

CITATION: *Anthony Noaks V Northern Territory of Australia* [2022] NTWHC003

PARTIES: ANTHONY NOAKS

V

NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: WORK HEALTH

FILE NO: 21935024

DELIVERED ON: 31 March 2022

DELIVERED AT: Darwin

HEARING DATES: 23 to 25 February 2021

DECISION OF: Judge Alan Woodcock

CATCHWORDS:

Appeal of notice – Misrepresentation

REPRESENTATION:

Counsel:

Worker: Joshua Nottle

Employer: Wade Roper SC

Solicitors:

Worker: Hall Payne Lawyers

Employer: Hunt and Hunt Lawyers

Decision category classification: B

Decision ID number: NTWHC003

Number of paragraphs: 35

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

No. 21935024

BETWEEN:

Anthony Noaks

Worker

AND:

Northern Territory of Australia

Employer

REASONS FOR DECISION

(Delivered 31 March 2022)

JUDGE WOODCOCK

1. The Worker Mr Anthony Noaks was employed by the Employer at the Alice Springs Hospital, as a switchboard operator from 10 January 2018. The terms of employment included a special provisions requirement that the employee is an Aboriginal person. He claims that on or about 29 March 2018 he sustained a mental injury out of or in the course of his employment. The mental injury was said to have arisen due to bullying by co-worker Ms Susan Pine.
2. The Worker subsequently made a claim for compensation on or about 10 April 2018 in accordance with the provisions of the *Return to Work Act 1986* (the Act). The Employer accepted liability for the claim on 24 April 2018, backdated to 29 March 2018.
3. On 11 March 2019, the Employer rejected liability for the claim by Notice of Decision. The Notice of Decision is set out as follows.

Dear Mr Anthony Noaks

With regard to your claim for payment of benefits, (claim number GB229707), as prescribed under the Return to Work Act, you are hereby advised that your employer Northern Territory Government, Department of Health (Central Australian Health Services) acting on the advice of Gallagher Bassett Services hereby:

Cancels payments of weekly benefits to you pursuant to Section 69 of the Return to Word Act. The cancellation will be effective in 14 days from your receipt of this notice.

The reasons for this decision are:

- You lodged a claim for compensation on or about 10 April 2018, relating to incidents in 2018.
- Liability for this claim was deferred and subsequently accepted on 24 April 2018 and back-dated to 29 March 2018.
- You attended a review on 13 February 2019 with Dr James Hundertmark, psychiatrist, in Darwin. In relation to your compensable injury, Dr Hundertmark has declared the following:
 - Clinical findings/diagnosis at this examination – Mixed Personality Disorder which is not work-related.
 - "The claimant suffers from a mixed personality disorder which is not work-related"
 - "The Worker's incapacity is no longer a result of the work-related injury/disease"
 - "It is my opinion that his mental state and the difficulties he is currently facing are not linked to his work-based issues".
- In relation to required treatment, Dr Hundertmark also states:

"It is in my opinion that he would benefit from seeing an experienced clinical psychologist to work with his various mental health issues at present. It is my opinion that these issues are not predominantly related to the Workers' Compensation concern".
- In relation to your capacity for work, Dr Hundertmark also states:

"It is my opinion that Mr Noaks is capable of commencing a graduated return to work program here in Darwin. It is my opinion that he has a 0.4 FTE work capacity currently. Further it is my opinion that this work capacity is likely to increase if placed in a suitable position. It is noted that there were very probably work performance issues when he was in his role at the Alice Springs Hospital. It important that he has some careful vocational assessment and that he is in a role which he has suitable skills for if he states working for Top End Health Services here in Darwin".
- Dr Hundertmark issued a Final Medical Certificate stating "the worker has ceased to be incapacitated for work", "the worker has fully recovered from the work related condition", "no significant psychiatric symptoms" and "no psychiatric diagnosis".
- Considering the abovementioned information Gallagher Bassett are of the opinion that you do not have a work-related mental injury and have therefore ceased to be incapacitated for work by the work related injury.
- The cessation of your weekly benefits will also be accompanied by a cessation in the payment of medication treatment."

4. The Worker disputes this decision and appeals the cancellation of his compensation. The onus rests with the Employer to establish the change in circumstances warranting the cancellation.
5. The Worker was clearly mistreated by other staff during his employment by the Employer, but the extent of the same is in dispute. In his Application, the Worker claims his co-worker Ms Susan Pine harassed and bullied him, and did so focusing on him being a white skinned person of Aboriginal descent. Specifically he asserts he was called a "sook", "stupid", a "bloody idiot" and/or a "friggin idiot". Mr Noaks recalls Ms Pine saying that, "I don't look aboriginal" and "she has seen darker men than me" [sic].

6. During his evidence the Worker gave a more detailed account. The racist remarks were said to include remarks reviling his deceased Aboriginal grandmother. These remarks commenced on the very first day of his employment. Ms Pine was said to have regularly said and done things to him to insult him, both on his own and in front of other staff members. He also details an instance where Ms Pine facilitated a mock medical emergency telephone call for the purpose of upsetting and humiliating him. The mock emergency purportedly left the Worker with the impression he had caused the death of a person by virtue of his poor performance. Ms Pine was not called in evidence. I note her responses tendered into evidence in the document headed "discussion with Susan Pine 12 April 2018 in relation to a formal complaint from Anthony Noaks".
7. Ms Pine denied calling the Worker a "friggin idiot" but did tell him his work was "shit". The document notes, "Susan advised that they then did a mock MET call that Anthony wrote legibly and then took a break at her suggestion and that he seemed emotional."
8. In relation to comments about the Worker's aboriginality, Ms Pine agreed she had said, "If it's about colour, you're whiter than me". Ms Pine admitted to calling the Worker a "sook" in correspondence to a co-worker and seen by the Worker.
9. I accept the Worker's evidence that Ms Pine was regularly rude and demeaning to him in the course of his employment, amounting to bullying. I accept the Worker's account that Ms Pine facilitated a mock medical emergency phone call. These findings are consistent with Ms Pine's account as quoted. I do not accept the suggestion this was invented by the Worker at a time after the initial Application. I accept the Worker's account of the mock emergency and am satisfied he was distressed as a result. I also accept Ms Pine said words to the effect that the Worker did not look Aboriginal and disparaged his ethnicity, commencing on the first day of his employment. I do not accept comments were made about the Worker's grandmother. Rather, it would seem to me this is more of a rationale as to why comments about the Worker's ethnicity hurt so much (he takes such insults as an insult to his grandmother who he reveres). I am satisfied that the bullying by Ms Pine of the Worker was ongoing, persistent and racist. I reject the suggestion that this behaviour is trivial.
10. The Worker gave evidence at length and was vigorously cross-examined for some hours. It became apparent that he is a person of limited capacity and at times an indifferent historian of fact. He appears to me a person of limited literacy and bad at filling out forms as a result. He has a long history of mental health issues, of which he is in complete denial. He has over the course of various physical injuries come to use opioid medication recreationally, possibly he is or was addicted to them. He has a number of physical ailments as a result of previous injuries. He revealed himself to be a fantasist as to his usual recreational pursuits and some of his former capacities. He has a long history of threatening violence and often sexual violence to men, women and children in perusing perceived grievances with medical advisers, public servants, administrators and co-workers in various settings (not in the work place the subject of these proceedings). He has at times during his numerous historic interactions with medical advisers and service providers been dishonest and threatening.
11. Dr James Hundertmark, Consultant Psychiatrist, prepared a report on 22 February 2019 subsequent to consulting with the Worker. He notes:

"Mr Noaks denied earlier interactions with a counsellor, psychologist or psychiatrist. It is again noted that he was deliberately withholding information during various portions of the interview."
12. Dr Hundertmark diagnosed a mixed personality disorder predominately of the borderline type. The Worker was said to have a range of personality issues including borderline and dependant

issues, and accordingly no specific personality diagnosis could be made. He opined that the Worker's lengthy absence from work was related primarily to his personality difficulties rather than being directly linked to workplace issues. Dr Hundertmark was unable to comment on the effect of pre-existing issues due to the Worker's failure to comply with the process of assessment. He doubted the veracity of the Worker's presentation and history. He regarded the Worker as having a capacity to work.

13. During the course of cross-examination, Dr Hundertmark remained unmoved.
14. Dr Ash Takyar, Consultant Psychiatrist, prepared a report on 3 February 2020.
15. Dr Takyar had reference to Dr Hundertmark's report and set out the following in terms of recorded medical history of the Worker in the relevant (post injury) period:

"Mr Noaks described developing an unstable mood state with suicidal thinking and suicidal behaviours. He reported having frequent intervention from the Alice Springs Emergency Mental Health Team. He also had contact with a number of different general practices in Alice Springs.

The available GP records were reviewed during the interview with Mr Noaks present. We established that he first mentioned work issues when at the Moore Medical Clinic on Hartley Street in Alice Springs with Dr Brent Pannell. It appears that his relationship with Dr Pannell eventually deteriorated. Dr Pannell wrote the initial Workers' Compensation certificates in March 2018.

Mr Noaks admitted attending the Central Clinic in Alice Springs. He acknowledged that he had sought opiate medication without actually requiring it for pain. He stated at our interview "it helped me with my moods and that". He stated "I told him it was for pain but it was for making me feel better". He said they only gave him opiates like Endone a few times. The case notes from the Central Clinic confirmed that he only mentioned Workers' Compensation issues in his appointment on 4 May 2018 having previously focussed on his need for opiate-based medication. He was previously discussing the use of the antidepressant mirtazapine in his consultations at the Central Clinic.

His records from the Aboriginal Congress Clinic mentioned the workplace issues at his first consultation of 17 May 2018. The first interview notes that he was upset and tearful during the consultation. He mentioned that his wife and child were currently in another country. He mentioned that he had overdosed on mirtazapine tablets.

At interview Mr Noaks reported that he had overdosed on medications three or four times after leaving his role at the Alice Springs Hospital. He said that on another occasion he had made an attempt at carbon monoxide poisoning by parking his car in a garage and keeping it running. He had contact with the emergency mental health team at Alice Springs on seven or eight occasions. He said he became stressed out and felt he did not really want to live. He denied any deliberate self-harm by cutting. He said he spoke to his case manager at Gallagher Bassett following the carbon monoxide poisoning attempt and she called the ambulance and the police.

Mr Noaks said that he felt he got worse after taking medications prescribed to him by the general practitioners. He said at times he did not want to deal with life anymore.

Mr Noaks said that he was asked by the Gallagher Bassett staff to move to Darwin to be with his mother. He said he hates being in Darwin. He said he loved the opportunity

he had to work with the Government in Alice Springs. He said he is really angry, frustrated and annoyed now. He said he is really angry and it is not fair what has happened to him. He said he prefers the weather in Alice Springs where it is cooler.

He described his mood state as being "pretty crap". He said he used to go rock climbing and "go on adventures". He said he used to like cooking. He said now he has low energy.

He reported that his sleep was poor. He said on one occasion he had gone "two weeks without any sleep"."

16. Dr Takyar was of the opinion the Worker presented with a DSM-5 major depressive disorder with generalised anxiety disorder. Significant symptoms and a lack of improvement of the same were noted. The psychological condition of the Worker arose from bullying and harassment in the work place, he was at the time of the report incapacitated and unable to work as a result.
17. In cross-examination it was variously put that the Worker had a long, undisclosed history of mental health problems and a fulsome disclosure of the same may have affected the diagnosis of the Worker, past and present. This was not conceded, and should have been.
18. Dr Takyar remained unmoved in his diagnosis and opinions.
19. Given the state of the evidence it is not possible to make a finding that the Worker did or did not have a diagnosable mental illness prior to the events the subject of these proceedings. I am unable to accept Dr Hundertmark's opinion that the Worker's absence from work was as a result of an underlying, pre-existing mixed personality disorder or an unspecified personality disorder. He was said to have a range of personality issues including borderline and dependant issues and accordingly no specific personality diagnosis could be made. He was noted to be evasive and non-committal at the commencement of the interview. He also refused to answer some questions. There was a limited answering of the doctor's questions towards the end of the interview. Perhaps understandably given this presentation Dr Hundertmark had misgivings about the Worker's history of presenting complaints.
20. Dr Hundertmark endeavoured to complete a report and give an opinion in the face of the uncooperative and at times non-responsive behaviour of the Worker. Frankly, Dr Hundertmark was put in an unfair position where he, in my assessment, was required to form a diagnosis without anything approaching a useful history from the Worker upon consultation. Dr Hundertmark was briefed with less source material relating to medical treatment of the Worker in the relevant period than Dr Takyar. Having the benefit of considering all of the material and all of the evidence, I do not accept the diagnosis of Dr Hundertmark.
21. Dr Migendra Das, Consultant Psychiatrist, prepared a short form report on 16 March 2019 following consultation on the same day. The report was prepared at the request of Dr Christina Dixon. Dr Das diagnosed the Worker with "major depressive disorder, current episode severe". He was not called in evidence. I am respectfully unable to give weight to this report and diagnosis.
22. Dr Gregory White, Consultant Psychiatrist, prepared a report on 18 May 2020 for the purpose of a whole person impairment assessment. He saw the Worker on 8 May 2020. He considered extensive documentation including the reports of Dr Hundertmark and Dr Takyer. Dr White diagnosed a major depressive disorder, single episode and cluster B personality traits. He was not called in evidence. Again, little weight can be given to this diagnosis as a result.
23. The Employer has pleaded that a diagnosis of acute adjustment disorder by Dr Achan in a letter on 11 October 2012 is a particular of the diagnosis by Dr Hundertmark as above. The letter is a two page document from Dr Achan addressed to the Worker's treating doctor outlining that after

a presentation on 7 October 2012, that, "Clinically, Anthony Noaks does fit the diagnostic label of Acute Adjustment Disorder". Doctor Achan was not asked to complete a report or called in evidence. His diagnosis, like many of the historic attempts to diagnose the Worker, differs from that of the two expert witnesses (though this is something less than a diagnosis it must be said). Dr Achan was not called in evidence. I am respectfully unable to give this opinion any weight. I do not accept it makes out or assists in the process of making out a pre-existing medical condition. The pleading therefore is not made out.

24. I accept the diagnosis of Dr Takyar that the Worker suffered a major depressive disorder with generalised anxiety disorder. The Worker gave a history of current symptoms. Dr Takyar was briefed with a variety of source materials relating to his medical treatment. The Worker did not disclose his long history of mental health problems to Dr Takyar in circumstances where he is in denial. He believes (it would seem to me erroneously but honestly) these problems arose from anger issues. Nonetheless having closely watched the Worker give his evidence, rejected other parts of his evidence as unreliable, watched him struggle with his challenges as previously mentioned, I accept his history of ongoing symptoms commencing in the relevant period as outlined to Dr Takyar that substantiate his diagnosis. Though some symptoms may be akin to those suffered by the Worker previously, the magnitude and combination of symptoms described make out the diagnosis.
25. The Worker has suffered from mental health problems all of his adult life, his medical history makes this clear. In circumstances where he does not accept this, he has not provided his prior history to either of the expert witnesses. The documentary history of mental health problems is insufficiently cogent to draw a rational conclusion as to a definitive mental illness prior to the pleaded injury. The attempts to further investigate his mental illness historically have not been followed up by the Worker. There are previous endeavours at diagnosis that are not adequately founded in a meaningful history for reasons discussed. A broad range of different working diagnosis are made or mused upon by various treating medical service providers; they are many and varied. The state of the evidence is such that I am unable to reach a conclusion as to a diagnosable mental illness prior to the injury as pleaded. Though clearly he was a vulnerable person with a history of need for medical assistance and traumatic experiences, and consequently carried with him personal challenges. He was also possibly addicted to prescription opioids, but again I cannot be satisfied of a diagnosable medical condition for the same reasons.
26. The Worker was clearly a vulnerable person with challenges when he commenced employment with the Employer at the Alice Springs Hospital, an institution that provides treatment for ill or injured people in Alice Springs. However he was, until on or about 28 March 2018 of sufficiently sound health to attend work and complete his daily tasks as a switchboard operator. The Employer shows by virtue of its pleadings and cross-examination of the Worker a lack of insight into the potential effects of race based bullying in the work place. Ms Pine, under the guise of training, bullied the vulnerable special provision Worker on the basis that he was an Aboriginal person with light skin. I am satisfied for reasons previously stated that this type of comment was especially hurtful to the Worker. The mock emergency staged by Ms Pine left the Worker believing a person had died as a result of his incapacity to help. I am also satisfied she regularly insulted and demeaned the Worker, including in the presence of co-workers.
27. As a consequence of the ongoing bullying by his co-worker Ms Pine in the workplace , I am satisfied the Worker suffered an injury in the form of a Major Depressive Disorder. I am satisfied the injury arose out of or in the course of the Worker's employment with the Employer.

28. The Employer has pleaded that the Worker has suffered from a primary personality disorder at the time of the pleaded injury. For reason previously stated I do not accept this diagnoses, nor am I satisfied that the symptoms suffered by the Worker as referred to by Dr Takyar are as a result of previous physical or mental injuries or disorders, given the state of the evidence in this regard. Accordingly, the pleaded particulars of the personality disorder are not accepted as making out the same. I have accepted, after careful assessment of all the evidence, that they arose as a consequence of the injury he suffered in the work place.
29. I do not accept as pleaded that the Worker made misrepresentations that were false and misleading. He is a man of limited literacy and capacity who did his best filling out forms and in the course of doing so made some errors. He is a man in denial of his historic mental health challenges and accordingly did not include them in his discussions with the doctors. I have found him to be a person who fantasises about his preinjury activities and capacities and rejected that part of his evidence. I have also found him to have been on occasion untruthful and threatening in the historic past. Clearly he was uncooperative with Dr Hundertmark. None of this however substantiates misrepresentation as pleaded.
30. The Employer pleads that it was wrong to accept liability for the Worker's injury in the first place. I have found that the injury arose out of or in the course of his employment. I have accepted the opinion of Dr Takyar that the injury caused the Worker to be incapacitated and unable to work as a result and remained so at the time of the notice. This pleading is therefore not made out.
31. The Employer has not discharged the onus of establishing a change of circumstances warranting the cancellation notice of 11 March 2019. The Worker has successfully appealed the cancellation notice.
32. The Employer has counterclaimed on the basis that if the cancellation notice is invalid the Worker's weekly compensation payments should be cancelled as the Worker's incapacity does not relate to his work injury but rather are unrelated or relates to subsequent injuries. For reasons stated above, I do not accept that subsequent injuries causing the Worker's incapacity have been proved.
33. Given the above findings that injury arose out of or in the course of his employment, and that the Worker remained unable to work at the time of the notice, the counterclaim cannot succeed and is dismissed.
34. I am therefore satisfied the Worker is entitled to the relief as sought.

Orders

35. The following orders are made:

- a) The Employer pay weekly benefits to the Worker from 25 March 2019 to date and continuing in accordance with the Act.
- b) The Employer pay interest on arrears of weekly benefits pursuant to subsection 89(1) of the Act calculated from and including 25 March 2019 to the date of payment of the arrears.
- c) The Employer reimburse the Worker for payments he has already made of medical expenses arising pursuant to section 73 of the Act, in accordance with the Act.
- d) The Employer pay the Worker's medical expenses arising pursuant to section 73 of the Act which have not been paid as at the date of these Orders, in accordance with the Act.
- e) The Employer pay the Worker's medical expenses arising pursuant to section 73 of the Act which are incurred after the date of these Orders, in accordance with the Act.

Dated this 31st day of March 2022

Alan Woodcock
WORK HEALTH COURT JUDGE