

ADMINISTRATIVE APPEALS TRIBUNAL

Applicant: Clara Bennett
Respondent: Australian Postal Corporation

T- DOCUMENTS

T1	Reviewable decision	4/4/2007
T3	Statement by Mr T. Stapleton	30/3/2008
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T1

File No: 86156 Reconsideration No. 118652

Safety, Rehabilitation and Compensation Act 1988 (the Act)

Request for Reconsideration of the Determination dated 4 April 2007

Re: CLARA BENNETT

Background

1. The employee was born on 12 December 1968 and has been working at Australia Post as a shop-front assistant for approximately 1 year and 3 months. The employee made a claim for compensation dated 14 December 2006 for the condition of *depression* that she claims arose as a result of lack of support, training, guidance and unjust comments made during a work Christmas party on 12 December 2006.

2. On 4 March 2007 the employer, the Australian Postal Corporation (APC) denied liability for the condition of *major depressive disorder* with an injury date of 12 December 2006. The APC delegate preferred the medical evidence of psychiatrist Professor Kooks over psychiatrist Dr Fanta and concluded that while the employee suffers from a psychiatric condition, her employment did not materially contribute to her condition.

3. The delegate also considered whether the employee's condition arose out of a failure to obtain a transfer and concluded that it did not.

Issues for consideration

4. Does the employee have an injury as defined in the Act?

5. If so, did the injury result from failure to obtain a promotion, transfer or benefit in connection with her employment?

Events in question

6. It is not in dispute that the employee commenced employment with Australia Post on 14 December 2005 as a shop-front assistant at Moonee Ponds Post Shop. Staff at this shop-front numbered around 20. This was her first job after giving birth to her son, who is now 8 years old.

7. The employee contends that from the beginning of her employment she was given no support, training or guidance to perform her duties adequately. She maintains that she was *thrown in the deep end* and felt overwhelmed. She said that taking time out from dealing with the customers to ask for advice from other staff and to perform essential tasks away from the counter was not tolerated, which added to the stressful environment.

8. The employee contends that work events culminated at the end of 2006 at the work Christmas party on 12 December 2006. At the Christmas party a member of the management team gave a speech during which bonuses were awarded to staff for work performed throughout the year. One of the staff noticed that the employee did not receive a bonus and queried that during the speech. The speaker replied: *what award does she expect – the most time slacking off award?* This comment was made publicly and in front of most of the staff of the Moonee Ponds Post Shop.

9. Subsequently, the employee was off work from 13 December 2006. She was admitted to hospital on 2 January 2007 and was discharged on 21 January 2007. The employee has not returned to work.

Medical Evidence

11. In a report dated 20 February 2007, Professor Kooks, consultant psychiatrist, diagnosed major depressive disorder. Professor Kooks, after taking a comprehensive history, concluded that the employee's employment with Australia Post was a contributing factor. Professor Kooks outlined a number of other non-work related factors that also contributed to the employee's condition.

12. In a report dated 20 January 2006, Dr Fanta, the employee's treating psychiatrist, also diagnosed major depressive disorder. Dr Fanta concluded that the employee's *soulless* workplace and particularly the events of the 2006 Christmas party were the main cause in precipitating major depressive illness.

Does the employee have an injury as defined in the Act?

13. The Act, at the relevant dates, defined an *injury* as meaning
- a) a disease
 - b) an injury (other than a disease) being a physical or mental injury arising out of, or in the course of, the employee's employment;
or
 - c) an aggravation of a physical or mental injury (other than a disease)...being an aggravation that arose out of, or in the course of, that employment.

But does not include any such disease, injury or aggravation suffered by an employee as a result of reasonable disciplinary action taken against the employee of failure by the employee to obtain a promotion, transfer of benefit in connection with his or her employment.

14. *Disease* is defined as:

- a) any ailment suffered by an employee; or
- b) the aggravation of any such ailment;

being an ailment or an aggravation that was contributed to in a material degree by the employee's employment by the Commonwealth or a licensed corporation.

15. In respect of psychiatric conditions, a condition will be a disease within the meaning of the Act if the evidence establishes that the employee suffers from a condition that is *outside the boundaries of normal mental functioning and behaviour* in the circumstances of the particular case (*Comcare v Mooi*).

16. I am satisfied, on the basis of the medical evidence that the employee suffers from a major depressive disorder. That condition is a *disease* for the purposes of the Act, and therefore compensable, if I am satisfied, on the balance of probabilities, that her employment contributed in a material degree to the onset or aggravation of that condition.

Did the employee's employment materially contribute to the injury?

17. Any determination of whether employment contributed in a material degree to a particular condition requires a consideration of the facts and circumstances of the particular case.

18. In *Westgate* it was found that it *was not necessary that the applicant show that there was a special, unusual or wrongful factor of his employment which was the contributing factor. It was sufficient that the employment positively contributed to the development of the applicant's depression.*

19. In the Federal Court decision of *Wiegand v Comcare*, von Doussa J concluded that it was open on the evidence for the Tribunal to hold that one or more of the incidents or state of affairs about which the employee complained in the course of his evidence contributed in a material degree to an aggravation of the depressive condition. Once the incidents created a perception in the employee's mind, whether reasonable or not, and that perception materially contributed to the disease, liability arose.

20. In *Canute* the Full Court said that the inclusion of the term *material* imposes an evaluative threshold below which a causal connection may be disregarded. What is required is: *an evaluation of all relevant contributing factors for the purpose of asking whether the employee's employment did or did not contribute materially to the suffering of the ailment, etc, in question (Comcare v Sahu-Khan (2007)).*

21. On balance, having considered all the evidence, I am not satisfied that the employee's employment with Australia Post was anything more than a mere contributing factor to the development of her major depressive disorder and the evaluative threshold is not met. I have reached this opinion in view of the following factors documented in Professor Kook's report:

- The employee's history of stressful family issues, particularly relating to her autistic son, Zim; and
- The employee's history of marital problems.

22. For completeness, I am satisfied that the employee's condition did not arise out of failure to obtain a transfer as I find that all aspects of her

employment, on the balance of probabilities, did not materially contribute to her depressive disorder.

Decision

23. Having regard to the reasons above, I am satisfied that the determination of 4 March 2007 denying liability under s 14 of the Act to pay compensation to the employee in respect of a *major depressive disorder* is correct and should be affirmed.

Notice of Rights

24. If you are dissatisfied with my decision, you may lodge an application with the Administrative Appeals Tribunal to have it reviewed. Relevant forms are available from the AAT but you may, instead, write to them including the following information in your letter:

- The date and details of the decision;
- The name of the person who made the decision;
- The reason(s) for your request for review; and
- The Reconsideration Number.

25. There is a time limit of 60 days from the day you receive the decision in which to lodge the application but, in some cases, an extension of time may be granted by the AAT.

Maria Apricot
Independent Review Officer
4 April 2007

T2

STATEMENT FROM MR TERRY STAPLETON

1. My name is Terry Stapleton and I reside at 5/67 Worongary Road, Ferntree Gully in the state of Victoria.
2. I am the Manager at the Moonee Ponds Post Shop and have been the manager there for past 15 years.
3. I have seen the statement of Ms Clara Bennett dated 16 March 2008 and wish to state the following.
4. I refer to paragraph three of Ms Bennett's statement and comment that employees of the Moonee Ponds Post Shop receive basic training on commencement of their employment. I remember Ms Bennett receiving this training from me when she commenced in February 2006.
5. Refresher courses on how to process different bills and payments are run throughout the year. These sessions are held after-hours, as the workload is too heavy to run them during business hours. Staff members are remunerated for their time spent in these courses. Ms Bennett was encouraged to attend these sessions, but could not attend. She told me the reason she could not attend was that she had to look after her son.
6. I refer to paragraph ten of Ms Bennett's statement and confirm that Ms Bennett applied for a transfer on 8 November 2006 to the Dandenong Post Shop. She requested the transfer on compassionate grounds as she needed to be closer to her son's school. I believe her son attends a school specifically for children with severe autism.
7. The transfer request was not granted as there was no vacancies at the Dandenong Post Shop.
8. As her supervisor, I noticed her mood lower after this request was not granted.
9. I refer to paragraph five of Ms Bennett's statement and state that I cannot recall Ms Bennett ever coming to me with concerns about her workload or lack of training.
10. I refer to paragraph six of Ms Bennett's statement and state that I do not recall this incident occurring. All available staff are required to be serving customers during peak hours. However, this policy does not include essential tasks away from the counter, such as replenishing change.

11. I refer to paragraph eight of Ms Bennett's statement and state that I did give a speech where awards were handed out to staff members. Ms Bennett was not the only staff member present who did not receive an award. The comment *what does Clara expect – the most time slacking off award?* was said in jest and in a light-hearted manner. I observed Ms Bennett laughing when the comment was made and subsequently socializing with staff members for the rest of the evening.
12. This statement is true and correct to the best of my knowledge.

DATED this 30th day of March 2008

.....(sgd).....
Terry Stapleton

T3

APPLICANT'S STATEMENT

1. My name is Clara Bennett and I reside at 5 Field Street, Sunshine in the state of Victoria. I am the applicant in the Administrative Appeals Tribunal application 2007/0132
2. I have been employed by Australia Post since 14 December 2005. I am employed as a shop-front assistant at the Moonee Ponds Post Shop.
3. When I began working for Australia Post I was given no formal training, support or guidance and I felt as if I was thrown in the deep end. The Australia Post shop at Moonee Ponds is extremely busy, especially over lunch time. Right from the start of my employment, none of my colleagues were willing to assist me.
4. When I finished work each day I would feel stressed and teary.
5. I tried to talk to my supervisor, Terry Stapleton, about the workload, but he dismissed my concerns. I remember him saying at the time, *everyone has the same workload and if other staff members can cope, then you should be too*. I believe that Mr Stapleton was frustrated with me and my performance because English is not my first language and I was slower at serving customers than most other staff members.
6. I recall one incident, in July 2006, where I was attending the customer service counter and I was running low on change. I excused myself to go to the back room where the change is located, only to be shouted at by Mr Stapleton. I remember him shouting, *get change when it's quiet and you should have managed your float better in the first place*. That incident left me feeling shaky and upset.
7. Another incident occurred at the work Christmas party on 12 December 2006. The Christmas party was a small gathering of approximately 20 staff members. At the Christmas party, Terry Stapleton was making a speech and giving out awards to most of the staff members.
8. Shannon May, a work colleague, said to the gathering during the handing out of awards, *Clara hasn't received an award yet, what about her?* I remember Mr Stapleton replying *what does Clara expect – the most time slacking off award?* I recall nearly everyone at the party hearing the comment and laughing.
9. That night I came home and felt very depressed. I wasn't able to sleep and felt worthless. I also had suicidal thoughts.

10. I did request a transfer to the Dandenong Post Shop on 8 November 2006 so I could be closer to my son's school. I did not obtain the transfer.
11. I was admitted to hospital on 2 January 2007 for treatment for major depression. I am currently not able to work. I still suffer from depression.

DATED this 16th day of March 2008

.....(sgd).....
Clara Bennett

T4

Professor Kocks MB.BSFRANZCP
Consultant Psychiatrist

20 February 2007

PRIVATE AND CONFIDENTIAL

Dear Sir/Madam

Re: Clara Bennett
Date of Birth: 12 December 1968
Date of Injury: 13 December 2006

I saw Ms Bennett on 19 February 2007 at the request of Australia Post. I had regard to Dr Fanta's report dated 20 January 2007.

Clara Bennett is a 39 year old Post Office shop assistant. She was born in Poland and moved to Australia when she was 15. Her English is very good, although she does present with a strong accent.

Employment history

Ms Bennett began her current employment in December of 2005. She said that her workplace has always been a very stressful environment and she felt overwhelmed since her first day. She said she felt like none of the employees were welcoming and they would not help her with work she did not understand or did not know how to do.

Ms Bennett recalls an incident in about July 2006 where she had to stop serving customers and leave the counter to get some change from the back room. She said that her manager, Terry Stapleton, shouted at her to get back to serving customers. This incident seems to be very clear in her mind and she said that it left her feeling very upset. She remembers trying not to be teary in front of the customers and trying to *pull herself back together*.

Ms Bennett mentioned that she tried to get a transfer to the Dandenong Post Shop around November 2006. This request was not granted. She said that she felt disappointed with the outcome but was not surprised because she did not believe that Australia Post looks after its workers or helps its workers.

Ms Bennett attended her work Christmas party in December 2006. She said that at the party she was victimised and put-down by her manager. She said that comments were made in front of the other staff members about her performance and she was *made fun of*. She said the events made her very upset and depressed.

After the Christmas party, she felt as if she could not resume work. She said her mood was very low and that she had a loss of enjoyment of life.

I asked her if she could summarise her feelings about her workplace and she replied that her workplace made no attempt to help her cope with her position and actively made her feel worthless and depressed. She said she wished she had never started working at the Post Shop and blames her current condition on her experiences working for Australia Post.

Personal History and Background

Ms Bennett separated from her husband in January 2006 and they remain separated. She said that there were many causes of their separation but that the stress on their relationship in raising their now 8 year old autistic son, Zim, was a factor. She said that Mr Bennett had very different views on how to treat and manage Zim's autism and they used to argue frequently about this issue.

Ms Bennett said she felt very sad about her separation and overwhelmed at the prospect of taking on the primary care of Zim. She said that she had gone to her local GP around July 2006 where she talked about her stresses at work and at home. She was not prescribed any medication.

Zim attends a special school suited to children with severe autism. She said that Zim needs constant care and can be prone to outbursts and tantrums. Since Zim's birth, she has attended support sessions for parents who have children with autism, in order to gain some useful coping mechanisms and to mingle with parents in similar situations.

She says she coped reasonably well with caring for Zim before she was diagnosed with depression. She said she used to feel stressed and tired sometimes if Zim was going through a particularly bad period.

Her husband moved out of the family home in November 2006 and sees Zim on most weekends. Since December 2006, her mother has been living with her and Zim in the family home. She said that she finds it hard to care for Zim, now that her husband is not living with them and now that she is depressed. Her mother has taken over primary care of Zim. Ms Bennett helps out when she feels able. Ms Bennett was admitted to hospital for treatment in on 2 January 2007 and was discharged on 21 January 2007. She is currently taking Lexapro

Diagnosis and Opinion

Ms Bennett is suffering from a major depressive disorder. She is currently clinically depressed.

You have asked me to comment on the causative factors of the major depression. Taking into account Ms Bennett's history, I am of the opinion that a number of factors caused her illness. I believe Ms Bennett was very unhappy at the workplace and that her general ostracism, culminating in the Christmas party event, was a causative factor in the development of her illness.

However, the separation with her husband clearly was a stressful and sad time in her life. The separation led to Ms Bennett taking on primary responsibility for Zim

in November 2006. I believe this added burden was the major factor in the development of her illness. Her request for a work transfer so that she could be closer to her son was rejected at this time, and this would have had added to the development of her illness.

My clinical opinion is that the issues which were not work related were probably more stressful and more likely to cause mental illness than the work related events.

Should you require any further information, please do not hesitate to contact me.

Yours sincerely

Professor Kooks

T5

**DR FANTA BSC FRANZCP
PSYCHIATRIST**

20 January 2007

PRIVATE AND CONFIDENTIAL

Dear Sir/Madam

Re: Clara Bennett

Date of Birth: 12 December 1968

Date of Injury: 13 December 2006

I saw the abovenamed on 20 January 2007 with regard to her Australia Post claim.

I am Ms Bennett's treating psychiatrist and have treated her since 15 December 2006.

Ms Bennett gave no history of psychiatric illness or treatment. Over her recent past, Ms Bennett has experienced some significant life stressors. She has an eight year old autistic son who needs constant care and attends a special school in Dandenong. She also separated from her husband in January 2006. They were separated but living together from January until November 2006. In November her husband moved to a flat in a nearby suburb. Ms Bennett has had the support of her mother throughout these life stressors.

Ms Bennett reports that from her first day at the Moonee Ponds Post Office, she felt anxious and stressed. She felt she did not receive adequate training to be comfortable in the position. She felt that the staff and her manager discouraged her from asking too many questions, as this slowed down the operation of the office.

She says she felt frustrated at her workplace and felt intimidated by her boss, Terry Stapleton. She says that there was an incident in July 2006 when Mr Stapleton shouted at her because she wasn't at the counter serving customers. She said that this made her feel highly frustrated and helpless.

Events culminated at the work Christmas party where Ms Bennett found herself under attack by Mr Stapleton. Mr Stapleton publicly humiliated her in front of the other staff by making slanderous remarks regarding her work performance. Ms Bennett was flabbergasted at the mean-spirited remarks and could not see how she could continue working in such an environment.

After the Christmas party, Ms Bennett had difficulty sleeping, low energy and a loss of enjoyment of life.

Ms Bennett applied for a transfer to the Dandenong Post Shop in November 2006. She recalled being disappointed at the rejection of her request but was not particularly surprised at the outcome.

Diagnosis

Ms Bennet suffers and is currently suffering from major depressive disorder. She was admitted to the Dandenong Hospital from 2 January 2007 until 21 January 2007. I saw her on several occasions during this period and commenced cognitive behavioural therapy. I also prescribed Lexapro.

I believe the main cause of her illness is her stressful and soulless workplace and particularly the events of the 2006 Christmas party. I believe that stressors surrounding Ms Bennett's separation and her son, Zim, did not play any significant role in Ms Bennett's illness. I can find no pre-existing or past psychiatric condition.

Yours sincerely

Dr E. Fanta