CITATION:	*Northern Territory of Australia v Noaks* [2023] NTCA 4
PARTIES:	NORTHERN TERRITORY OF AUSTRALIA v NOAKS, Anthony
TITLE OF COURT:	COURT OF APPEAL OF THE NORTHERN TERRITORY
JURISDICTION:	APPEAL from the SUPREME COURT exercising Territory jurisdiction
FILE NO:	AP 8 of 2022 (22226085)
DELIVERED:	14 April 2023
HEARING DATE:	13 February 2023
JUDGMENT OF:	Blokland, Brownhill JJ & Riley AJ

CATCHWORDS:

WORKERS' COMPENSATION – Entitlement to and liability for compensation – Cessation of payments – Appeal from Supreme Court – Whether Work Health Court had regard to admission of diagnosis of mental illness prior to the work injury – Whether Work Health Court provided adequate reasons – Whether validity of the Notice of Decision was considered – Supreme Court correct in findings – Appeal dismissed

Anthony Noaks v Northern Territory of Australia [2022] NTWHC 3; *Boyle (a pseudonym) v The Queen* [2022] SASCA 50; *DL v The Queen* (2018) 266 CLR 1; *Goodrich Aerospace Pty Ltd v Arsic* (2006) 66 NSWLR 186; *Jones & Anor v Sutherland Shire Council* (1979) 2 NSWLR 206; *Keith v Gal* [2013] NSWCA 339; *Lee v MacMahon Contractors Pty Ltd* (2018) 41 NTLR 168; *Mitchell v Cullingral Pty Ltd* [2012] NSWCA 389; *Nicolia v*

Commissioner for Railways (NSW) (1970) 45 ALJR 465; *Northern Territory of Australia v Noaks & Anor* [2022] NTSC 61; *Paridis v Settlement Agents Supervisory Board* (2007) 33 WAR 361; *Tracy Village Sports & Social Club v Walker* [1992] 111 FLR 32; *Walker v Walker* (1937) 57 CLR 630, referred to.

Return to Work Act 1986 (NT) ss 69, 116

REPRESENTATION:

Counsel:

Appellant:	JW Roper SC
Respondent:	DA Skennar KC

Solicitors:

Appellant:	Hunt & Hunt
Respondent:	Hall Payne Lawyers

Judgment category classification:	B
Number of pages:	20

IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Northern Territory of Australia v Noaks [2023] NTCA 4
No. AP 8 of 2022 (22226085)

BETWEEN:

NORTHERN TERRITORY OF AUSTRALIA
Appellant

AND:

ANTHONY NOAKS
Respondent

CORAM: BLOKLAND, BROWNHILL JJ and RILEY AJ

REASONS FOR JUDGMENT

(Delivered 14 April 2023)

The Court:

[1] This is an appeal from a decision of the Supreme Court,[1] dismissing an appeal against a decision of the Work Health Court.[2] The Work Health Court had set aside the appellant's Notice of Decision to cancel the respondent's compensation payments under s 69 of the *Return to Work Act 1986* (NT) (*'RTW Act'*).

1 *Northern Territory of Australia v Noaks & Anor* [2022] NTSC 61 ('*Noaks*').

2 *Anthony Noaks v Northern Territory of Australia* [2022] NTWHC 3 ('Woodcock LCJ Reasons').

[2] An extensive Notice of Appeal was reformulated at the hearing of the appeal and the appellant ultimately advanced three principal grounds, summarised as follows:

1. The Supreme Court should have found that the pleadings in the Work Health Court included an admission that the worker suffered "an Acute Adjustment Disorder with reactive mixed mood changes complicated" as at 11 October 2012, and the Work Health Court was required to, and failed to, have regard to the admission;
2. The Supreme Court erred by finding Woodcock LCJ's reasons were adequate; and
3. The Supreme Court miscast ground 6 of the Notice of Appeal below as being a 'no evidence' ground and failed to consider whether Woodcock LCJ failed to engage with, consider or decide the question of validity of the Notice of Decision.

[3] For the reasons that follow we conclude none of the grounds are made out.

Procedural History

[4] The respondent obtained a position as a switchboard operator at the Alice Springs Hospital in January 2018. On 29 March 2018, he presented to his general practitioner and was certified unfit for work following complaints he had been bullied and harassed by his co-workers. On 10 April 2018, the respondent made a claim for compensation under the *RTW Act* which was

accepted. The appellant commenced paying weekly compensation payments to the respondent on 24 April 2018, which payments were backdated to 29 March 2018.

[5] On 11 March 2019, the appellant issued a Notice of Decision under s 69 of the *RTW Act* giving the respondent 14 days' notice of the cancellation of his weekly compensation entitlements. The Notice of Decision was based upon conclusions contained in a report provided by a consultant psychiatrist, Dr Hundertmark.

[6] Following service of the Notice, a mediation was conducted but failed to resolve the dispute. The respondent then commenced proceedings in the Work Health Court pursuant to the *RTW Act* disputing the decision of the appellant.

[7] The initial proceedings were heard by Woodcock LCJ between 22 and 25 February 2021. Both parties provided lengthy written materials, including medical records, reports and submissions. On 31 March 2022, Woodcock LCJ delivered written reasons for decision in which his Honour found in favour of the respondent and set aside the Notice of Decision.

[8] On 26 April 2022, the appellant filed an appeal against the Work Health Court decision in the Supreme Court. The proceedings below were heard by Reeves J on 6 July 2022. The judgment of the Supreme Court dismissing the appeal was delivered on 3 August 2022.

[9] The appeals to the Supreme Court and to this Court are confined to a question of law.[3] As Reeves J noted, the expression "on a question of law" has been held to be narrower than an appeal that "merely 'involves a question of law'".[4]

[10] The relevant and helpful discussion in *Lee* as to what constitutes an error of law, as distinct from an error of fact, was summarised by Reeves J and need not be repeated here.[5]

[11] The primary issues before the Work Health Court were the evaluation of medical material and the assessment of the credibility and reliability of the respondent.

[12] In brief, the consultant psychiatrist, Dr Hundertmark, gave evidence on behalf of the appellant of having diagnosed the respondent as suffering from a mixed personality disorder predominantly of the borderline type. The veracity of the respondent's history was doubted by Dr Hundertmark. His opinion was that the respondent's absence from the workplace was related primarily to his personality difficulties rather than any direct link to the workplace. Further, he considered the respondent to be capable of a graduated return to work.

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3 See s 116 of the *RTW Act*; *Lee v MacMahon Contractors Pty Ltd* (2018) 41 NTLR 168 at [15]-[19] ('*Lee*'); *Noaks* at [4].

4 *Noaks* at [5], citing *Paridis v Settlement Agents Supervisory Board* (2007) 33 WAR 361 at [53].

5 *Noaks* at [6], citing *Lee* at [15]-[19].

[13] The respondent called a consultant psychiatrist, Dr Takyar, whose opinion was that the respondent presented with a major depressive disorder and a generalised anxiety disorder along with significant symptoms which arose from "persistent and significant" bullying and harassment in the workplace.[6] In the opinion of Dr Takyar, the respondent remained totally incapacitated for work.

[14] Less formal reports and medical opinions were received into evidence without the authors being called, namely from Dr Mrigendra Das, Dr Gregory White and Dr Kris Achan.

[15] The respondent's evidence before the Work Health Court led Woodcock LCJ to make mixed findings about the respondent's reliability and honesty and to make observations about his background of difficult and sometimes extreme behaviours.[7]

Ground 1 – Failure to address the "admitted" diagnosis of Acute Adjustment Disorder

[16] In preferring the evidence of Dr Takyar over that of Dr Hundertmark, Woodcock LCJ said:[8]

> *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

6 Appeal Book at 456 ('AB').

7 Woodcock LCJ Reasons at [10].

8 Woodcock LCJ Reasons at [19]-[20] (emphasis added).

> 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 noncommittal 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.
>
> 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.

[17] In relation to the circumstances of the respondent prior to the events the subject of these proceedings and the preferred diagnosis, Woodcock LCJ accepted the diagnosis of Dr Takyar that the worker suffered a major depressive disorder with generalised anxiety disorder. His Honour went on to say:[9]

> 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

9 Woodcock LCJ Reasons at [24].

magnitude and combination of symptoms described make out the diagnosis.

[18] The appellant contends that in concluding that it was not possible to make a finding that the respondent did or did not have a diagnosable mental illness prior to the events the subject of the proceedings, his Honour erred in failing to address a report found in the materials and written by Dr Achan.

[19] In its Amended Defence in the Work Health Court (at [3(f)]) the appellant had pleaded that "on or about 11 October 2012, the [respondent] was diagnosed with reactive mixed mood changes complicated…". In his Reply, the respondent admitted that "on 11 October 2012, Dr Kris Achan opined (in a letter to Dr Piyadasa) that he was suffering from 'an Acute Adjustment Disorder with reactive mixed mood changes complicated'".

[20] In oral submissions, counsel for the appellant contended that Woodcock LCJ accorded Dr Achan's letter no weight and effectively ignored the fact of the earlier diagnosis. It was argued that due to the "admission" in relation to paragraph 3(f), his Honour was required to consider the diagnosis of 11 October 2012 and it was not open for no weight to be ascribed to it.

[21] The respondent submitted this ground must fail because paragraph 3(f) was not an admission of Dr Achan's opinion. We agree.

[22] As pointed out by the respondent, the purported admission is of the fact that the letter was sent, and of the words it contained, not the diagnosis itself. In our view, this is the most logical construction of the pleadings. The use of

the word "opined" lends weight to this construction. This interpretation was also adopted by Reeves J in the proceedings below.[10] Paragraph 3(f) cannot be regarded as a statement against interest by the respondent.

[23] Further, in our opinion, it is readily apparent that Woodcock LCJ did consider the diagnosis, and having done so, gave it no weight, which makes the alleged admission essentially inconsequential.

[24] It is clear that Woodcock LCJ considered the opinion of Dr Achan and provided reasons for according it no weight. His Honour stated:[11]

> 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 of 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 is therefore not made out.

[25] The appellant further submitted that error arose in circumstances where Dr Achan's opinion/letter was admitted as evidence "for all purposes".[12] In

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10 *Noaks* at [57].

11 Woodcock LCJ Reasons at [23].

12 Appellant's written submissions at [28].

those circumstances, it was said, the letter should have been afforded the weight "that its import and probative value demanded".[13]

[26] Given our accepted construction of the "admission", it was open to Woodcock LCJ to consider and reject Dr Achan's diagnosis. His Honour was entitled to give the opinion such weight as he thought proper,[14] or as the circumstances warranted.[15] This approach was also open due in part to the failure of the appellant to call Dr Achan as a witness to explain his qualifications, the history of the respondent available to him, the context in which he saw the respondent, and the nature of the adjustment disorder and its likely duration, amongst other things.

[27] In relation to this ground, it is necessary to address one further matter. In the course of argument, the appellant contended that, contrary to the findings of Woodcock LCJ, Reeves J made a finding of previous diagnoses of relevant mental illnesses when his Honour said "*prior to his injury, the Worker had a history of psychiatric disorders and treatment from at least 2012*"[16] whereas, it was submitted, Woodcock LCJ was only prepared to find that the respondent had "*a long history of mental health issues*",[17] consistent

13 Ibid at [29], citing *Jones & Anor v Sutherland Shire Council* (1979) 2 NSWLR 206 at 214-215 and 219-220 per Samuels JA.

14 *Walker v Walker* (1937) 57 CLR 630 at 634-635 per Latham CJ.

15 Ibid at 634-635 per Latham CJ, at 636 per Dixon J, at 638 per Evatt J.

16 *Noaks* at [7].

17 Woodcock LCJ Reasons at [10].

with his finding that there was no reliable evidence of any diagnosis of mental illness prior to the work injury.[18]

[28] At the hearing of the appeal, counsel for the appellant accepted that in the circumstances it was reasonably open for the expressions "psychiatric disorder" and "mental health issues" to be used interchangeably by two laypersons and those expressions in context effectively meant the same. We consider this is all that occurred. If Reeves J was communicating a departure from the clear findings of the Work Health Court, his Honour would have to explain his reasons for so doing. It is clear from the context of the judgment as a whole that Reeves J meant no such departure from the findings in the Work Health Court. There is nothing of substance that arises from this point.

[29] The Supreme Court was not in error to dismiss this ground. Ground 1 is not made out.

Ground 2 – Inadequacy of reasons

[30] The obligation on a judicial officer to provide adequate reasons was summarised by Reeves J,[19] with reference to *DL v The Queen* as follows:[20]

> The content and detail of reasons "will vary according to the nature of the jurisdiction which the court is exercising and the particular matter the subject of the decision". In the absence of an express statutory provision, "a judge returning a verdict following a trial without a jury is obliged to give reasons sufficient to identify the principles of law applied by the judge and the main factual findings on which the judge

18 Woodcock LCJ Reasons at [19].

19 *Noaks* at [50]-[52].

20 (2018) 266 CLR 1 at [32] per Kiefel CJ, Keane and Edelman JJ (citations omitted).

> relied". One reason for this obligation is the need for adequate reasons in order for an appellate court to discharge its statutory duty on an appeal from the decision and, correspondingly, for the parties to understand the basis for the decision for purposes including the exercise of any rights to appeal.

[31] Reasons are to be read as a whole and, while it is not necessary for a judge to give extensive or elaborate reasons, they must be more than a bare statement of legal principles applied and the findings of fact made. A judge will normally be expected to articulate the reasoning on points critical to the contest between the parties.[21] Reasons must go further than merely setting out the evidence of each side and saying that the judge prefers one body of evidence over another.[22]

[32] In *Lee*,[23] the interrelationship between inadequate reasons and issues of fact and law was summarised as follows:

> While it is true to say that a failure to give reasons may constitute an error of law, a failure of that type cannot be used to convert a finding of fact by a workers' compensation tribunal into a question of law susceptible to appeal. As we identified in the earlier discussion concerning the nature of an appeal of this type, regardless of the trial judge's reasons, if there is evidence which, if believed, would support the finding of fact, there is no error of law.

[33] In oral submissions, counsel for the appellant raised the principles discussed in *Tracy Village Sports & Social Club v Walker*.[24] *Tracy Village* sets out the

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21 *Boyle (a pseudonym) v The Queen* [2022] SASCA 50 at [119]-[120].

22 *Mitchell v Cullingral Pty Ltd* [2012] NSWCA 389 at [116]; *Keith v Gal* [2013] NSWCA 339 at [116] regarding differing evidence given by witnesses regarding the existence of a fact, citing *Goodrich Aerospace Pty Ltd v Arsic* (2006) 66 NSWLR 186 at [28].

23 At [58], citing *Nicolia v Commissioner for Railways (NSW)* (1970) 45 ALJR 465.

24 [1992] 111 FLR 32 ('*Tracy Village*').

very limited circumstances in which errors of fact might be said to constitute errors of law for the purposes of an appeal. For example, where there is no evidence from which one could purport to make a finding, or where there is no finding of fact from which a proper inference could be drawn.

[34] The appellant's basis for this ground is far removed from the principles expressed in *Tracy Village*. The appellant advanced the submission that the appellant is "in the dark" as to whether Woodcock LCJ's treatment of the evidence involved any error of law.[25] The error of law is said to be due to the paucity of the reasons and the failure to record the evidence and findings within those reasons. The appellant says that the inadequacy of the reasons below has left it unable to determine if such an error of law was made.

[35] Counsel for the respondent acknowledged that inadequacy of reasons can constitute an error of law, but submitted the reasons were adequate as given.

[36] The appellant's real grievance is that Woodcock LCJ preferred Dr Takyar's evidence to that of Dr Hundertmark without, it was suggested, a proper and reasoned articulation of why, and without referring to particular symptomatology. On the same basis, it was contended that Reeves J was in error as his Honour should have found, and failed to find, that the obligation

25 Appellant's written submissions at [76].

to provide proper reasons was not discharged by Woodcock LCJ's reasons for decision.

[37] The respondent submitted Woodcock LCJ's reasons were adequate because they dealt with the critical issues. Further, the competing opinions between medical practitioners and the submissions made in relation to the respondent's history were dealt with in the reasons. Woodcock LCJ's reasons enabled the appellant to understand the basis for the decision.

[38] In the Supreme Court, Reeves J held the reasons, while "economical", sufficiently disclosed the reasoning process that his Honour employed to reach the conclusions.[26] It was noted Woodcock LCJ gave at least two reasons why he preferred Dr Takyar's evidence over Dr Hundertmark's.

[39] The first reason was that Dr Hundertmark was unable to obtain a reliable history from the respondent, which he drew attention to in his report with the qualifying statement:[27]

> It is possible that there are pre-existing conditions affecting Mr Noaks but he was not forthcoming in complying with the assessment process at today's interview. He deliberately refused to answer some questions which were not directly associated with the workplace issue.

[40] In analysing the evidence, Woodcock LCJ specifically considered the contents of, and diagnosis in, Dr Hundertmark's report. His Honour proceeded on the basis that he was unable to conclude whether the

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26 *Noaks* at [56].

27 AB at 442.

respondent "did or did not have a diagnosable mental illness prior to the events the subject of these proceedings" whilst noting Dr Hundertmark's opinion.[28] The non-acceptance of that opinion is unsurprising given the qualification in the report itself.

[41] The second reason was that Dr Hundertmark was briefed with less source material relating to the medical treatment of the respondent in the relevant period than was Dr Takyar.[29] The source material each doctor received was set out clearly in their reports. Reference to those reports reveals that Dr Hundertmark had quite limited background information whereas Dr Takyar had material including from a previous psychiatrist which he summarised and relied upon in reaching his conclusions.

[42] Further, we note the reports reveal that Dr Hundertmark was unable to obtain a satisfactory history from the respondent. He said the respondent was "extremely evasive", "fail[ed] to comply with the process of assessment" and "refused to give his complete past medical history".[30] In those circumstances, Woodcock LCJ considered Dr Hundertmark was working "in the face of the uncooperative and at times non-responsive behaviour of the [respondent]" and went on to observe that the doctor was put in an unfair position where he "was required to form a diagnosis without

28 Woodcock LCJ Reasons at [19].

29 *Noaks* at [56]; Woodcock LCJ Reasons at [20].

30 AB at 439, 440.

anything approaching a useful history from the [respondent]”.[31] It is unsurprising his Honour felt unable to rely upon the conclusions of Dr Hundertmark in those circumstances. On the other hand, Dr Takyar found the respondent to be “engageable and polite” and “reasonably engageable in my review of him”.[32]

[43] His Honour also separately provided a cogent reason as to why he was not able to give weight to the opinions of other medical professionals, namely that they were not called to give evidence and, in the case of Dr Achan, that he was not asked to provide a report.[33]

[44] We agree with Reeves J’s determination that Woodcock LCJ exposed his reasoning, albeit briefly, on the critical contest, and it follows that this alleged error does not constitute an error on a question of law.

[45] Ground 2 is not made out.

Ground 3 – Error in miscasting ground 6

[46] The appellant submitted that Reeves J misconstrued appeal ground 6 before the Supreme Court as being wholly reliant upon, and limited to, an argument that there was no evidence to support Woodcock LCJ’s finding of incapacity

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31 Woodcock LCJ Reasons at [20].

32 AB at 454, 457.

33 *Noaks* at [20], Woodcock LCJ Reasons at [23].

on the part of the respondent and that this was dispositive of the question regarding the validity of the Notice of Decision issued by the appellant.[34]

[47] The appellant acknowledged that it did assert there was a lacunae in the evidence of incapacity but, in addition, asserted the real gravamen of this ground of appeal was that Woodcock LCJ failed to engage with, consider or decide the question of the validity of the Notice of Decision. The appellant argued that Woodcock LCJ did not turn his mind to the question of validity of the Notice of Decision. It was submitted that his Honour did not consider whether the incapacity or a change in circumstances existed at the time of the Notice of Decision, and that Dr Takyar's findings as to capacity did not extend backwards in time to the Notice of Decision.

[48] The respondent argued that, during the hearing below, counsel for the appellant had agreed with Reeves J that this ground was restricted to a "no evidence" ground and that, even if it was not a "no evidence ground", it could still be inferred from the reasons and the report of Dr Takyar that the incapacity existed at the time of giving the Notice.[35]

[49] Accepting the occurrence of the injury, the appellant was required to discharge the onus of proving that the injury was no longer causative of incapacity at the time of giving the Notice of Decision. The appellant

34 Appellant's written submissions at [94]-[95].

35 Respondent's written submissions at [6.1]-[6.2].

submitted that the real gravamen of the Notice of Decision was that the worker had ceased to be incapacitated as a result of any work-related injury.

[50] The appellant referred to Dr Hundertmark's evidence that, at the time of his interview with the respondent:

(a) work related issues were not impacting his ability to work; and

(b) irrespective of whatever other conditions might have been impacting the respondent at that time, he was fit for a graduated return to work.

[51] The appellant claimed that Dr Takyar's opinion to the contrary was "temporally constrained to the date of Dr Takyar's report".[36] Specifically, the appellant submitted there was no pre-dating of the opinions of Dr Takyar, that:

(a) "there is total incapacitation at the current time"; and

(b) "[the respondent] has no capacity for employment".[37]

[52] A review of the evidence and the reasons for decision does not support this submission. Dr Takyar's report was prepared, following a referral, as an "assessment in relation to [the respondent's] entitlements under the *RTW Act* in relation to an injury occurring in the course of his employment in March

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36 Appellant's written submissions at [89].

37 Ibid.

2018."[38] In the report, he summarised the background of the workplace injury in a paragraph titled "History of Presenting Complaint" and, under the heading "Current Work Status," stated:[39]

> Mr Noaks told me that he has not been able to work since the injury, other than making an attempt two months after he ceased work initially to return to work, which he said he could only sustain for three or four days because of the continuing difficulties with bullying and harassment.

[53] Further, Dr Takyar stated in a paragraph headed "Summary and Opinion":[40]

> Mr Anthony Noaks is a 39-year-old male with no evident history of any pre-existing psychiatric illness, though the medical notes indicate that he may have had an opioid dependency or an opiate-use disorder at some point in the past. He described the development of a psychiatric condition in the context of bullying and harassment by a particular trainer at Alice Springs Hospital. He said that he eventually realised how depressed his mood was over time, and he said he realised after his ex-wife had shown him a large number of photos of him before and after his injury and he realised he no longer smiled after it had occurred.
>
> He presents with symptoms consistent with a DSM-5 major depressive disorder and generalised anxiety disorder given the specific symptoms he has and the *lack of improvement over the last almost two years*.

[54] Dr Takyar's report must be read in context, as a whole, with the qualification of the referral, and in our opinion it would be illogical to temporally constrain it to the date of the report when it was prepared with reference to the initial injury and triggered by the Notice of Decision.

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38 AB at 449.

39 AB at 451.

40 AB at 456 (emphasis added).

[55] By accepting the evidence of Dr Takyar, and rejecting the evidence of Dr Hundertmark, Woodcock LCJ effectively dealt with the conflict of opinion for the reasons already discussed. Accepting that Dr Takyar's report covers the period inclusive of the Notice of Decision, it was open to his Honour to make the following findings and overturn the Notice in favour of the respondent, namely:[41]

(a) the respondent did suffer an injury in the course of his employment with the appellant;

(b) the injury was causative of his loss of capacity for work or loss of earning capacity and had not improved since; and

(c) the incapacity did arise out of or in the course of his employment with the employer.

[56] The matter of adequacy of reasons has already been addressed above in relation to Ground 2, and the same observations, findings and conclusions apply here.

[57] In addition, Reeves J did deal with the issue having reviewed the conclusions drawn by Dr Takyar in his report and observing:[42]

> Specifically, it is implicit from the references to the [respondent's] incapacity being total, to his symptomatology being stable and stationary and his impairment being permanent that his incapacity for work had continued throughout the period since he sustained his injury in the course of his employment in 2018.

41 Woodcock LCJ Reasons at [5]-[9], [26]-[28], [30].

42 *Noaks* at [62].

[58] This ground is not made out.

Disposition

[59] The appeal is dismissed.

[60] We will hear the parties as to costs.