

CITATION: *Natasha Bennett v Northern Territory of Australia*  
[2023] NTWHC 1

PARTIES: Natasha Bennett  
v  
NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: WORK HEALTH

FILE NO(s): 2020-03807-LC

DELIVERED ON: 16 January 2023

DELIVERED AT: Darwin

HEARING DATE(s): 7 to 9 March 2022. Submissions closed on  
20 June 2022.

DECISION OF: Judge Alan Woodcock

**CATCHWORDS:**

*WORK HEALTH – Return to Work Act; mental injury; capacity to work*

**REPRESENTATION:**

*Counsel:*

Worker: Duncan McConnell SC

Employer: Wade Roper SC

*Solicitors:*

Worker: Halfpenny's

Employer: Hunt and Hunt Lawyers

Decision category classification:

B

Decision ID number:

[2023] NTWHC 1

Number of paragraphs:

44

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

No. 2020-03807-LC

BETWEEN

Natasha Bennett

Worker

AND:

NORTHERN TERRITORY OF AUSTRALIA

Employer

REASONS FOR DECISION

(Delivered 16 January 2023)

**JUDGE WOODCOCK**

1. The Worker commenced employment with the Employer in June 2016 as an Aboriginal Community Worker in Alice Springs.
2. On or about 25 October 2017, the Worker sustained a mental injury in the course of her employment as an Aboriginal Community Worker ("the Injury"). As a result of the Injury, the Worker was incapacitated for work.
3. The Worker made a claim for compensation on 27 November 2017 under the *Return to Work Act 1986* (NT) ("the Act"). The claim was accepted by the Employer on 8 February 2018.
4. On 10 October 2020, the Employer cancelled compensation of the Worker by Notice of Decision as follows.

*Dear Natasha Bennett,*

*With regard to your claim for payment of benefits (claim number GB229570 NTWS claim number 229570), as prescribed under the Return to Work Act (the Act), you are hereby advised that your Employer, the Commissioner for Public Employment on behalf of the Northern Territory of Australia, (Territory Families), acting on the advice of the Northern Territory's claims provider Gallagher Bassett, hereby:*

*Cancels payments of weekly benefits to you pursuant to Section 69 of the Return to Work Act. The cancellation will take effect 14 days from your receipt of this notice.*

The reasons for this decision are:

1. You have ceased to be incapacitated for work as a result of your exacerbation of pre-existing major depressive disorder (the injury), as indicated in the attached final certificate of Dr Khalid dated 29 May 2020 and the attached final certificate of Dr Dobson dated 19 June 2020.

#### Particulars

- On 27 November 2017 you submitted a claim for compensation in relation to an injury sustained on or around 25 October 2017.
- Liability for your claim was accepted on 8 February 2018.
- On 15 May 2020 you were examined by Dr Abdul Khalid, Psychiatrist.
- In his report dated 27 May 2020 Dr Abdul Khalid states:
  - "In my opinion, Ms Bennett's major depressive disorder, recurrent, is more or less in remission and has reverted to pre-aggravated state."
  - "In my opinion, Ms Bennett has the capacity for full-time paid employment"
- Dr Khalid provided a 'Statement of fitness for work – final certificate' dated 29 May 2020 indicating you have ceased to be incapacitated for work.
- Dr Lucy Dobson provided a 'Statement of fitness for work – final certificate' dated 19 June 2020 indicating you have ceased to be incapacitated for work.
- The cessation of your weekly benefits will be accompanied by a cessation of services and payment of all treatment.

...

#### **Documents relied upon**

We enclose the following documents:

1. Report of Dr Abdul Khalid dated 27 May 2020
2. Statement of fitness for work – Final certificate of Dr Khalid dated 29 May 2020
3. Statement of fitness for work – Final certificate of Dr Dobson dated 19 June 2020
5. The Worker disputes the cancellation of her compensation and appeals the decision. The onus of establishing a change in circumstances making out the cancellation of the Worker's compensation rests with the Employer.
6. The Employer pleads that the Worker ceased to be incapacitated for work and relies upon three reports and evidence of Dr Abdul Khalid; and a report from Psychiatrist Dr Yue Chong (Olivia) Lee; and the notes and a certificate from General Practitioner Dr Lucy Dobson. The Employer also relies upon the report and evidence of occupational therapist Sanja Zeman in relation to employment the Worker might undertake. The report and notes of Konekt Vocational Rehabilitation Services are relied upon by Dr Khalid in his opinion.

7. The Worker submits that the Employer does not establish on its case the change in circumstances making out the basis for the cancellation of the Worker's compensation. The Worker also relies upon the evidence and report of Psychiatrist Dr Ash Takyar.
8. In the alternative the Employer pleads that the Worker is partially incapacitated. This was conceded by the Worker during the hearing.
9. The Worker gave evidence that she loved her job and that it was her passion. The Worker had suffered two episodes of depression prior to her employment with the Employer, which was in full remission at the time of the Injury. She had experienced the divorce of her parents as a child, discovering the body of her stepfather during her youth, the death of loved ones, personal violence, and violence in the work place. She had an ongoing suite of significant physical health problems. Despite these challenges, the Worker was passionate about her employment and able to perform her duties as an Aboriginal Community Worker prior to the Injury. Her evidence was an earnest and honest account of the challenges she has faced before and after her injury at work.
10. The Worker consulted Dr Monica Theron at The Gap Road Clinic on 1 December 2017, who records in her notes generalised anxiety disorder with depression. The medical notes from The Gap Road Clinic and the North Side Clinic set out the Worker's ongoing regular consultation, treatment and medication regime following the Injury. On 8 December 2017, Dr Theron described the diagnosis of the Worker as, "anxiety secondary to work situation". Dr Theron was not called in evidence. Dr Theron's diagnosis as recorded in the notes on 1 December 2017 are uncontroversial.
11. Consultant Psychiatrist Dr Lee prepared a report following consultation with the Worker dated 5 February 2018. Dr Lee was furnished with medical certificates, statements of the Worker and the Employer, Dr Theron's letter and the Worker's claim form. She was not provided the notes of the Worker's ongoing medical attendances. She did however take a history from the Worker. Dr Lee diagnosed a relapse of major depressive disorder with anxiety features, triggered by stress at work. The index episode occurred in her twenties from which she has since recovered. It was noted that numerous traumas in her life, including in her work life, had rendered her vulnerable to developing mental illness. Dr Lee noted, "However having the stressor of work being removed and yet she continues to experience significant distress and impairment would suggest that the persistence of her condition is not due to work". Dr Lee accepted the decline in the Worker's level of function and heightened psychological symptoms.
12. Dr Lee's report was made less than four months after the Employer accepted that The Worker had sustained a mental injury in the course of her employment and should receive compensation. For more than two years and eight months after Dr Lee's report, the Worker continued to be certified medically unfit for work and the Employer continued to compensate her as such. Dr Lee's report acknowledges the Worker is a person predisposed to mental illness, who was in remission from depression prior to the Injury. It was in the doctor's opinion that the Injury caused by a relapse occurred in the course of the Worker's employment and she continues to be ill. Dr Lee was not furnished with treating notes and no history of alteration, let alone improvement in the Worker's symptoms since the work related injury became evident. Dr Lee was not called in evidence. For these reasons I am respectfully unable to give weight to the opinion of Dr Lee that the ongoing mental injury of the Worker is not work related.

13. Dr Lucy Dobson was the Worker's General Practitioner from 31 May 2019 to 17 July 2020. Dr Dobson was not called in evidence and did not prepare a report. Reliance is placed on her written note on 20 December 2019 which stated, "main concern are getting her back to capacity as grief is non compensable".
14. The Employer also relies on a note being made by Dr Dobson that in January 2020 the obligations under Work Cover were the most anxiety provoking issue.
15. Having reviewed Dr Dobson's notes and medical certificates, it would appear she is attending to the various medical needs of the Worker in a very challenging time, against the backdrop of ongoing depression suffered in the work place. It would appear from Dr Dobson's notes that at no stage is the Worker in remission from the mental injury caused in the workplace during the period Dr Dobson was the treating doctor.
16. Of course the doctor is concerned first and foremost to heal the Worker as best she can. The Worker suffered through the death of loved ones, two heart attacks, 'Covid lock downs' and serious physical ailments in this time. Dr Dobson continued to certify the Worker as unfit for work as a result of depression/anxiety/PTSD up until the final certificate issued by her dated 19 June 2020.
17. On 19 June 2020, Dr Dobson issued a certificate ticking a box that the Worker had ceased to be incapacitated for work, but writing that the grounds for assessment were, "Capable of part-time work initially not full time in area different to environment where work related condition occurred [sic]."
18. It must be acknowledged Dr Dobson was during this time the Worker's treating doctor. However, her opinion in this regard is unexplained. There are no notes to rationalise or explain the certificate and no report. Dr Dobson was not called in evidence. I am respectfully unable to give weight to the same.
19. Dr Khalid prepared three reports after consulting with the Worker and was called in evidence. For the first report dated 15 March 2019, Dr Khalid was briefed with the Worker's statement, the report of Dr Lee, Konekt Vocational Rehabilitation services initial assessment and progress reports, medical certificates and Guardian Closure Report. The Worker saw Dr Khalid in person for 50 to 60 minutes on 7 March 2019. Dr Khalid did not take a history from the Worker, relying instead on the history taken by Dr Lee.
20. The Worker was said to have cried and sobbed during the interview. Her mood was said to be up and down. She reported experiencing nightmares three weeks prior, having suicidal ideation on and off, with no plan or intent. She is quoted as saying, "I would do it if there was an easy way". She reported flashbacks to historic traumas. She was observed to be oriented to place and time and had no formal thought disorder.
21. Dr Khalid diagnosed, "Major depressive disorder, recurrent, currently in partial remission" ... "Ms Bennett's major depressive disorder is now resolving and she reported more than 50% improvement in her symptoms. I expect that with treatment her major depressive disorder would resolve in three months' time".

22. In his report of 15 March 2019, Dr Khalid sets out the following in answer to a question by the Employer's solicitors:<sup>1</sup>

**3. The following incidences were the contributing factor in the psychological claim in 2017;**

- a) Lack of professional support and supervision in the workplace**
- b) Bullying in the workplace from team leader and intimidation from staff**
- c) Several months working with no manager**
- d) No professional debriefing**
- e) High levels of stress and pressure in the workplace and various trauma**

**Please comment on if the above factors are now not a contributing factor given that Mr Bennett is not currently working, what explanation do you feel is appropriate to explain why there has been minimal progression of Ms Bennett claim or improvement of her symptoms? Are the symptoms a natural continuation of a pre-existing injury?**

*Ms Bennett had a pre-existing major depressive disorder and she experienced a recurrence due to the alleged factors "a" to "e" listed above. In my opinion her past major depressive disorder has now overtaken and the above factors are not a significant contributing cause of her current conditions and area a natural continuation of her pre-existing injury.*

23. Dr Khalid says that the Worker volunteered that her major depressive disorder had improved more than 50 per cent. During the consultation her mood was observed to be slightly anxious, and she cried and sobbed.

24. The doctor's opinion was that the Worker's work place injury is no longer causing her symptomology, and that the effects of the pre-existing major depressive disorder has overtaken her work injury exacerbation. It was his opinion that the Worker should be able to return to work in three months of the report.

25. The Worker was said to have expressed suicidal ideation with no plan. She stated, "I would do it if there was an easy way out". Dr Khalid observed the Worker to have reported flashbacks to previous traumas. These observations are quite similar to the Worker's observed symptoms in the previous report and the subsequent report. The Worker denies saying she had 50 per cent improvement. Certainly the observed and described symptoms, as documented in the report, do not appear to be consistent with improvement.

26. For the purpose of the second report, Dr Khalid consulted with the Worker for 35 to 40 minutes via video and telephone. During the interview the Worker cried and sobbed, she expressed suicidal thoughts with no plan to carry out the same. She complained of suffering from flashbacks to past traumas. She is reported to say she "didn't give a shit" and was "tired of it all". The Worker said she was still on her healing journey, that she misses her old job, she was left with major depressive disorder and did not want "it" to happen again. She reported the death of a loved one.

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<sup>1</sup> Page 21 of the report.

27. Dr Khalid set out the following:
- a. *“Based on the history, mental state examination and the documents provided to me, in my opinion, Ms Bennett’s major depressive disorder is more or less in remission and her condition has reverted to pre aggravated state. I consider that there is some abnormal illness behaviour. In my opinion, she is fit for all job options identified.”*
28. For the third report dated 26 October 2021, Dr Khalid had reference to additional medical certificates, the initial report of Dr Theron, the initial claim form, return to work progress reports, an initial assessment report, a labour market report and the report of Dr Takyar and of course his own report.
29. He records the Worker as saying she had made no progress. She reported suffering two heart attacks, two deaths in her family. Her mood was reported as up and down. She wakes up with low mood which improves as the day progresses but worries at night time waking in a panic two or three times a week. She reported no nightmares. She is said to have expressed some fleeting suicidal thoughts but denied planning or intent. The Worker reports losing her confidence and self-esteem. She misses work, her affect was said to be slightly anxious.
30. Dr Khalid’s opinion was that the Worker had experienced an aggravation of her major depressive disorder as a result of a heart attack. He noted there was no work related contribution to the recent aggravation of major depressive disorder. He stated, “From a psychiatric point of view Ms Bennett’s symptoms are not severe enough to affect her capacity to work, however I note that she had a heart attack last month which may be affecting her capacity to return to work.”
31. Dr Khalid’s said the prognosis for the Worker was fair “as her work-related aggravation of major depressive disorder had returned to pre-aggravated state and she had suffered some recurrence of her symptoms in relation to her heart attack last month. I consider that her major depressive disorder would go into remission after she recovers from her physical condition.”
32. Dr Khalid gave evidence in relation to the Worker’s marijuana use that, “She already had depression and she was worsening. If she did not have depression and developed depression as a result you would’ve said it’s a substance abuse depression disorder.”
33. Dr Khalid was asked about the effects of the Worker’s heart attack, deaths in the family and other intervening events prior to her consultation on 15 May 2020. He was of the opinion that despite all these things my examination didn’t pick up that she was seriously depressed on that date.”
34. In cross-examination Dr Khalid made it clear that the opinions he expressed in his reports were his independent opinion formed after examining the Worker. Dr Khalid was taken to his opinion in his report of 15 May 2020 that the Worker’s major depressive disorder was more or less in remission, had reverted to a pre-aggravated state and was at that time capable of full time work. The following sequence of questions and answers occurred:<sup>2</sup>

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<sup>2</sup> Transcript dated 8 March 2022, pages 77-78.

MR MCCONNELL: Well, Doctor, I just wonder how it's possible for you to conclude that she was capable of full-time work in the absence of any evidence to support that conclusion?---Because she had done volunteer work (inaudible) hours per week. Because she had been increasing her work hours.

That was the basis of your opinion - - - ?---On my examination on the day.

That she was capable of full-time paid employment on that day? ---Yes.

And you expressed that opinion notwithstanding that she had not returned to working any form at all? ---I'm talking about her psychiatric condition, not her work. That was not an opinion about her. It's about her psychiatric condition, whether that has returned to pre-aggravated state.

But, Doctor, isn't it the case that in October 2017 she had been working in youth work? --  
-Yes.

In October 2017 she suffered a mental injury? ---Yes.

And that from October 2017 onwards she was not capable of returning to youth work because of that mental injury? ---Yes.

And it was still the case in May 2020 that she wasn't capable of returning to youth work because of that mental injury, wasn't it? ---Yes, because of this sort of aggravation.

35. In the report of 25 May 2020, Dr Khalid repeatedly used the phrase that the Worker's major depressive disorder was "more or less in remission". The phrase was repeated in his subsequent report. A phrase that is ambiguous.
36. Dr Khalid was not briefed with the notes of the Worker's treating doctor and, did not take a history from the Worker, relying instead upon the history taken by Dr Lee. The presentation of the Worker as recorded by the Professor is markedly similar throughout all three consultations, with minimal variations. The professor appeared to give significant weight to the Worker attending as a volunteer even though her observed symptoms had not improved.
37. Dr Khalid's opinion as quoted was that based on the history, mental state examination and the documents provided the Worker's major depressive disorder is 'more or less' in remission and her condition had reverted to pre aggravated state, her major depression being overtaken by other causes, he considered that there was some abnormal illness behaviour. It is difficult to reconcile the assessment of transitioning from a major depressive disorder caused in the work place reverting to a pre aggravated state but still exhibiting illness behaviour absent a change in observable symptoms throughout the consultation process. There was an unsuccessful endeavour to clarify this in the cross examination of the Professor, some of which is set out above. Dr Khalid remained unmoved, however no further clarity was gained as a result. Consequently I am unable to give weight to Dr Khalid's diagnosis in this regard.
38. Consultant Psychiatrist Dr Ash Takyar prepared a report dated 2 February 2021. He was briefed with clinical notes and the first two reports of Dr Khalid along with Dr Theron's letter, a diagnostic image and report and statements of fitness to work. He took a history

from The Worker upon consultation. The history of volunteering by the Worker was also discussed.

39. Dr Takyar's opinion was that the Worker presented with DSM-5 adjustment disorder and mixed anxiety and depressed mood. The Injury developed in a context of overwork and bullying; she was noted to be well before the injury but having a previous psychiatric injury. His opinion was that at the time of the report the Worker continued to suffer symptoms from an injury arising from the Injury suffered in the work place. His further opinion was that the Worker is partially incapacitated from work and had a capacity to work for three to five hours per week in work other with her pre injury Employer.
40. Dr Takyar's diagnosis was unambiguous. He made reasonable concessions in cross-examination but remained unmoved as to his opinion. I accept his evidence and give weight to his diagnosis.
41. Given my findings, including being unable to give weight to the diagnosis of Dr Lee, Dr Dobson or Dr Khalid, for the reasons stated and accepting the diagnosis of Dr Takyar, the Employer has not discharged the onus of establishing a change in circumstances warranting the cancellation notice of 20 October 2020. The Worker has therefore successfully appealed the cancellation of the notice.
42. The Employer pleads in the alternative that the Worker was partially incapacitated. Having accepted the evidence of Dr Takyar I am satisfied this is made out, given his opinion that the Worker has a capacity to work three to five hours a week.
43. Occupational Therapist Sanja Zeman undertook a three hour consultation with the Worker, taking a history. Having done so she prepared a report to determine the Worker's functional capabilities, vocational potential and earning capacity. Ms Zeman listed a range of potential jobs. She was cross examined as to the suitability of the same and potential barriers to The Worker undertaking the listed jobs. She was nuanced and responsive in her answers to cross examination. I accept her evidence and, given her report and evidence in court, am satisfied that the Worker has a capacity to undertake employment as a General Clerk.
44. I am therefore satisfied the Worker has a capacity to work five hours a week as a General Clerk from the date of Dr Takyar's report on 2 February 2021.

## Orders

The following orders are made:

- (1) The Notice is invalid and is set aside;
- (2) The Employer pay the Worker arrears of compensation based on a declaration that, from the time of the Notice to the present and ongoing, the Worker remained partially incapacitated for work and has capacity for 5 hours of work per week;
- (3) Payment of arrears of weekly benefits from the time of the Notice to the present, on the basis of the Worker's partial incapacity, based on a weekly amount to be determined by the Court;
- (4) Ongoing payments of weekly benefits from date of the Orders, until lawfully reduced or ceased in accordance with the Act;
- (5) The matter is certified fit for Counsel;
- (6) The Employer to pay interest to the Worker on the arrears in Order 3, as above;
- (7) I will hear the parties as to costs.