

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 6100/20  
**Applicant:** Konstantinya Miernik  
**Respondent:** Talend Australia Pty Ltd  
**Date of Determination:** 28 January 2021  
**Citation No:** [2021] NSWCC 32

The Commission determines:

1. The applicant sustained a psychological injury in the course of her employment with the respondent with a deemed date of injury of 10 February 2020.
2. The respondent has failed to establish a defence pursuant to section 11A of the *Workers Compensation Act 1987*.
3. The applicant had no current work capacity from 19 June 2020 to 26 July 2020.

The Commission orders:

1. The respondent is to pay the applicant weekly payments of compensation at the rate of \$2,112 per week from 19 June 2020 to 26 July 2020 pursuant to section 37 (1) of the *Workers Compensation Act 1987*.
2. The respondent is to have credit for any weekly payments of compensation and/or actual wages and/or personal leave paid to the applicant during the period from 19 June 2020 to 26 July 2020.

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.

S Naiker

Sarojini Naiker  
Disputes Officer  
**As delegate of the Registrar**



## STATEMENT OF REASONS

### BACKGROUND

1. The applicant, Konstantinya Miernik, claims that she sustained a psychological injury in the course of her employment with the respondent, Talend Australia Pty Ltd.
2. The applicant claims that there were several incidents in the workplace, including a “Performance Success Plan” provided to her at a meeting with her manager on 10 February 2020, which set unrealistic expectations for what she could achieve as a sales manager. The applicant claims that the respondent knew she could not meet those expectations.
3. The applicant ceased work following that meeting on 10 February 2020. She was paid weekly payments of compensation until 19 June 2020, when liability was disputed by the respondent. The applicant claims weekly payments of compensation for having no current work capacity from 19 June 2020 until 26 July 2020. The applicant returned to work with the respondent on 27 July 2020.
4. The respondent issued dispute notices dated 27 May 2020 and 11 September 2020. The respondent concedes that the applicant did sustain an injury in the course of her employment but disputes liability on the grounds that the injury sustained by the applicant was wholly or predominantly caused by reasonable action taken or proposed to be taken by the respondent with respect to performance appraisal.

### ISSUES FOR DETERMINATION

5. The parties agree that the following issue remains in dispute:
  - (a) whether any psychological injury sustained by the applicant was wholly or predominantly caused by reasonable action taken or proposed to be taken by the respondent with respect to performance appraisal (section 11A of the *Workers Compensation Act 1987* (the 1987 Act)).

### PROCEDURE BEFORE THE COMMISSION

6. The parties attended a conference and hearing on 21 January 2021. 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 Young appeared for the applicant, instructed by Ms Youkhana. Mr Allen Parker appeared for the respondent, instructed by Mr Guest, with Ms Sagvand from icare also in attendance.
8. The hearing was conducted by telephone in accordance with the protocols set out by the Commission due to the coronavirus pandemic.
9. The applicant’s pre-injury weekly earnings (PIAWE) were agreed at \$2,640.
10. During conciliation, Mr Parker for the respondent raised concerns regarding the applicant’s pay slip from the respondent for the month of July 2020, which indicated that the applicant received income in that month in the amount of \$15,000. The pay slip did not provide sufficient details as to how that amount was calculated, and no additional information was provided by the respondent despite the pay slip being created by the respondent.

11. Mr Young advised that he was instructed that the payment was for leave entitlements and earnings upon the applicant's return to work on 27 July 2020, and possibly some workers compensation payments. Mr Young advised that the applicant would consent to an order that the respondent be given credit for any weekly payments of compensation and/or actual wages and/or personal leave paid to the applicant during the period from 19 June 2020 to 26 July 2020 if the applicant was otherwise successful in this dispute.

## **EVIDENCE**

### **Documentary evidence**

12. The following documents were in evidence before the Commission and taken into account in making this determination:
  - (a) Application to Resolve a Dispute (ARD) and attached documents;
  - (b) Reply and attached documents, and
  - (c) Application to Admit Late Documents filed by the respondent on 15 January 2021.

### **Oral evidence**

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

## **FINDINGS AND REASONS**

### **The applicant's evidence**

14. The applicant has provided statements dated 26 March 2020 and 30 September 2020.
15. The applicant states that she commenced employment with the respondent in March 2018 as a Territory Sales Manager. She states that the respondent is a data integration software company and she was to obtain clients through various means.
16. The applicant states that in the first year of her employment with the respondent, she was the number one salesperson for the Asia/Pacific region. She states that after that first year, the respondent employed two more Territory Sales Managers, so that the applicant's territory was divided into three. She states that she was not happy about this as she felt that she was being penalised for doing well and she had to meet her existing targets with significantly less territory and client base.
17. The applicant states that during 2019 the respondent's business kept falling behind in the marketplace and none of the sales people met their KPIs. She states that she applied for and was offered a job with a rival business, Databricks, but her manager, Steve Singer, encouraged her to stay with the respondent.
18. The applicant states that in early 2020, Mr Singer's demeanour changed towards her. She states that he had always been a very welcoming manager, but that he now locked himself in his office and had developed a nit picking attitude.
19. The applicant states that she was unable to complete her quarterly pipeline review for a scheduled meeting in early February 2020 because many of her clients were still on holidays and she had only just returned from holidays. She states that she asked for the meeting to be pushed back, but Mr Singer insisted it go ahead and then cancelled the meeting half way through and was quite angry about this.

20. The applicant states that the following week she gave her hour long presentation about how to grow the business before her other colleagues. She states that Mr Singer had reviewed the applicant's presentation with her beforehand and said that it looked good, but with some tweaks to be made. She states after the presentations she had a one on one meeting with Mr Singer who said that the business needed to grow into a billion dollar company, that she had failed to complete a legal document in a timely manner, and referred to the pipeline meeting being cancelled because she was unprepared. She states that Mr Singer said she was to be put on a 'performance success plan.'
21. The applicant states that she felt her heart sink when she was told this. She states that she knew she was not meeting her targets but neither had anyone else in the sales team. She states that she asked Mr Singer if she was being put on a performance improvement plan, and that he replied: "No Nina, you put someone on a PIP when you want to get rid of them. I want you to stay, I want you to do better so that I can promote you."
22. The applicant states that she saw an email when she was overseas on holidays in December 2019 which required her to sign a legal document, but could not retrieve the document. She states that she attended to that document a few days later when she was able to access it.
23. The applicant states that on a Friday in February, Mr Singer approached the applicant at her desk and thanked her for a presentation she had given at a quarterly meeting. She states that she told Mr Singer that he had promised that he would give the applicant her Performance Success Plan by that day. She states that he assured her that he would have the plan ready the following week. She states that Mr Singer said: "Have a great weekend, you've earned it."
24. The applicant states that she did not have a great weekend because she had so many things on her mind, in particular that it appeared to her that she was the only person to be performance managed.
25. The applicant states that on the following Monday, 10 February 2020, she was directed to meet Mr Singer in his office, where he handed her a document and said: "Have a read of this." The applicant states that the document was entitled "Performance Success Plan", but that as she read it she felt the room was swallowing her up because her thought was that the document was a performance improvement plan.
26. The applicant states that there were quotas in the document that she would not be able to reach. She states that she said to Mr Singer that she had told him all year she would not reach her quotas because her territory had shrunk to accommodate extra sales people and their marketing manager had quit and had not been replaced. She states that there were "improvement goals" that were unrealistic and unachievable.
27. The applicant states that the last part of the document stated that she would be on the plan until 30 April 2020 and that failure to meet or exceed the goals set out in the plan may result in disciplinary action, including termination. She states that the plan virtually stated that there was no end date and her employment could be terminated at any time. She states that she was in absolute shock.
28. The applicant states that Mr Singer said to her:

"When an employee receives a document like this, they do one of three things - they throw the document on the table, say fuck you, and walk out. Or they sign the document, smile, and start madly looking for another job. Or they do what I hope that you'll do, which is sign the document, take it all on board, become a better person, and who knows at the end of this maybe I'll be able to promote you."

29. The applicant states that she said to Mr Singer that she needed time to process the contents of the plan and he replied: "That's okay, you have until the eleventh to sign it." The applicant states that she left her office and began walking through Martin Place and felt that she was about to have a breakdown.
30. The applicant states that she did not sleep at all that night and attended her general practitioner the following day and was provided with a certificate for a month off work due to 'acute stress disorder.'
31. The applicant states that on 13 February 2020, Mr Singer phoned the applicant to see how she was and that he acknowledged that he should have given the applicant a warning and admitted that the document was about performance management.
32. The applicant states that she returned to work with the respondent on 27 July 2020.

### **The evidence of Stephen Singer**

33. Stephen Singer has provided a statement dated 3 April 2020. He states that he has been employed with the respondent for approximately four years, and for the last three and a half years as Manager of Australia and New Zealand.
34. Mr Singer states that the applicant's position requires her to prospect and build a pipeline of deals in her territory, close revenue deals for subscriptions for the respondent's various products and undertake revenue forecasting. He states that the applicant has an outgoing personality and he initially found her to be very enthusiastic, with a lot of ideas about how to generate revenue.
35. Mr Singer states when the applicant first commenced employment with the respondent, she was given a "ramped" quota, being less of an amount than a full quota, because she was new to the business and would not meet a full year target. He states that by the end of 2018, the applicant had met or exceeded all her quotas.
36. Mr Singer states that in 2019 the Australia/New Zealand territory was divided into two segments. He states that the applicant was upset that she did not get to sell to companies with over 1000 employees.
37. Mr Singer states that for most of the first half of 2019, the applicant whinged and complained about her lack of revenue, but she was not putting in a whole lot of effort. He states that the applicant was also missing deadlines to complete important tasks, not updating information, not getting quotes to clients within agreed timeframes, or completing her expenses in a timely manner. He states that the applicant did appear to put slightly more effort into her work in the last part of 2019.
38. Mr Singer states that he was aware that the applicant had applied for a job with Databricks, and that he asked her to be honest with him and keep him updated so that he could plan if she decided to move on.
39. Mr Singer states that he had to chase up and send a bunch of emails to the applicant to sign a document that is required at the end of each quarter which confirms that the employee had behaved honestly and ethically. He states that the document only takes about seven minutes to complete. He states that this was just another example of the applicant's lack of attention to detail.
40. Mr Singer states that at a meeting on 29 January 2020, where the applicant was to present her deal review, it was obvious that she was unprepared and after she stumbled through a directionless 15 minutes of talking, he decided to stop the meeting and reconvene at a later date.

41. Mr Singer states that he took the applicant aside after the meeting and told her that he expected a bit more from her and what she had delivered. He states that he asked the applicant if she was still dedicated to turning around her performance, and when she confirmed her commitment to the respondent, he said that the best way forward was to put together a plan to help the applicant improve in a number of specific areas. He states that the applicant expressed that she felt that this was a good idea.
42. Mr Singer states that over the next week he formalised a plan, which is known as a performance success plan. He states that on 10 February 2020 he presented that plan to the applicant. He states that the first thing that the applicant said was: "This isn't a performance success plan, this is a performance improvement plan." Mr Singer states that he said to her that she could call it what she liked but it was put in place to enable her to be successful.
43. Mr Singer states the applicant appeared convinced that the plan was designed to force her out of her employment, but he told her that this was absolutely not the case. He states that he suggested that they meet again the following day to discuss the plan further.
44. Mr Singer states that either the next day or the day after he met with the applicant to discuss the plan. He states that the applicant went through every detail in the three-page document and that she was convinced that the improvement goals were not obtainable and that the expectations of her were unrealistic. He states that the applicant was fixated on the 30 April timeframe and felt that if she had not improved in every single area that she could be sacked. Mr Singer states that he said to her that if she showed no improvement in that time, which was nearly 3 months, then she could not be shocked if such action was taken.
45. Mr Singer states that he told the applicant that they would meet at least 2 to 3 times a week to review her progress. He states that he reiterated to the applicant that he did not want her to fail and that if she stayed focused and worked hard, then all the goals were achievable. He states that he said to the applicant that he would go back to HR and tweak the document to simplify it and try and make it clearer.
46. Mr Singer states that the following day he received an email from the applicant saying that she was not well and would not be coming into work. He states that a week or so later he had a phone call with the applicant and during that call the applicant seem convinced that he was trying to get rid of her.

### **The Performance Success Plan (PSP) document**

47. The opening paragraph of the PSP states that the purpose of the plan is to define areas of concern, gaps in the applicant's work performance, and reiterate the respondent's expectations in order for the applicant to demonstrate immediate and sustained improvement in her role.
48. The PSP sets out 'Areas of Concern' and 'Improvement Goals.' The PSP states that the applicant is to spend at least two hours per week with Mr Singer to run through each opportunity, dry runs and challenges, and that Mr Singer would commit to being on at least one meeting with the applicant each week. The PSP states that Mr Singer and the applicant would meet each Monday to discuss progress towards the goals in the PSP.
49. The PSP states:

"Effective immediately, you are placed on a PSP until Apr 30<sup>th</sup> 2020. We are hopeful you will create success through this plan. During this time, you will be expected to make immediate and sustained progress on the plan outlined above. Failure to meet or exceed these expectations may result in disciplinary action, up to and including termination. In addition, if there is no significant improvement to indicate that the

expectations and goals will be met within the timeline indicated in this PSP, your employment may be terminated prior to **Apr 30<sup>th</sup> 2020**. Furthermore, failure to maintain performance expectations after the completion of the PSP may result in disciplinary action up to and including termination. Similarly, if you succeed on the PSP, you may receive an extension to continue on the plan as a way to reinforce new habits and continue providing you a supportive structure.”

50. The PSP states that the start date is 9 February 2020 and that the applicant has until 11 February 2020 to sign the document.

### **The medical evidence**

51. The notes from the first consultation the applicant has with her general practitioner, Dr Boyatzis, on 11 February 2020 includes the following:

“Since January, has been experiencing increased stress/ anxiety within workplace

Reports stress stems from:

- Being informed about a performance review
- Increased pressure relating to sales targets
- Difficult management with her manager”

52. The notes from the applicant’s first consultation with a psychologist, Milica Kecmanovic, on 12 February 2020 refers to the applicant returning from overseas and:

“Upon her return she was told to ‘get over her jet lag’ although she went to work straight from the long flight and was presented with a Performance Success Program (PSP), which was poorly written and overrides her employment contract. The reason was given that her administration needs improvement as does her sales. She was asked to sign the PSP on the spot, but refused and asked for certain corrections to be made. She feels that if she were to sign it, it would place her in a precarious employment position since it stipulates that they can fire her even if she succeeds in completing what is outlined in it. She feels angry, frustrated and cast-aside.”

53. Dr Young, consultant psychiatrist, has provided two reports dated 16 April 2020 at the request of the respondent.

54. Dr Young records that “the primary stress” for the applicant was the implementation of a performance success plan. He records that the applicant was initially alarmed when she was told of this plan, although she was partially reassured by her manager informing her that it was a plan to facilitate her promotion. Dr Young records that the applicant experienced anxiety when it became apparent to her that the plan was not a performance success plan but a performance improvement plan.

55. Dr Young opines that the performance success plan given to the applicant and the meetings around this are the predominant cause of an Adjustment Disorder.

56. Dr Suman, psychiatrist, has provided a report dated 7 August 2020, at the request of the applicant’s solicitors.

57. Dr Suman places the meeting when the applicant was handed the performance plan from Mr Singer as early January 2020, however, the details of events in the workplace are consistent with the applicant’s own evidence. Dr Suman records that Mr Singer cut short a meeting between himself and the applicant and then told the applicant that he wanted to discuss a plan to help with her job promotion. Dr Suman then records details of the meeting when the performance plan was provided to the applicant, and that the applicant felt targeted at that meeting because the targets in the plan were unachievable.

58. Dr Suman diagnoses adjustment disorder with mixed anxiety and depressed mood, and opines that the applicant's employment, especially her interaction with Mr Singer, remains the main and substantial contributing factor towards her psychological injury.
59. Dr Suman opines that being presented with unachievable targets led to the applicant experiencing significant distress.

### **Determination**

60. The respondent concedes that the applicant sustained a psychological injury in the course of her employment. The respondent contends, however, that the applicant's psychological injury has been wholly or predominantly caused by reasonable action taken with respect to performance appraisal, and that pursuant to section 11A (1) of the 1987 Act, no compensation is payable to the applicant.
61. Section 11A (1) of the 1987 Act provides:

“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.”
62. Mr Parker for the respondent submits that Mr Singer had a positive attitude towards the applicant and the purpose of the plan was for the applicant to focus on her work so she could remain employed with the respondent. He submits that the action taken with respect to the plan, which amounts to performance appraisal, was reasonable.
63. Mr Young for the applicant submits that the performance plan does not meet the criteria set out by Geraghty CCJ in *Irwin v Director General of School Education*, NSWCC no.14068/97 (18 June 1998, unreported) (*Irwin*), but that even it is regarded as performance appraisal, the action with respect to that appraisal was not reasonable.
64. The interpretation of 'performance appraisal' that has been accepted in many decisions of the Commission is that set out by Geraghty CCJ in *Irwin*, where His Honour said:

“Furthermore, performance appraisal is a process, an established process involving various steps. Perhaps it will involve the completion of questionnaires and forms. It requires discussion between various parties about performance, written appraisal, sometimes even self-appraisal, maybe even a score. It is a process in which parties are engaged and knowingly engaged.

Performance appraisal is not a vague, continuing, informal process which begins on the first day of employment although, in a sense, we can say that we are continually under scrutiny and being appraised in somewhat the same way as students in a classroom are being scrutinised on a day-to-day basis. But 'performance appraisal' is somewhat like an examination, not a continuing assessment. Performance appraisal is more like a limited discrete process, with a recognised procedure to which the parties move in order to establish an employee's efficiency and performance.”
65. I accept that the meeting which was conducted on 10 February 2020 between the applicant and Mr Singer, and the PSP provided to the applicant, was action with respect to performance appraisal which is consistent with what is set out in *Irwin*. Mr Singer arranged the meeting so that he could discuss the applicant's work performance with her. The PSP identified sales targets that the applicant needed to meet and the activities that she was to engage in to meet those targets. The PSP included weekly meetings between the applicant and Mr Singer of at least two hours in duration so that Mr Singer could monitor the applicant's progress with the plan.



66. I accept that what was set out in the PSP contained a recognised procedure which the applicant and Mr Singer would move with in order to establish the applicant's efficiency and performance.
67. I do not accept that any of the meetings or conversations between the applicant and Mr Singer before the meeting on 10 February 2020 involved action with respect to performance appraisal. The applicant refers to a performance success plan being raised by Mr Singer at a one on one meeting after an hour-long presentation that she gave before her other work colleagues. The applicant also refers to being told on the Friday before the 10 February meeting (which was a Monday) that a performance success plan would be ready the following week. Mr Singer only refers to the one conversation with the applicant regarding a performance success plan, which was after a meeting on 29 January 2020 when Mr Singer cancelled the meeting because he considered the applicant to be unprepared.
68. Although the applicant was informed by Mr Singer of a performance success plan in those meetings and conversations, there was no recognised procedure in place on those occasions which would form the basis of performance appraisal.
69. However, I do not accept that the meeting on 10 February 2020 was reasonable in the action taken by the respondent with respect to performance appraisal. Geraghty CCJ also stated in *Irwin*:
- "The test of 'reasonableness' is objective and must weigh the rights of employees against the objective of an employer. Whether an action is reasonable should be attended, in all the circumstances, by a question of fairness."
70. Some of the contents of the PSP, along with the conduct of Mr Singer at the meeting on 10 February 2020, were not attended by fairness.
71. Firstly, although the PSP required the applicant to meet certain sales targets and identified certain areas of concern, Mr Singer had not sought any input from the applicant in regard to this. The applicant states that she had told Mr Singer during 2019 of the difficulties in meeting her targets. Yet the applicant was given 24 hours to sign the plan. Mr Singer states that he told the applicant that he would go back to HR to "tweak the document", but only to try and make it clearer, not to modify anything in the plan after consultation with the applicant. The PSP was being presented as an ultimatum that required almost immediate acceptance by the applicant.
72. I would add that I raised with counsel for both parties during the hearing that Mr Singer states that he had another meeting with the applicant within two days of the 10 February meeting. However, both counsel accepted and proceeded on the basis that Mr Singer's evidence was a reference to the one meeting only between himself and the applicant, being on 10 February 2020.
73. Secondly, it was not reasonable for the respondent to threaten the applicant's termination of employment and make that a possible outcome of her failure to meet the goals set by the respondent, without there being any prior formal warnings of the applicant's poor performance. The applicant states that when she read this part of the PSP she was in absolute shock.
74. The threat of dismissal was not just contained to the PSP. Mr Singer states that he said to the applicant that if she did not show improvement in three months, then she could not be shocked if such action was taken. The performance appraisal involved the real possibility of termination of employment despite the applicant being given no prior formal warning of poor performance.

75. In addition, the applicant was not invited to have a support person either prior to the meeting, or during the meeting when the applicant began to raise her concerns about the plan. No reasonable timeframe was provided by Mr Singer for the applicant to obtain any legal or employment advice. Instead, the plan was to be signed by the applicant by the next day.
76. The threat of dismissal was clearly of concern to the applicant because Mr Singer states that the applicant was fixated on the 30 April timeframe and felt that if she had not improved in every single area that she could be sacked. Yet Mr Singer did not suggest that the applicant seek appropriate advice. His only concession was to take the document back to HR and try and simplify its terms.
77. Mr Parker submits that a support person was not required as the meeting on 10 February did not involve discipline. I do not accept that submission. The threat of dismissal contained in the PSP, and confirmed by Mr Singer during the meeting, amounted to action with respect to discipline, and the applicant should have had the opportunity of having appropriate support at that meeting.
78. There is also the applicant's evidence of Mr Singer referring to one of three things that an employee was likely to do when a document like the PSP is received by that employee. Mr Singer does not deny he said that to the applicant. I agree with the submission made by Mr Young that Mr Singer has had the opportunity to dispute that part of the applicant's evidence and has not done so. I accept the applicant's evidence of what was said by Mr Singer.
79. I agree with the submission made by Mr Young that what was said by Mr Singer was an ultimatum that the applicant either sign the document or she should leave. That was not an action that was reasonable in the context of a performance appraisal.
80. *Northern NSW Local Health Network v Heggie* [2013] NSWCA 255; 12 DDCR (*Heggie*), involved the section 11A category of 'discipline', but the propositions set out by AJA Sackville have equal application to 'performance appraisal', when he said at [59]:
- “(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.”
81. It may be that Mr Singer believed he was acting in good faith. He states that he reiterated to the applicant during the meeting on 10 February that he did not want her to fail. He states that he told her that she just needed to show she was putting in the effort and he would match that effort with more from himself. Mr Parker emphasised Mr Singer's positive attitude towards the applicant.
82. However, the issue is whether the contents of the PSP, and what occurred in the meeting on 10 February, was reasonable action with respect to performance appraisal. The denial of any input by the applicant in the performance appraisal process; the failure to allow support for the applicant at the meeting and sufficient time thereafter to obtain appropriate advice; the threat of dismissal contained in the PSP on the background of there being no prior formal warnings of poor performance; and the ultimatum by Mr Singer at the meeting that the applicant agree to the plan or resign, were not reasonable actions taken on the part of the respondent with respect to performance appraisal.
83. Accordingly, I do not accept that the respondent has established a defence pursuant to section 11A of the 1987 Act.

84. I also do not accept that the meeting on 10 February 2020, which included provision of the PSP, was the whole or predominant cause of the applicant's psychological injury.
85. Dr Young opines that it was the provision of the PSP and the meetings around this that are the predominant cause of the applicant's diagnosable condition. Dr Suman opines that it is especially the applicant's interaction with Mr Singer that was the main and substantial contributing factor towards her psychological injury.
86. Both Dr Young and Dr Suman identify other meetings and interactions between the applicant and Mr Singer as being part of the predominant cause of the applicant's psychological injury. Neither doctor identifies the 10 February alone as being the whole or predominant cause of injury.
87. The applicant states that she felt her heart sink when she was told by Mr Singer after a presentation which she had made that she was to be on a performance success plan. She states that after her discussion with Mr Singer on the Friday before the 10 February meeting she did not have a great weekend. In the first entry made by Dr Boyatzis on 11 February 2020 there is a reference to the applicant experiencing stress since January, and that stress stems from being informed about a performance review, increased pressure relating to sales targets and difficulties with her manager. I accept that these were events prior to the 10 February meeting which were also stressful to the applicant.
88. It is consistent with the opinions reached by Dr Young and Dr Suman that it was these meetings and interactions with Mr Singer, and not just the meeting on 10 February 2020, which were causes of the applicant's psychological injury. I have already determined and provided reasons as to why I do not accept that the meetings or interactions between the applicant and Mr Singer, other than the 10 February meeting, involved performance appraisal. They were not events which meet the criteria for performance appraisal set out in *Irwin*.
89. Accordingly, the respondent also fails to establish a defence pursuant to section 11A of the 1987 Act, because the provision of the PSP and the meeting on 10 February 2020 was not the whole or predominant cause of the applicant's psychological injury.

#### **The claim for weekly payments of compensation**

90. The respondent did not dispute that the applicant had no current work capacity for the period claimed from 19 June 2020 to 26 July 2020.
91. The list of payments in the Reply indicate that the applicant has received at least 13 weeks of weekly payments of compensation.
92. The applicant's PIAWE is agreed at \$2,640. Eighty per cent of PIAWE is \$2,112.
93. There will be an order that the respondent is to pay the applicant weekly payments of compensation at the rate of \$2,112 per week from 19 June 2020 to 26 July 2020 pursuant to section 37 (1)(a) of the 1987 Act.
94. In accordance with the concession made by Mr Young at the commencement of the hearing, there will also be an order that the respondent be given credit for any weekly payments of compensation and/or actual wages and/or personal leave paid to the applicant during the period from 19 June 2020 to 26 July 2020.