and the records made by Dr Balasingham, Ms Coorey and Dr Hong that the applicant was struggling with some psychiatric symptoms soon after the incident and were sufficient for a finding to be made that the applicant did sustain a primary psychological injury by way of PTSD.

79. The incident itself might be regarded as somewhat minor or innocuous but DP Roche said in *Attorney General's Department v K* [2010] NSWCCPD 76 (K), after reviewing a number of authorities which considered psychological injuries sustained in the course of employment, at [52]:

“it is not necessary that the worker’s reaction to the events must have been ‘rational, reasonable and proportionate’ before compensation can be recovered.”

80. There is no evidence to indicate that the applicant had any prior psychological difficulties or illnesses. As minor or innocuous as the incident might seem, I accept from a review of the evidence that the incident did trigger at least some symptoms, which he never had before, which amount to the psychological disorder of PTSD.

81. The opinion of Dr Whetton is of no assistance in this dispute. His opinion is that the applicant could not have sustained a psychological injury based on the delay in the applicant seeking medical treatment. However, he does not consider whether the applicant was struggling in the six month hiatus between incident and treatment, even though the applicant tells him that he was developing symptoms of anger and irritability and having bad dreams during this period of time. I also do not accept his opinion of the applicant’s presentation being “unconvincing” when compared to what has been observed and recorded by Ms Coorey.

82. I am also satisfied that the applicant has sustained a secondary psychological injury as a result of the incident on 7 March 2018. A secondary psychological injury is defined in section 65A (5) of the 1987 Act to mean:

“...a psychological injury to the extent that it arises as a consequence of, or secondary to, a physical injury.”

83. Campbell J in *State of NSW (Department of Education) v Kaur* [2016] NSWSC 346 at [22] said:

“...I should point out that in my judgment, the question of whether an injury is a primary or secondary psychological injury is one for the Commission to determine and not one that arises as a medical dispute as defined by s 319 of the 1998 Act.”

84. As I have already observed, most of the psychological symptoms of the applicant which are recorded by Ms Coorey are a consequence of the physical injury of the applicant being struck by the resident. Her diagnosis of Major Depressive Disorder, Severe, seems to be due to factors of chronic pain, shame, failure, loneliness and financial difficulties, which follows from the applicant’s physical injury. Mr Beran in his submissions conceded that the applicant had sustained a secondary psychological injury in addition to a primary psychological injury.

85. My own view from a review of the evidence is that most of the symptoms complained of by the applicant are from his secondary psychological injury. That conclusion is well summarised by Ms Coorey when she writes towards the end of her report: “The Impact of events surrounding the injury sustained by Mr Shrestha has been extensive with multiple losses suffered.” However, the extent to which any permanent impairment results from the applicant’s primary psychological injury will be for an Approved Medical Specialist (AMS) to determine.

86. This matter will be remitted to the Registrar for referral to an AMS for an assessment of whole person impairment for primary psychological injury sustained on 7 March 2018.