

Reasons for Decision



Date: 16 August 2010
Our reference: 25513
Insurer's reference: S09CD769926
Review Officer: Marisha Mees
Direct telephone: 3020 6388
Applicant: Susan Dale
Date of application: 15 June 2010

18/8/10.

REVIEW DECISION

My decision is to set aside the decision by the Insurer to reject the application for compensation and to substitute another decision that the application for compensation is one for acceptance. I make this decision according to section 545(1)(a) of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (the Act).

My decision is made according to section 32 of the Act.

To assist understanding of how I arrived at this decision I outline my reasons below.

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BACKGROUND

The Applicant lodged an application for compensation (the application) with WorkCover Queensland (the Insurer) on 6 May 2010. The Applicant alleges to have sustained a psychological injury over a period of time due to bullying and harassing behaviour by her superiors. At the time the injury is alleged to have occurred the Applicant was employed by Queensland Health (the Employer) at the Southport Hospital as a Registered Nurse.

The Insurer conducted an investigation into the circumstances surrounding the application and provided the Applicant with their written reasons for decision dated 4 June 2010. The decision of the Insurer was that the Applicant's application was one for rejection as it was considered that the Applicant had not sustained an injury in accordance with section 32 of the Act, as the provisions of section 32(5) precluded the Applicant from an entitlement to compensation.

The Applicant seeks review of this decision.

PROCESS OF REVIEW

Section 539 of the Act states that the object of the review is to provide a non-adversarial system for promptly resolving disputes. Chapter 13 Part 2 of the Act outlines the 'decisions' made by an Insurer that Q-COMP may review, and Q-COMP's review powers and obligations.

The review is an independent administrative process or a 'review on the papers'. This means that as the decision-maker, I consider the material on the Insurer's claim file and any new information provided by the Applicant or another party during the review process. I also follow the rules of natural justice, meaning that I must conduct the review fairly and openly and give all parties an opportunity to be heard.

The Applicant lodged an application for review with Q-COMP on 15 June 2010.

The Applicant provided verbal submissions in support of her application on 16 July 2010 and written submissions on 23 July 2010. These submissions did not pertain to the decision at hand or was not new information not known to the Employer and therefore were not released to the Employer.

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GROUNDS FOR REVIEW

I note the following grounds for review have been provided:

- management acted unreasonably by scheduling meetings without providing the Applicant the option of having a support person available
- management action was unreasonable in circumstances whereby a meeting was scheduled to discuss the Applicant's alleged performance issues with a person present whom the Applicant had lodged a complaint against for bullying and harassing behaviour.

RELEVANT LEGISLATION

The sections of the Act that are relevant to this review are:

108 **Compensation entitlement**

- (1) Compensation is payable under this Act for an injury sustained by a worker.

32 **Meaning of *injury***

- (1) An *injury* is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

...

- (5) Despite subsection (1) and (3), *injury* does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances—
- (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;
 - (b) the worker's expectation or perception of reasonable management action being taken against the worker;
 - (c) action by the Authority or an insurer in connection with the worker's application for compensation.

Examples of actions that may be reasonable management actions taken in a reasonable way—

- action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker
- a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment

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545 Review of decision or failure to make a decision

- (1) The Authority must, within 25 business days after receiving the application, review the decision and decide (the *review decision*) to—
- (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute another decision; or
 - (d) set aside the decision and return the matter to the decision-maker with the directions the Authority considers appropriate.

MATERIAL CONSIDERED

In reaching my decision I considered all relevant documentation on the Insurer claim file, including:

- application for compensation dated 4 April 2010
- Employer's report, undated
- psychological and psychiatric injury form (PPI form)
- various file notes of the Insurer
- the Insurer's statement of reasons for decision dated 4 June 2010.

Witness evidence

- the Employer's response to the Applicant's alleged factors dated 24 May 2010
- file note of Dave Corkhill written on 29 April 2010 in relation to meeting held on 30 March 2010
- file note of Dave Corkhill written on 29 April 2010 in relation to performance plan for Applicant
- Applicant's statement to the Insurer dated 9 May 2010
- correspondence from the Applicant to the Insurer dated 1 June 2010.

Medical evidence

- various medical certificates.

I also considered the application for review dated 13 June 2010 and submissions provided during the review process.

I considered all documents and submissions, although I may not specifically refer to each of them in my decision.

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ISSUES FOR DETERMINATION

Section 108 of the Act states that compensation is payable for an 'injury' sustained by a 'worker'.

Therefore, the issues to decide are:

1. Is the Applicant a 'worker' within the meaning of section 11 of the Act?
2. Did the Applicant sustain an 'injury' within the meaning of section 32 of the Act?

It is not disputed that the Applicant is a 'worker' within the meaning of section 11 of the Act. This is not an issue for review.

The issue to be decided at review is whether the Applicant sustained an 'injury' within the meaning of section 32 of the Act. If the provisions of section 32(5) of the Act are satisfied, they exclude a psychiatric or psychological condition from the definition of 'injury' within section 32(1) of the Act.

Therefore, I must determine whether it is more probable than not that:

- the Applicant sustained a personal injury
- the personal injury arose out of or in the course of the Applicant's employment
- the employment was a significant contributing factor to the injury
- the injury arose out of or in the course of:
 - reasonable management action taken in a reasonable way by the employer in connection with the Applicant's employment
 - the Applicant's expectation or perception of reasonable management action being taken against the Applicant
 - action taken by the Insurer in connection with the Applicant's application for compensation.

I will now consider each element in turn.

Did the Applicant sustain a personal injury?

Numerous medical certificates have been provided by the Applicant's General Practitioner, Dr Gregory McMahon of the Burleigh Heads Medical Centre. I note from a review of these certificates that Dr McMahon has diagnosed the Applicant as suffering from 'Anxiety/Depression'.

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In the absence of any medical information to the contrary, I am therefore satisfied that the Applicant has sustained a personal injury described as being 'Anxiety/Depression'.

Did the personal injury arise out of or in the course of the Applicant's employment and was the employment a significant contributing factor to the injury?

In *Lackey v WorkCover Queensland*¹, the Industrial Court held that the phrase 'arising out of' involves a causal or consequential relationship between the employment and injury, but does not require a direct or proximate relationship.

The Applicant has stated that the manner in which meetings with management were conducted on 30 March 2010 and 29 April 2010 had contributed to the onset of her psychological condition. The Applicant provided further clarification on this in her statement to the Insurer dated 9 May 2010.

I note the following as described by the Applicant:

- the first event took place on 30 March 2010 when the Applicant was requested by Mr David Corkhill, ED Educator to join him in the Unit Manager's office, with Ms Jo Timms
- no explanation or reason why was given to the Applicant prior to her being approached by Mr Corkhill
- the Applicant was handed a nursing workup sheet and requested to read her entry
- the Applicant was then informed that her entry was wrong and that a Doctor had brought it to their attention
- at no time was the Applicant advised of what the alleged issue was with respect to the entry made or who the Doctor was that reported the issue
- the Applicant was also advised that there had been many other complaints made against her from younger members of staff and some staff were refusing to work with the Applicant
- no names or specific examples were given to the Applicant, other than she had communication issues
- the Applicant was advised to consider whether she wished to stay in her position or leave and if she chose to stay that she would be commenced on a performance plan and to undergo communication training
- on 1 April 2010, the Applicant was approached by Ms Timms as to how she was 'feeling'. The Applicant informed Ms Timms that she had considered leaving as she felt that Mr Corkhill did not like her and therefore felt she was being intimidated and harassed by him

¹ [2000] QIC 43

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- the Applicant informed Ms Timms that an example of this was Mr Corkhill's refusal to issue the Applicant with her ALS certificate which she completed in December. The Applicant advised that she was the only Nurse who completed this course with Mr Corkhill who had not yet received their certificate
- on 29 April 2010, the Applicant was approached by a senior staff member to Simone's office as Ms Timms wished to see her. The Applicant recalls the shift as being an extremely busy one and noted that she had not yet been able to take a break
- when the Applicant entered the office she noted Mr Corkhill to be in attendance
- the Applicant was informed of more complaints being lodged against her. The Applicant requested she be able to have a support person present if this discussion was to continue
- the discussion continued on without the Applicant having a support person present. The Applicant denied all the allegations which had made against her
- at the conclusion of the discussion the Applicant was quite emotional and extremely upset and stated in the heat of the moment that 'she quits'.

Having considered the Applicant's submissions in their entirety, I consider that her claims essentially relate to one overriding factor, namely management's reasonable actions in addressing complaints made against the Applicant.

On 24 May 2010, Ms Timms provided her response to the Applicant's alleged cause of injury. I note from a review of Ms Timms' response that she acknowledges that the above instances as raised by the Applicant did occur. As such, I am satisfied that the overriding factor regarding management's actions in addressing complaints against the Applicant can be confirmed as contributing to the Applicant's condition.

My findings however, in relation to the reasonableness of management's action are reserved until such time as it is established on the medical and factual evidence, that the Applicant's injury arose out of or in the course of her employment, and that employment was a significant contributing factor to the injury.

The required causal nexus to satisfy 'arising out of' is a relatively undemanding one. There is no specific need for a direct causative relationship between the workers' employment and their injury; it only requires a minimally causal or consequential relationship between employment and the claimed injury.² I note that the **overriding factor** was confirmed on the evidence before me.

² *WorkCover v Curragh Queensland Mining Pty Ltd* no.C89 of 2002, 16/12/02, *Avis v WorkCover* (2000) 165 QGIG 788 and *Lackey v WorkCover* (2000) 165 QGIG 2.

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This leads me to a finding that there existed a causal connection between the Applicant's employment and her claimed injury. As such, I am satisfied that the Applicant's personal injury has arisen out of her employment.

Furthermore, in order to satisfy the requirements under section 32 of the Act, employment related factors do not need to be 'the' significant causal factor for the injury. That employment was 'a' significant causal factor among a number of other causes (whether they were work related or not or significant or not), will be sufficient to satisfy section 32(1)³. I have considered the available medical evidence in addressing this issue.

I again refer to the numerous medical certificates provided by Dr Gregory McMahon. In particular the certificate dated 4 May 2010, the Applicant's stated cause of injury was noted as being 'unreasonable conflict with Educator at work'. Dr McMahon indicated that he was also satisfied that the Applicant's stated cause of injury was consistent with her diagnosis.

In view of the medical evidence before me, and in the absence of any extraneous factors, I am satisfied that employment was a significant contributing factor to the onset of the Applicant's claimed condition.

In summary, I am satisfied that the Applicant's personal injury arose out of her employment and that her employment was a significant contributing factor to her injury.

Did the injury arise out of or in the course of management action?

In *Avis v WorkCover Queensland*⁴, the Industrial Court held that the phrase 'arising out of' involves a causal or consequential relationship between the management action and the injury, but does not require a direct or proximate relationship.

The Applicant's overriding factor related to management action in that it involved the actions of management in their approach to meeting with the Applicant to discuss allegations which had been made against the Applicant concerning her conduct and performance.

³ *Croning v Workers' Compensation Board of Queensland* (1997) 156 QGIG, and *Boyd v Q-COMP*(2005) 180 QGIG 1129.

⁴ [2000] QIC 67

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Was the management action reasonable and taken in a reasonable way?

The Applicant asserts that management acted unreasonably by first requesting her to attend upon a meeting without giving her any prior warning as to the nature of the meeting and secondly, for undertaking a further meeting again without any prior warning or opportunity to have a support person present. The Applicant also asserts that at this second meeting Mr Corkhill was present even after the Applicant had raised an issue with Ms Timms about Mr Corkhill's alleged bullying behavior towards the Applicant.

As noted above the Applicant provided a history of events as they occurred from her perspective. In relation to the meeting held on 30 March 2010, Ms Timms gives the following history by way of background:

- during February and March received complaints concerning the Applicant as follows:
 - complaint received from staff specialist regarding documentation of vital signs made by the Applicant
 - several complaints from clinical nurses and clinical nurse consultants regarding Applicant's attitude and inability to follow direction
 - significant number of graduate nurses made complaints regarding the Applicant's bullying and intimidating behavior towards them
- Mr Corkhill and Ms Timms discussed these issues between themselves prior to meeting with the Applicant to discuss 'three' complaints
- during the meeting on 30 March 2010, Ms Timms made the following observations:

Susan denied the information provided by the staff specialist and inferred that the doctor was lying. Susan further went on to deny any behavior of bullying and felt that she got on well with all staff. I further explained each of the complaints however Susan became defensive in her behavior...I then provided Susan with several strategies for active listening and suggested that David [Mr Corkhill] and she could work together to find communication courses...I brought this meeting to a close by offering Susan the information and contact details for the District's employee Assistance Service and suggested we meet again in a few weeks to assess her progress.

I note Mr Corkhill has provided his handwritten files notes of what transpired during the meeting on 30 March 2010. Of interest however, I note Mr Corkhill did not complete his file note until one month later on 29 April 2010 after the second meeting had taken place.

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Notwithstanding, I note the following remarks were recorded:

- on a temporary contract at Southport for the last six months, had previously been at Robina however contract was not renewed
- Jo and I have had a significant number of complaints from all levels of staff in relation to Applicant's aggressive tone, being argumentative, inability to learn and being open to new ideas
- Applicant denied this was how she behaved and indicated that she got on well with all staff.

Ms Timms reports that over the coming months from April to May that the Applicant 'continued to display defensive behavior and was critical of David stating he was 'intimidating''.

Ms Timms advises that she received three more complaints of which she was very concerned about and again discussed these issues with Mr Corkhill. Ms Timms notes that the first opportunity she had to arrange the meeting '(given the urgency)' was when the Applicant was on a late shift. Ms Timms states that she spoke with the CNC on duty and informed her of the intended meeting to which she assured Ms Timms of having sufficient staff in order for the Applicant to attend.

In relation to the second meeting which occurred on 29 April 2010, Ms Timms reported the issues as the reason for the meeting:

- Applicant alleged to have made a derogatory finger gesture towards a graduate nurse
- a Senior Nurse requested the Applicant to perform a specific duty to which it was alleged that the Applicant refused to do and behaved in a defensive manner
- emergency department Physiotherapist, Rob was unhappy about the Applicant's 'unprofessional' manner and wanted to discuss directly with the Applicant however, as Ms Timms had arranged to meet with the Applicant advised that she would discuss with Applicant direct.

I note Ms Timms advises that the Applicant attended the office and requested a support person. However, as the Applicant queried what the meeting was about, Ms Timms states that she then assumed that the Applicant no longer wished for a support person to be present. Ms Timms notes that the Applicant was angry and upset and left the meeting stating that she was 'quitting'.

Mr Corkhill's file notes of that discussion refer to the complaints raised with the Applicant and the Applicant's denial of such. Mr Corkhill then notes that the Applicant became defensive and stated

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that she was resigning. Mr Corkhill queried with the Applicant if this was to take effect immediately prior to the Applicant leaving and made a recording that the Applicant 'lacks insight into her performance and poor relationships with others'.

The Applicant in her response dated 18 July 2010 provided the following:

- in relation to the meeting on 30 March 2010, the Applicant acknowledges being defensive in respect of the allegation about her alleged incorrect document recording as no specifics were provided to the Applicant and she did not consider that she had done anything wrong
- in relation to the many other complaints made about the Applicant's behavior by both senior and younger members of staff the Applicant states that she was unaware of her work being in question and advised that she considered that she got on well with her colleagues. The Applicant advises that no names were mentioned or specific examples other than her issues related to communication and that she was to consider whether she wished to stay employed and if so, would be put on a performance plan
- the Applicant advises that on 1 April 2010 that she approached Ms Timms as she felt that Mr Corkhill did not like her and therefore felt she was being intimidated and harassed by him. The Applicant informed Ms Timms that an example of this was Mr Corkhill's refusal to issue the Applicant with her ALS certificate which she completed in December. The Applicant advised that she was the only Nurse who completed this course with Mr Corkhill who had not yet received their certificate

The Applicant has at review provided email correspondence between Ms Timms and Mr Corkhill which was obviously not meant for the Applicant, however, has been inadvertently sent to her. The email discusses whether the Applicant should receive her certificate or not. Whilst I note the Applicant considers this supports her assertion that Mr Corkhill was bullying and intimidating her, I am not able to make this determination on the basis that I am unaware of the Applicant's outcome for completing this certificate. In any event I note the Applicant has made a separate formal complaint in relation to this matter.

The Applicant further stated that on 29 April 2010, that she was advised by a senior staff member that Ms Timms wished to see her for a 'second'. Once the Applicant entered the office and saw Mr Corkhill present the Applicant knew the meeting would be the same as the previous one. The Applicant advises that she was totally shocked when advised that there were three more complaints which required immediate urgent attention. The Applicant requested a support person,

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however the discussion continued on without one being made available. The Applicant was in an emotional state and felt she was forced to resign.

In relation to the three specific alleged complaints which were the subject of the said meeting, the Applicant has provided her responses as follows:

- in relation to complaint one regarding the alleged derogatory finger gesture towards a graduate nurse the Applicant states that she did not and would not do such a thing
- in relation to complaint two from a CNC, the Applicant acknowledges receiving a direction from a CNC during a handover of a patient and advises that she did go against the instruction of the CNC as she was advised by Dr Leo, ED consultant and O & G that an 'IDC' be inserted rather than 'paning' the patient. The Applicant states that the CNC was upset at her for this but she was following the direction given to her
- in respect of complaint three the Applicant acknowledges being asked by Rob, the Physiotherapist to put a tubi grip on. The Applicant advises that she did query what size he wanted and when she returned with one it appeared to be too small. The Applicant states that Rob appeared upset by this, however, asserts that she did nothing wrong other than admit to not know how to correctly size the tubi grip.

The Applicant has provided copies of email correspondence sent to Ms Timms advising that she did not wish to resign from her position and noted that it was comment made by her when she was in an emotional state and not of sound mind.

In response to this I note Ms Timms acknowledges reading the Applicant's email withdrawing her resignation however, still submits to the Applicant relevant paper work requesting her to formalise her resignation.

Conclusion

In *Delany v Q-COMP*⁵, President Hall determined that where one of a number of events and courses of conduct would merely be considered a 'blemish' in management action if considered in isolation, and where the events and courses of conduct are not truly discreet (i.e. joined by subject matter, time and personality), then a worker will be entitled to a much more 'global evaluation of the actions in which the management team had engaged'. Once a number of events which may otherwise individually be considered as blemishes are repetitive, there is a stronger indication of a

⁵ [2000] QIC 67

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need for a global assessment. As such, as the actions are not 'truly discrete' I will use a global approach in assessing the reasonableness of management's conduct.

It is the Applicant's submission that management acted unreasonably when addressing complaints with the Applicant in the meetings on 30 March 2010 and 29 April 2010.

Ms Timms advises that the purpose of the first meeting on 30 March 2010 was to discuss the various complaints which had been raised about the Applicant's behavior informally in a non-threatening environment.

I note the Applicant denied the allegations which were made against her and states the complaints were unfounded as Ms Timms and Mr Corkhill did not provide any specific details relating to names, dates, etc when the alleged incidences of inappropriate behavior occurred.

I have considered the responses of both the Applicant and the Employer and I have concluded that it is reasonable for management to raise with an employee any concerns which they might have to ensure that any behavior/performance issues can be actioned promptly. However, in relation to whether management action was undertaken in a reasonable way, I have determined that it was a 'blemish' on management's part to ask the Applicant to consider resigning. Furthermore, whilst there is a difference of opinion in relation to whether the Applicant was offered the contact details for the Employee Assistance Service, I am nonetheless also satisfied that if this wasn't offered that this was a 'blemish' on management's part.

In relation to the second meeting conducted on 29 April 2010. The Applicant submitted that management acted unreasonably in circumstances where a second meeting was again called without any prior notice to the Applicant. Furthermore, the Applicant states that it was unreasonable to have Mr Corkhill in attendance given the Applicant had made a complaint to Ms Timms regarding Mr Corkhill's alleged behavior towards the Applicant and for proceeding with the meeting after the Applicant requested that she be allowed a support person to attend. Furthermore, the Applicant states that it was unreasonable to have a meeting at the time it was conducted when limited support people were available.

I have considered the responses of both the Applicant and the Employer and I am satisfied that it was reasonable for management to conduct a further meeting, however it was undertaken in an unreasonable way.

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I have come to this decision on the basis that Ms Timms was aware of the Applicant's concerns in relation to Mr Corkhill and note Ms Timms previous comments whereby the Applicant kept reporting that she felt intimidated by Mr Corkhill.

Furthermore, Ms Timms states that this second meeting needed to be conducted as a matter of urgency given the seriousness of the complaints raised. If the complaints raised were as serious as Ms Timms asserts it would have been prudent for Ms Timms to ensure that the Applicant was aware of nature of the meeting prior to her attendance so as a support person could be available and to not have Mr Corkhill in attendance given the Applicant's concerns.

Overall I consider management to have acted unreasonably. I have applied *Delaney v Q-COMP*⁶, in that whilst I consider that it was reasonable of management to discuss the complaints made against the Applicant, I consider that these meetings were undertaken unreasonably.

I have come to this conclusion on the basis that management exhibited several instances of 'blemishes' in regards to the provision of management action. I have also placed significant weight on the evidence that shows that management conducted the second meeting on 29 April 2010 concerning allegations made against the Applicant that are of a serious nature, without prior informing the Applicant of the nature of those serious allegations and with Mr Corkhill present after Ms Timms was made aware of how the Applicant felt she was being treated by him. Furthermore, proceeding with a meeting after the Applicant requested a support person and knowing that it would be difficult to have one available at the time the meeting was scheduled also constitutes unreasonable management action.

As such, I consider the conduct of management overall, to have been unreasonable.

DECISION SUMMARY

I determined that:

- the Applicant sustained a personal injury
- the personal injury arose out the Applicant's employment
- the employment was a significant contributing factor to the injury
- the injury arose out of reasonable management action taken in an unreasonable way by the Employer in connection with the Applicant's employment.

⁶ [2005] QIC 11

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I therefore conclude that the provisions of section 32(5) of the Act do not exclude the psychiatric/psychological condition from the definition of "injury" within section 32(1) of the Act.

Therefore my decision is to set aside the decision by the Insurer to reject the application, and to substitute another decision that the application is one for acceptance.

RIGHT OF APPEAL

If either party disagrees with this decision then either party may appeal to:


- an Industrial Magistrate (84 courts state-wide) **OR**
- the Queensland Industrial Relations Commission in Brisbane.

Either party has 20 business days from the date of receipt of this decision in which to lodge an appeal. If a party chooses to lodge an appeal with an Industrial Magistrate, the notice of appeal must be filed at the Magistrates Court nearest to the place where the party resides/carries on business or at a Magistrates Court agreed between the party and Q-COMP.

A copy of the notice lodged with either the court or Commission must also be served on Q-COMP within 10 business days.

A notice of appeal should include the following information:

- application for compensation number
- worker's full name and address
- employer's name
- details of grievance
- name, address and telephone number of appellant's legal representative.



Tammy Manderson for Marisha Mees
Review Officer