CITATION: *Alexander v Northern Territory of Australia* [2006] NTMC 015

PARTIES:	LINDA HAZEL ALEXANDER
	v
	NORTHERN TERRITORY OF AUSTRALIA
TITLE OF COURT:	Work Health Court
JURISDICTION:	Work Health
FILE NO(s):	20508216
DELIVERED ON:	14 February 2006
DELIVERED AT:	Darwin
HEARING DATE(s):	31 January – 3 February 2006
JUDGMENT OF:	Hugh Bradley CM

CATCHWORDS:

WORK HEALTH -- WORKERS COMPENSATION -- INCAPACITY
Causal relationship between original injury and current incapacity –

Work Health Act 1986 (NT) as amended s 110A

REPRESENTATION:

Counsel:

Worker:	Michael Grant
Employer:	Peter Barr QC

Solicitors:

Worker:	Ward Keller
Employer:	Hunt & Hunt

Judgment category classification:	C
Judgment ID number:	[2006] NTMC 015
Number of paragraphs:	25

IN THE WORK HEALTH COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20508216

BETWEEN:

LINDA HAZEL ALEXANDER
Worker

AND:

NORTHERN TERRITORY OF AUSTRALIA
Employer

REASONS FOR DECISION

(Delivered 14 February 2006)

Mr HUGH BRADLEY CM:

1. Linda Hazel Alexander (the worker) appeals against the decision of the Northern Territory of Australia to cease work health payments which were being made to her for injuries sustained during her period of employment with the Department of Correctional Services (DCS). The employer maintains that its Form 5 notice cancelling payments is valid and able to be sustained but also counterclaims on the basis that the worker "ceased to be incapacitated for work as a result of the work injury". The distinction as to whether the employer is obliged to substantiate the Form 5 assertions or prove its counterclaim is irrelevant since Counsel have agreed that the single issue of ongoing capacity (referred to sometimes in submissions by Counsel as enhanced or increased vulnerability) will determine both matters.

The Facts

2. These may be shortly stated as they are in the most part not in issue.

3. The worker is a lady of 45 years with a difficult family background and troubled early life. At relevant times and even before her employment by the Department of Correctional Services she suffered from a personality disorder. Her early lifestyle involving drugs, alcohol and prostitution led to unhappy relationships. In this context she, in her own words, "decided to grow up" in or about 1991. In that year she was prosecuted for the fourth time for driving under the influence and made a "cry for help" attempt at suicide whilst living in Tennant Creek.

4. The worker then undertook courses at the Barkley Open College in office skills and business accounting. In early 1994 she obtained employment with the Tennant Creek High School in what I gather to be a reception/secretarial capacity. References provided to the Court give testimony to her efficiency, competence, communication skills, caring personality, "rapport with public, staff and especially students", ability to carry out confidential duties, punctuality, presentation and her pleasant and outgoing demeanour. The references said she was prepared to develop according to the demands of a changing work situation and that she was loyal and honest. The picture thus painted is of a lady with a difficult past who has (at least so far as the work environment is concerned) turned the corner and became a stable, competent, balanced and outgoing personality. This is far from the picture painted today or at any time since her employment ceased with the Department of Correctional Services.

5. In or about the beginning of 1996 the worker moved with her partner to Alice Springs and sought employment there. She quickly obtained employment with the Commonwealth and subsequently with a local High School. She then saw the advertisement for a position with the Department of Correctional Services. She saw an opportunity for herself in this field and felt that she had something to offer. She applied and after interviews was successful in obtaining employment and underwent training commencing on 1 September 1996. There are some minor issues regarding

the disclosure of previous criminal offences before or during the interviews and/or training but in my mind these matters do not affect the overall outcome of this matter.

6. After training at the Peter McAulay Centre in Darwin the worker paid for her mother to come from Western Australia to her graduation. It appears she was proud of what she had achieved. The worker was then assigned at her own request to the Alice Springs Correctional Centre. In this employment she generally did well and the assessment reports between September 1996 and August 1997 speak well of her progress.

7. It is clear from the evidence and from the findings of the departmental "Report into Harassment at Alice Springs Correction Centre" (Exhibit P14) that from early 1997 until she ceased work the worker was the subject of an ongoing and escalating campaign of whisper, innuendo and abuse culminating in totally unsubstantiated allegations of corrupt practices. There were, as Mr Barr has correctly pointed out, other stressors in her life. These included the suicide of her younger sister, a change of rosters to which she did not agree and the responses to her own sometimes inappropriate behaviour. Following her harassment the worker found she could no longer work. She ceased work on 6 January 1998 and made a work health claim. This claim was and is accepted as appropriate by the employer.

8. All the evidence suggests, and the employer agrees, that it not desirable for her to return to the environment of the prison service given the rather different and regrettable culture that seems to prevail there.

9. The worker came to Darwin in 1998 and firstly obtained employment in the security industry. Subsequently she obtained employment with the Northern Territory Government as a clerk and she has continued to work in that capacity as an Administrative Officer 2. She is competent although not necessarily happy in this work and her earnings there are less than the

agreed Normal Weekly Earnings of $909.51 with the Department of Correctional Services. The parties agree this will necessitate some adjustment to past entitlements.

10. The worker was not a good historian (and she certainly made things difficult for many of the psychiatrists who examined her) but generally says she is a changed person since her employment with Department of Correctional Services. She says that prior to approximately November 1997 she said she was confident and felt she was a good worker. Indeed she said that for some time she felt she could put up with the snide remarks and gossip within the prison environment. It seems however that the combination of pressures were too much for her and she felt unable to continue; she obtained medical advice and stopped work. At that time she said she suffered sleeplessness, anxiety, depression, that she was proned to cry and unable to eat. This she says caused her to be unable to function for some months. I presume that it was on this basis that her claim was accepted during 1998. In September 1998 she first obtained work with a security firm but this ceased when one of her ex colleagues repeated allegations to her then employer Group Four Security. When told of this she felt that life was not worth living anymore and attempted suicide. She said that this was not of the "cry for help" variety.

11. She says she could not return to prison officer type of work that she still thinks of what happened to her during her employment with Department of Correctional Services. She is more paranoid; if she sees people connected with Department of Correctional Services she is liable to have a panic attack and says she no longer feels competent and is unable to remain enthusiastic or focussed for long. These matters were not contested.

12. When comparing her life before and after 1997 she says that before she had not experienced anxiety and was able to cope. Afterwards she says her anxiety is worse (albeit this seems to acknowledge some level of prior

anxiety). She says further that she is not as confident and feels a sense of hopelessness and that she has never felt as bad about life as now. She sought psychological help for some time after her arrival in Darwin and particularly on one occasion after her work place was broken into approximately two years ago. She takes valium when having trouble sleeping.

13. In cross-examination the worker conceded that she is in a relationship that has lasted about six years and there are mutual friends whose company she enjoys. She rides a motorbike and admits to some adventure involving the corralling of a horse as reported in the newspaper. She sought medical assistance from Dr Lyn Reid who would not issue Work Health Certificates (apparently because of a reluctance to become involved). It appears that neither of her doctors referred her to psychiatric help except at the specific request of the worker. Her answers to questions regarding her work as a prostitute throw some doubt on her veracity however the material carries little weight on relevant issues and Mr Barr properly did not attempt to make too much of it.

14. On 22 February 2005 the employer forwarded a Form 5 and accompanying documents asserting that she was no longer incapacitated and her weekly payments ceased shortly thereafter. I am not advised as to the precise date the payment ceased but the parties assured me that they can sort out all issues of entitlement once the Court has determined the general issue of entitlement.

15. During cross-examination it became clear that a significant part of the workers emotional upset, at least for several months after July 1997 was due to the untimely death of her younger sister. I am satisfied that this was a contributing factor to the state of her mind at the end of 1997. No-one suggests it is still a significant factor.

The Issue

16. Counsel agree that the issue for the Court to decide is whether a mental injury sustained by the worker in the course of employment is still extant to the degree that it affects her capacity to earn.

17. The worker's argument is that in 1997/8 she incurred a psychological injury that has endured to date and that she now suffers from a chronic reactive type of depression associated with an anxiety state and panic attacks. This condition affects her capacity to work. If this diagnosis of Dr McLaren is not accepted then the worker says that at least she suffers from an enhanced vulnerability which prevents her return to certain types of employment particularly that within the prison service. It is said that this is a permanent aggravation of her pre existing condition which was described as a border line personality disorder (not serious but of a type said to be not uncommon within the prison system).

18. The employers argument is that the worker suffered before and continues to suffer from a personality disorder which affects her life but that the exacerbation caused by the events of 1997/8 is now dissipated and while she should not return to work in the prison system she is now no more damaged or incapacitated than she was prior to her employment with the department. Although not put precisely, except in the medical certificate, it is fair to say that the employer argues this to be the case since before 22 February 2005.

Medical Evidence

19. The evidence of doctors McLaren and Brown for the worker and employer respectively was similar in many regards. The only real differences are those reflected in the issue that the court has to decide.

20. Dr McLaren had a co-operative patient and saw the worker on several occasions. Dr Brown on the other hand suffered under the difficulty of having a recalcitrant patient and saw her only once. I am not sure that either

doctor had all of the details and history that came before this court by way of evidence; that evidence illustrated the quite different personalities and coping abilities before and after her employment with Department of Correctional Services.

21. Mr Barr has argued that many of the facts necessary to sustain the conclusion of Dr McLaren have not been proved and that therefore the opinion cannot be sustained – *Makita (Australia) Pty Ltd v Sprowles* 52 NSWLR 705. It was put that this case expounded a rule of law not of evidence and that it was not open for the court to avoid the principle; further it was said that if the principle was an evidence based rule then I should still be slow to receive indirect evidence on the issues necessary for Dr McLaren to draw his conclusions. To some extent no doubt these matters are relevant also to the opinion of Dr Brown. I am of the view that the *Makita* decision is best interpreted as relating to the admission of evidence. On the material before me there is in my view a factual basis in the worker's evidence as recounted above and not contested to support Dr McLarens opinion and further, given my observations of the worker and her reticence to tell parts of the story I think it is proper to consider (with some care) other evidence available to me. Such evidence includes the medical histories and the references tendered by consent. I am entitled to take this approach by virtue of s 110A of the Act.

22. when comparing the evidence of the two doctors and relating that to the evidence of change of lifestyle, confidence and capacity to cope I am satisfied that Dr McLaren has correctly concluded that the worker is still suffering from a psychological condition which limits her capacity to cope and to undertake employment. He concludes and I find that this present disability is the aftermath of her work injury. He says, and it is agreed by Dr Brown, that is would not be possible for the worker to return to her employment as a prison officer. They have not however suggested that other

types of employment where the prison type culture is not evident would not be suitable for her.

Conclusions

23. Looking at all of the facts as found above and the evidence of the worker's medical condition I have no hesitation in finding that the worker is a very different person today than she was prior to commencing employment with the Department of Correctional Services. She is now in my judgment, suffering from some form of depression (her demeanour in court tends to support this). She is on all accounts more likely to react adversely if she were forced to return to the prison service and generally I am satisfied that she is more susceptible to breakdown as a result of her experiences in this employment. I therefore find that she continues to suffer from an injury caused by her employment and is thereby unable to return to that employment. The employer has not postulated anything other than what she is now earning as being what she is capable of earning in the most profitable employment available to her. This is agreed to be less than what she was earning with the Department and thus she has suffered a relevant loss of earning capacity.

24. Dr Brown concludes that the worker has symptoms sustained by unresolved anger and her psychological conditions are liable to occur again under stress. This combined with his recommendation not to return to the prison service and my finding that her current state is at least partially related to her employment is sufficient (even without the evidence on the ongoing psychological condition diagnosed by Dr McLaren) to find she is still incapacitated by virtue of her employment with DCS.

25. I therefore find that the worker is entitled to ongoing benefits under the *Work Health Act* including weekly payments. I invite the parties to consider what appropriate orders should flow from this finding.

Dated this 14th day of February 2006.

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Hugh Bradley
CHIEF MAGISTRATE