PURSUANT TO S 160(1)(b) ACCIDENT COMPENSATION ACT 2001 THERE IS A SUPPRESSION ORDER FORBIDDING PUBLICATION OF THE APPELLANT'S NAME AND ANY DETAILS THAT MIGHT IDENTIFY THE APPELLANT

IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

[2023] NZACC 011 **ACR 155/22 and 181/22**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	KC Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing:	16 January 2023
Held at:	Wellington/Te Whanganui-a-Tara by AVL
Appearances:	The Appellant is self-represented F Becroft for the Accident Compensation Corporation
Judgment:	27 January 2023

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Date of mental injury - s 36(1); claim for rehabilitation assistance outside New Zealand – s 128; and claim for cover for mental injury, ss 20 and 25, Accident Compensation Act 2001 ("the Act")]

Introduction

[1] The appellant has filed the following appeals:

(a) Appeal 155/22 is against a review decision dated 29 August 2022. The Reviewer dismissed an application for review of the Corporation's decision dated 23 May 2022 advising that the date of the appellant's mental injury was 26 May 2015.

(b) Appeal 181/22 is against two review decisions dated 6 October 2022. The Reviewer dismissed an application for review of:

(1) the Corporation's three decisions dated 20 May 2022 declining the appellant's applications for rehabilitation assistance; and

(2) the Corporation's decision dated 1 August 2022 declining additional cover for migraines and headaches as mental injuries.

Background

[2] The appellant was born overseas and obtained medical qualifications there. She came to New Zealand in 2011 and worked in a city hospital while her husband worked in a different centre.

[3] On 21 May 2014, Dr Dhivyan Vishundan recorded that the appellant was unfit for work for three days.

[4] On 2 July 2014, Dr David Chee recorded that the appellant was unfit for work for two days.

[5] On 22 July 2014, Dr Alia Al-Beer, GP, recorded that the appellant had reported having had diarrhoea and also migraines that started three months before. Dr Al-Beer diagnosed migraines. Dr Al-Beer noted that the appellant was "a bit stressed with personal issues", and that she was unfit for work for two days.

[6] On 10 September 2014, Dr Christina Page, Psychiatrist, provided a psychiatric assessment of the appellant. Dr Page recorded that the appellant noted that she and her husband had been having difficulties coping with a long-distance relationship since March 2014, she had been very stressed and concerned about her marriage, and there had been conflicts and fights. Dr Page noted that the appellant had mentioned no history of physical or psychiatric problems but reported "stress headaches" in the last four months. Dr Page also recorded feedback from the appellant's work colleagues noting significant concerns about her work ability and competence. Dr Page advised that the appellant did not currently meet the criteria for any DSM 5 diagnosis, but it was possible that she may have undisclosed symptoms, and a

psychotic process could not be ruled out. Dr Page recommended that the appellant continue to work only under close supervision and that regular updates about her progress be obtained from Dr Bradfield, Clinical Director Anaesthesia. Dr Page noted that further psychiatric assessment could be sought as appropriate.

[7] Around February 2015, the appellant resigned from her employment, her marriage ended and she moved to live in Australia.

[8] From 26 May 2015, the appellant received treatment from Ms Maria Polymeneas, Psychologist. On 23 October 2015, Ms Polymeneas reported:

> Thank you for referring [the appellant] to me for assistance with her depression and anxiety relating to her marriage breakdown and the issues she had with her place of employment in New Zealand.
>
> I have seen her on 5 occasions to date and believe that she would benefit from another 5 sessions.
>
> Her depression and anxiety is decreasing as she is starting to understand the reasons she reached this state. Her NZ environment appears to have been toxic with little support from management and mentors while she was away from her husband for extended periods of time. In addition, his mood affected her and his nature where he blamed her for his lack of success with exams also affected her. …
>
> She is still looking at the legal nature of her leaving her place of employment in NZ and I believe that her mood will improve once this has been finalized. …

[9] On 22 August 2018, Ms Polymeneas noted that she had continued to treat the appellant, and that the incidents that resulted her in having to leave her workplace were traumatic and had still not achieved a resolution.

[10] On 8 March 2019, the appellant filed a sensitive injury claim said to relate to an assault on 8 March 2014 while she lived in New Zealand.

[11] On 9 May 2019, the Corporation issued a preliminary decision indicating that it was unable, at that stage, to approve the claim.

[12] The appellant applied to review that decision. In her review application, she stated, amongst other things:

> ... I was shouted at, pushed, bullied, sexually insulted/harassed, threatened, things were thrown at me, walls were punched next to me, I was accused of infidelity and foul/degrading language was used on me.
>
> I have not needed a regular GP prior to 2014... These matters affected my health, wellbeing, work, training and finances. I had to leave my home in New Zealand under those circumstances my ... training has been significantly affected. I would have completed my ... training by latest, early 2017. I was very affected by these traumatic circumstances. ...
>
> I am still undergoing rehabilitation for my life, work, training, finances and wellbeing. ...
>
> I need compensation and rehabilitation for my health, wellbeing, life and (specialist) training that has undergone devastation.

[13] Along with the claim, there was evidence of communications between the appellant and her former health employer which showed significant relationship/ employment issues between them during 2014.

[14] On 2 September 2019, the Corporation wrote to the appellant to explain the nature of the assessment being undertaken. The letter advised that the assessment was for mental injury caused by sexual abuse and would be undertaken by an experienced clinical psychiatrist. The letter added that the only events that the assessment would be able to look at for injury under the sensitive claim were sexual abuse events, so it was important to be clear on what these were.

[15] Subsequently, the appellant indicated that she preferred to be assessed by a GP or a counsellor rather than a psychiatrist. The Corporation then arranged an assessment with a psychologist.

[16] On 30 October 2019, a psychological assessment was completed by Ms Kathryn McLennan, Clinical Psychologist, and Mr Matthew Manderson, Neuropsychologist. The assessment noted the appellant felt she had two different claims, a work-related claim and a sensitive claim. The report described the appellant's working situation in late 2013/2014, as reported by her. She was completing her training. Her husband was living in a different town and she was coping with that and other life hurdles. She requested annual leave so that she could spend more time with her husband. This was declined. She requested a transfer which was also declined. The appellant also described workplace bullying and

sexual harassment. The appellant believed that her husband was contacted by work colleagues and informed that she was cheating on him. The appellant advised that at this stage her husband became aggressive towards her and became very rough during sex. The appellant noted that she did not consent to the level of violence and derogatory comments used. The assessors advised:

> In the assessment however [the appellant] indicated that the context within which this [sensitive claim] occurred in (e.g., work-related issues) was substantially more significant and impactful on her current functioning. [She] described experience of workplace bullying, and sexual harassment, and felt that the domestic abuse she experienced was a direct result of the actions of her consultants and mentor at work. On top of the issues described at work and at home, [she] was also grieving the loss of her grandmother, who was her closest support and relative.
>
> From the interview, I gather that [the appellant] has been reviewed by the Medical Council, assessed by a Psychiatrist as part of this review, and de-registered by the NZCA, though I am not privy to the details of these reviews. She is currently going through legal avenues to re-establish her career, and understandably these processes have caused her some distress, particularly as she is unsure where she will live in the near future. Unfortunately without having access to the results of these reviews, and without completed questionnaires such as the DAPS and PAI, I am somewhat limited in terms of my ability to formulate the whole clinical picture, and thereby provide appropriate recommendations.
>
> In terms of the sensitive claim, [the appellant's] description is consistent with sexual violation under the crimes act. She reports that while she may have consented to sexual intercourse with her husband she did not consent to the level of violence, aggression and profanity used. She describes feeling intimidated and traumatised by this experience, and described the sexual abuse as inconsistent with her views on sex and marriage, and quite inconsistent with their relationship prior to 2014.
>
> [The appellant] has undoubtedly been affected by these events (both work-related and sexual abuse), and she describes a significant change in her circumstances, and wellbeing as a result of these experiences. Based on the information provided however, it is difficult to establish a diagnosable mental injury arising from sexual abuse. Based on the current assessment there is limited clinical evidence to suggest she is currently experiencing symptoms related to a Post-Traumatic Stress Disorder; and though there were some elevations on the DASS-21, there were few reported symptoms or clinical features of either a Major Depressive Disorder or Anxiety Disorder, which we might expect to see in someone seeking treatment after sexual abuse.

[17] The appellant subsequently provided further information, including a psychologist's letter from 23 October 2015, further email correspondence, medical certificates and GP notes from 2014, and asked that the information be made available to the assessors so that they could reassess her claim.

[18] On 20 November 2019, Ms McLennan and Mr Manderson reported again after receiving the further information provided by the appellant. The assessors noted a letter from a psychologist that indicated that she was referred for support with depression and anxiety in 2015, which appeared to relate to both her work situation and her marriage breakdown. The assessors noted that it was still difficult to tell the extent to which sexual abuse was a factor in the development of depression and anxiety.

[19] On 16 December 2019, Ms Bethany Price, Registered Psychologist, reported that the appellant had been referred by her GP for depression and anxiety and had attended nine sessions between July and December 2019. The report noted:

> At [the appellant's] most recent consultation on 05/12/19, she reported "sexual issues", including "abuse" and "harassment" in relation to her workplace and her personal life, both in New Zealand in 2014, and noted she has submitted a sexual abuse claim. She reported being "traumatised" and perceives the reported abuse to have impacted her mental health. …

[20] On the same day, Ms Price forwarded a longer report to the Corporation. In this report, Ms Price noted that, in both July and November 2019, the results of a depression and anxiety stress scale questionnaire (DASS-21) yielded scores on both occasions indicating severe depression.

[21] On 21 January 2020, the Corporation issued a decision declining the mental injury claim on the basis the evidence received indicated that the events experienced by the appellant did not cause a mental injury.

[22] On 6 February 2020, a review application was filed against the Corporation's decision. There were, subsequently, a number of communications from the appellant which detailed concerns in relation to the reports of Ms McLennan and Mr Manderson.

[23] On 6 April 2020, Dr Olivia Lee, Consultant Psychiatrist, reported, having assessed the appellant in person. Dr Lee diagnosed a major depressive disorder:

> In my opinion, given the information I have and reported onset of symptoms, I am of the opinion that the cause of [the appellant's] symptoms were due to the interpersonal relationship breakdown that occurred in New Zealand that she

> reported but declined to elaborate. It would appear that whatever occurred in New Zealand was hugely significant. … I would make a diagnosis of major depression commencing from approximately 2015. … This is a new condition as I could list no prior psychiatric history before 2015. In my opinion the conditions started from approximately 2015 but had been exacerbated by her experiences through the different states health departments that she had worked in due to the repeated setbacks.

[24] On 17 June 2020, the review of the Corporation's decision of 21 January 2020 took place. The appellant did not attend. On 16 July 2020, the Reviewer dismissed the review application as she was not satisfied that the appellant had suffered a mental injury caused by a Schedule 3 criminal act. The appellant lodged an appeal against the Reviewer's decision.

[25] On 11 April 2021, Dr Turner, Psychiatrist, reported, following an assessment of the appellant undertaken by telephone. Dr Turner related a history of the appellant performing extremely well after graduating from medical school and working in Emergency Medicine in 2008. Then followed specialty training, and her end of term assessment over the period from January to April 2018 recorded that she met the expectations for her level of training. As to diagnosis, Dr Turner said:

> The main differential diagnosis would be between a delusional disorder, characterised by delusions that come to dominate the person's life, in the relative absence of other psychotic symptoms, such as hallucinations, and with relative preservation of the personality. In [the appellant's] case, she has developed a pre-occupational with unconsented communications between people in Auckland from 2014, that continued to affect her, but she has also developed a significant change in her character and lifestyle and her highly reduced functioning would be more in keeping with the negative symptoms seen in schizophrenia.
>
> The other main differential diagnosis is of a major depressive disorder, severe with psychotic features, but this would be unusual developing de novo and is more usually seen as part of an established bipolar illness; however, [the appellant] has had no previous medical or depressive episodes.
>
> Given the longstanding nature of her illness, it is unclear whether she developed delusional beliefs first and then became depressed or whether depression was present from the outset of her illness.
>
> I did not think she had PTSD, but considered her to have considerable anxiety in the context of her depression and disappointments, such as job rejections and loss of career and marriage.
>
> Overall, I think she currently has significant symptoms of psychosis and depression and diagnosis of major depressive disorder, severe with psychotic features could be given. …

> I do not think that [the appellant] described any events that would be clearly consistent with events described in Schedule 3 of the Act, either at home or at work. …
>
> I have found no evidence that her psychotic illness was a result of anything done to her by another person.

[26] Between 8 June 2021 and 3 August 2021, the appellant attended at the clinic of Ms Pamela Woods, Psychologist. Ms Woods noted the following:

> Axis one diagnosed symptoms:
>
> Low mood: worried, concerned, sad, indignant, angry, pessimistic, fear of becoming "a bad manipulative person"
>
> Anxiety symptoms consistent with GAD (General Anxiety Disorder)
>
> Evidence of some PTSD symptomology, including having strong negative beliefs about other people or national systems, no one can be trusted, triggered with feelings of being unsafe; irritable behaviour, sleep disturbance.

[27] On 22 August 2021, Mr Thuya Sithu, Psychologist, noted:

> [The appellant] was sexually assaulted and abused by her former partner while she was working as a medical professional in New Zealand in 2014. She suffered from intense anxiety, depressive moods. This can be stated as she suffered from PTSD. ...

[28] In a further report on 9 November 2021, Mr Thuya Sithu said (*verbatim*):

> The history has been obtained from [the appellant]. … [The appellant] was sexually abused and sexually harassed at her workplace and personal home life in New Zealand in 2014... These events are consistent with sexual violation under Schedule 3 of the Crimes Act. She has suffered Post Traumatic Stress Disorder and Depression because of these events. These damaging events appear to have been encouraged by some of her anaesthesia management and hierarchy in New Zealand at that time. Prior to these events, she was planning to live and work in New Zealand long term as well as have children and start her own family there.
>
> I understand she also suffers from physical pain such as neck strain/sprain and tension headaches. Studies indicate when one suffers from stress, anxiety, depressive moods and overwhelmed physiological reactions, pain can be triggered.
>
> She had to leave her work and home in New Zealand under duress due to these events. As a result, she has suffered consequences such as homelessness, unemployment, financial losses, social isolation, relationship losses and specialization obstructions have impacted [her] significantly. Despite all this difficult circumstances, [she] has been a good citizen and a good doctor, with

> no patient complaints or procedural complications, throughout her medical career in both New Zealand and Australia.
>
> She is still currently unemployed, has large debts and is facing significant financial damages with an extremely bleak future ahead. She needs assistance with a good return to work plan incorporating her medical work rehabilitation, assistance with her own home acquisition and good financial compensation for her significant financial losses

[29] On 4 January 2022, Dr Kavita Kanodia, GP, completed a medical certificate on behalf of the appellant, noting her symptoms of feeling "very low, depressed, anxious, stressed, going through PTSD not coping, poor concentration, impaired thinking, disturbed sleep", with chronic cough and tension headaches.

[30] On 27 April 2022, following an appeal hearing, Judge McGuire allowed the appellant's appeal against the Reviewer's decision of 16 July 2020, and granted the appellant cover for mental injury suffered as a result of sexual abuse.[1]

[31] On 4 May 2022, the Corporation confirmed cover for Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MJD). The Corporation stated:

> Please note that we consider the date you first received treatment for your mental injury to be your date of injury. In your case the date of your injury has been determined to be 8/3/2014.

[32] On 4 May 2022, the appellant claimed, "ACC New Zealand Costs and Compensations", and listed her current assistance requirements as follows:

> 1. Adequate and urgent financial compensation for my very significant losses. I also have very large extensive debts now.
>
> 2. Assistance to get a large home for myself with enough space and suitable modifications.
>
> 3. Good assistance with my medical specialist training/work incorporating my recovery. Assistance to acquire a suitable training/work registrar position.
>
> 4. Wellbeing and health improvement assistance such as free yoga/remedial massage sessions.
>
> 5. Housework cleaning assistance.
>
> 6. Assistance to acquire my own kindly suitable committed relationship and my own children since my ovums are aging rapidly.

---

1 *KC v Accident Compensation Corporation* [2022] NZACC 67.

> 7. Stop the widespread defamation and technological issues.

[33] On 5 May 2022, the appellant emailed the Corporation as follows:

> Also in regard to the compensations I want to claim, such as weekly payments backdated, interest, lump sum compensation, as well as all other assistance, do my entitlements for compensation begin from the 8/3/2014?

[34] On 20 May 2022, the Corporation issued decisions declining the appellant's application for housework/cleaning assistance, and well-being and health improvement assistance such as free yoga/remedial massage sessions, on the basis that the Corporation was unable to pay for costs incurred outside of New Zealand for rehabilitation. On the same day, the Corporation issued a decision declining assistance to get a large home with enough space and suitable modifications. This was on the basis that there was no statutory provision for the Corporation to fund the purchase of a place of residence; and, because housing modifications were considered as part of social rehabilitation, the Corporation was unable to pay for costs incurred outside of New Zealand for rehabilitation. The appellant applied for a review of the Corporation's decisions.

[35] In an email dated 20 May 2022, the Corporation stated:

> We are currently investigating your eligibility for weekly compensation. This requires review of your date of accident to confirm it is the correct date. ACC defines the date of accident for a mental injury claim to be the date you first received treatment for your covered injuries and is based on the medical notes and reports available at the time. Once we have confirmed the correct date of accident, we will need to collect your IRD records for a year prior to your date of accident in order to confirm that you were employed and working at the date of accident and therefore potentially eligible for weekly compensation.
>
> Our psychology advisors and technical specialists have been asked to review the available medical notes and reports on file in order to confirm your date of accident. …

[36] On 23 May 2022, the Corporation issued a decision determining that the date of the appellant's injury was changed from 8 March 2019 to 26 May 2015, this being the date at which she first sought treatment for the mental injury caused by her accident. The appellant applied for a review of that decision and claimed that she first received treatment for her covered in injury in 2014.

[37] In mid-2022, the appellant requested additional cover for migraine/tension headaches caused by the March 2014 injury.

[38] On 25 July 2022, Dr Peter Thakurdas, Medical Advisor, advised that there was insufficient support for migraines and/or tension headaches' cover. Dr Thakurdas noted that these were typically non-specific, multifactorial symptoms rather than injury diagnoses *per se*. For the Corporation to consider accepting them would ordinarily require a primary covered traumatic physical injury diagnosis of which these might be specific symptoms as a result of the covered physical injury diagnosis.

[39] On 1 August 2022, on the basis of Dr Thakurdas' advice, the Corporation issued a decision declining additional cover for migraines and tension headaches. The appellant applied for a review of this decision.

[40] On 29 August 2022, a Reviewer dismissed an application for review of the Corporation's decision dated 23 May 2022 advising that the date of the appellant's mental injury was 26 May 2015. The Reviewer found that there was insufficient evidence to prove that a date earlier than 26 May 2015 was the date of the appellant's mental injury. The appellant lodged an appeal against this decision.

[41] On 12 September 2022, the Corporation declined the appellant's application for weekly compensation on the basis that she was not working and earning income in New Zealand at the date of her accident on 26 May 2015.

[42] On 20 September 2022, Dr Mark Floyd, Occupational Physician, noted the appellant's report of a history of tension headaches and migraines since 2014, related to stress at the time.

[43] On 6 October 2022, a Reviewer dismissed the appellant's review of the Corporation's decision of 20 May 2022 declining the appellant's applications for rehabilitation assistance. This was on the basis that the Act barred the Corporation from paying any rehabilitation costs incurred outside of New Zealand.

[44] On 6 October 2022, the same Reviewer dismissed the appellant's review of the Corporation's decision of 1 August 2022 declining additional cover for migraines and tension headaches. This was on the basis that the available medical reports made it clear that, notwithstanding the close connection in time between the event in March 2014 and the onset of new migraine and headache symptoms, the event did not cause a separate and distinct mental injury of migraines and/or tension headaches.

[45] On 22 November 2022, Ms Penny Louw, Psychologist & Clinical Advice Manager, reported as follows:

> I note that the client reported a range of psychosocial and work-related stressors from early 2014. In addition to the sexual abuse, non-injury contributors to stress included separation from her husband due to work demands, verbal abuse by her husband, bullying, escalating conflict and hostility in the workplace, and the illness and death of a family member (her grandmother); and later also experiences such as the Medical Council investigation and loss of role, relocating to Australia, unemployment, financial strain and legal proceedings. All of these factors would have contributed significantly to stress. It is therefore difficult to single out the sexual abuse events as a significant causal factor and the development or maintenance of stress that may in turn have contributed to headache or migraine.
>
> Tension headache and migraine are nonspecific, multifactorial and ubiquitous symptoms that are not included in the diagnostic criteria for either post-traumatic stress disorder or major depressive disorder. They are therefore not considered to be signs or symptoms of these disorders. As such, their presence is not an indication that the covered injuries were in evidence in early 2014.
>
> In this case, multiple sources of psychosocial stress are evident in the medical records since 2014. It is therefore not possible to identify headache or migraine as a specific function (or direct consequence) of either the sexual abuse or the associated covered mental injuries.

[46] On 29 December 2022, Dr Surjit Randhawa, GP, provided a medical opinion that the appellant's tension headaches/migraines/neck sprain in 2014 were substantially directly caused by the sexual/physical assault on her, that Dr Page gave the appellant treatment for psychotic depression which is a component of MDD and Dr Bradford activated processes/systems in 2014, and that the appellant is in need of assistance arising out of her injuries.

Date of the appellant's mental injury (Appeal 155/22)

Relevant law

[47] Section 36(1) of the Act provides:

> The date on which a person suffers mental injury in the circumstances described in section 21 or 21B is the date on which the person first receives treatment for that mental injury as that mental injury.

[48] Section 6 provides that "treatment" includes physical rehabilitation, cognitive rehabilitation, and an examination for the purpose of providing a certificate including the provision of the certificate.

[49] In *A v Roman Catholic Archdiocese of Wellington*,[2] Frater J stated:

> [533] … where, as here, treatment was sought (at different points in time) in relation to distinct and separate criminal acts, the issue of coverage in respect of mental injury must be assessed at each distinct stage, in light of the relevant legislative provisions in operation at that time. Qualification for cover can hardly be determined in advance, in relation to abuse which has not yet been disclosed
>
> [534] … At the time the diagnosis of post-traumatic stress disorder was made in this case, the primary focus of the plaintiff's counselling was on parenting issues and crisis management. Although some mention was made at that time of her sexual abuse, the treatment was not "for" the sexual abuse in any specific sense; it was for parenting issues. This distinction is critical, given that, for the purposes of s 21A (in line with the parallel requirement in s 36 of the 2001 Act and s 44 of the 1998 Act) the treatment must be "treatment for that mental injury as that mental injury" – in other words, in respect of the mental injury, which has arisen as a result of the specified criminal act.
>
> …
>
> [539] The allegation of sexual abuse by her grandfather was first mentioned to Letitia Allan, during a weekend in the bush. At that time, the plaintiff had been seeing Ms Allan for counselling for postnatal depression. However, the support provided at that time was not specifically tailored to sexual abuse; the therapy primarily related to the provision of skills to cope with parental pressures. It can not be described as treatment for the effects of sexual abuse specifically.

[50] In *XXXXXXX*,[3] Beattie DCJ stated:

> [32] This Court can take cognizance of the fact that depression, sufficient to be identified as a mental injury within the meaning of the Act, can arise from a myriad of causes, many of which would not be from causes which could be a

---

2 *A v Roman Catholic Archdiocese of Wellington* HC [2007] 1 NZLR 536.

3 *XXXXXXX v Accident Compensation Corporation* [2009] NZACC 163.

> covered personal injury, and it is for this reason that I find that Section 36 must have as a pre-requisite that the treating health professional has knowledge of the nature and the cause of the mental injury which that health professional is being asked to treat.

Discussion

[51] The issue here is whether the date assigned by the Corporation for the appellant's mental injury, namely, 26 May 2015, is correct. The Act requires that the date of the appellant's mental injury is the date on which she first received treatment for her mental injury (PTSD and MJD) as that mental injury.[4] The treatment which was first received by the appellant must have been specifically tailored to her PTSD and MJD.[5] The treating health professional must have had knowledge of the appellant's PTSD and MJD which the health professional was being asked to treat.[6]

[52] The appellant submits as follows:

(a) The correct date of injury is either 22 July 2014 or 22 August 2014. This was when she sought treatment for a mental injury. On the former date, she received treatment from Dr Al-Beer including a clinical examination, a referral to a neurologist, and a sick certificate for the clinical diagnosis of migraines/stress headaches. On the latter date, she received treatment from Dr Page, who recommended that the appellant continue to work only under close supervision and that regular updates about her progress be obtained from Dr Bradfield, Clinical Director Anaesthesia. Dr Page noted that further psychiatric assessment could be sought as appropriate. The Oxford Handbook of Clinical Medicine notes that stress headaches, tension headaches and migraines are clinical diagnoses, and also early symptoms of PTSD and generalised anxiety disorder. Dr Al-Beer's medical notes recorded no past history of headaches and recorded that she was "a bit stressed" with personal issues.

---

4 See section 36(1).
5 See n2, at paragraph [539].
6 See n3, at paragraph [32].

(b) Medical documents show that she had 10 weeks of sick leave in 2014, which was very unusual for her, and which demonstrates that she was badly harmed.

(c) On 11 June 2014 and on a later date, she received mental rehabilitation from Ms Turner, a general counsellor in Auckland, through the employee assistance programme.

(d) In August 2014, she received treatment from Dr Page for a possible psychotic process which is included under the very broad diagnosis of MDD for which she has cover. Dr Page recorded that the appellant was stressed and concerned about relationship issues, that she had mentioned no history of physical or psychiatric problems, and that she had had stress headaches in the previous four months.

[53] This Court acknowledges the appellant's submissions. However, the Court notes the following considerations.

[54] First, the appellant has not established that, prior to 26 May 2015, she received treatment for her mental injuries (PTSD and MJD) as those mental injuries. There is no reference in the medical reports of Dr Al-Beer, Dr Page, and the doctors who certified sick leave, to treatment for PTSD and MJD as those mental injuries. There is no documentation in support of any "mental rehabilitation" from Ms Turner, let alone treatment by her for PTSD and MJD as those mental injuries. There is no indication that any treatment was specifically tailored to the appellant's PTSD and MJD as those mental injuries.

[55] Second, the first (albeit limited) reference to treatment for the appellant's PTSD and MJD as those mental injuries occurs in a letter from Ms Polymeneas, Psychologist, that she had treated the appellant from 26 May 2015 for "assistance with her depression and anxiety relating to her marriage breakdown".

[56] Third, Dr Lee, Consultant Psychiatrist, having assessed the appellant in person in April 2020, diagnosed major depression commencing from approximately 2015,

and noted that this was a new condition as she could list no prior psychiatric history before 2015.

[57] In light of the above evidence, this Court concludes that the date assigned by the Corporation for the appellant's mental injury, namely, 26 May 2015, is correct.

The appellant's claims for rehabilitative assistance (Appeal 181/22)

Relevant law

[58] Section 128 of the Act provides:

> The Corporation must not pay for costs incurred outside New Zealand for any rehabilitation unless section 129 applies or regulations made under this Act require such a payment.[7]

[59] In *Siebers*,[8] Judge Beattie (in relation to the equivalent provision under the Accident Insurance Act 1998) stated:

> [23] The provisions of s.130 and Regulation 18 indicate that it was the clear determination of the legislature to not allow for overseas treatment costs to be part of the accident compensation regime, even in circumstances where, as in the case of this appellant, there is not available within New Zealand the type of treatment that the claimant required to alleviate the pain or treat the injury that has been suffered.
>
> [24] In some quarters this situation, as is highlighted up by the facts of the present case, might be considered to identify an anomaly in the legislation but this is not a matter which the Court can cure by judicial activism and intervention. The Court cannot create some discretionary power for the respondent to exercise where clearly the Act does not allow for any such discretion.
>
> [25] Accordingly then, whilst this appellant on the face of it has obtained less than satisfactory treatment within New Zealand for her injuries suffered here in New Zealand and where those injuries were not able to be treated here, apparently because of a lack of expertise and facilities, nevertheless she cannot obtain recompense for the costs that she has incurred in having that treatment carried out overseas.

---

7 Section 129 provides for the payment of attendant care outside of New Zealand.

8 *Siebers v Accident Compensation Corporation* [2001] NZACC 215.

[60] In *Wacker*,[9] Judge Barber stated:

> [29] … s.128 of the Act expressly prohibits ACC from meeting the costs for the overseas travel and treatment as referred to above. I agree with Ms Becroft that the wording and prohibition contained in s.128 must include costs which are ancillary to treatment.

Discussion

[61] The issue in this case is whether the appellant is entitled to rehabilitative assistance in Australia in relation to her covered injuries. The Act provides that, other than payment of attendant care (not applicable to the appellant), the Corporation must not pay for costs incurred outside New Zealand for any rehabilitation.[10] The Court has no discretion to allow payment to the appellant for rehabilitation costs incurred outside New Zealand, even where she cannot be treated in New Zealand for her injuries.[11]

[62] The appellant submits:

(a) Prior to leaving New Zealand she had an earning capacity of up to $500,000 as a doctor, and had almost finished her training. However, because of all the traumatic events she experienced in New Zealand, she was forced to leave like a refugee. She is still unemployed because of her covered mental injuries, and as such, is in large amounts of debt. The financial and social consequences have been dire. Every part of her life has been affected. She has received no support from the Corporation, nor has she been told by it what support she is entitled to.

(b) In relation to the wellbeing support requested, the appellant believes in an holistic approach to healthcare. Yoga and remedial massages improve her wellbeing by relieving the tension in her muscles and relieving other symptoms associated with her mental injuries.

(c) In relation to the appellant's request for a house with modifications, housing is a basic human right. It would be beneficial for her

---

9 *Wacker v Accident Compensation Corporation* [2011] NZACC 186. See also *Venn v Accident Compensation Corporation* [2015] NZACC 201, at paragraph [9].

10 Section 128.

11 *Siebers v Accident Compensation Corporation* [2001] NZACC 215, at paragraphs [23]-[25].

rehabilitation if she could move out of the family home and become self-sufficient. She also requires a large home as she needs space to breathe and not feel restricted.

(d) In relation to the appellant's request for housework assistance, her covered mental injuries prevent her from doing housework. As such, her elderly mother currently does this for her, but she believes that this is unfair.

[63] This Court acknowledges the appellant's submissions, and accepts that the rehabilitation assistance she seeks in Australia may well be of benefit to her. However, the Court refers to the plain meaning and effect of the statutory provision which prevents the Corporation from paying for her costs incurred outside New Zealand for rehabilitation. There is also no provision in the Act requiring the Corporation to pay the appellant for the purchase of a house.

The appellant's claim for cover for migraines and headaches as a mental injury (Appeal 181/22)

Relevant law

[64] Section 20(2)(a) of the Act provides that a person has cover for a personal injury which is caused by an accident. Section 25(3) notes that the fact that a person has suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident. Section 26(1)(d) provides that personal injury includes a mental injury suffered by a person in circumstances described in section 21. Section 27 defines mental injury as a clinically significant behavioural, cognitive or psychological dysfunction. Section 21 provides for cover for mental injury caused by certain criminal acts.

[65] In *Ambros*,[12] the Court of Appeal stated the following in relation to causation:

> [65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and

[12] *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

> scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense
>
> …
>
> [67] The different methodology used under the legal method means that a court's assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty -- see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture … Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence
>
> …
>
> [70] … The generous and unniggardly approach referred to *Harrild* may, however, support the drawing of a robust inference in individual cases. It must, however, always been borne in mind that there must be sufficient evidence pointing to proof of causation, on the balance of probabilities, for a Court to draw even a robust inference on causation. Risk of causation does not suffice.

[66] In *Bloomfield*,[13] Judge Joyce KC stated:

> [18] In this case, and when all is rendered down, the extension of cover claims pursued on appeal by Mr Bloomfield rest mainly on the foundation of a temporal connection argument. On occasion, a temporal connection may be of significance in the context of other, helpful to a claimant, evidence. But the mere presence of such a connection will usually do no more than raise the *post hoc ergo propter hoc* fallacy.

[67] In *Stewart*,[14] Judge Barber stated:

> [33] The cases consistently highlight that the question of causation cannot be determined by a matter of supposition. There must be medical evidence to assist the respondent Corporation, and now the Court, to determine that question. A temporal connection, in itself, will be insufficient. There needs to be a medical explanation as to how the ongoing condition has been caused by the originally covered injury.

[68] In *Hoar*,[15] Judge Joyce KC stated:

> [43] The Court will seldom be able to derive any assistance from the provision of extracts from materials found on the World Wide Web or elsewhere (including even extracts from medical and scientific journals) unless those materials are brought before the Court through - and this properly explained and

---

13 *Bloomfield v Accident Compensation Corporation* [2014] NZACC 1: reference to the mistaken notion that, because one happening follows another, the first has caused the second

14 *Stewart v Accident Compensation Corporation* [2003] NZACC 109.

15 *Hoar v Accident Compensation Corporation* [2012] NZACC 86.

> put in due context by - an expert in the field: Hughes v ACC, 19/4/04, Judge Cadenhead, DC Wellington, 199/04. …
>
> [45] In short, absent such evidence from an expert (one truly able to give context and advise as to the utility of such materials in the case in question) the Court cannot justify findings on account of them.

Discussion

[69] The issue here is whether the Corporation correctly declined cover for migraine/tension headaches (in addition to existing cover for Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD)) resulting from her March 2014 mental injuries. Mental injury is defined as a clinically significant behavioural, cognitive or psychological dysfunction.[16] The appellant is required to provide sufficient evidence to prove, on the balance of probabilities, that her migraine/tension headaches were caused by her March 2014 mental injuries, and risk, supposition or conjecture of causation is insufficient.[17] A temporal connection between the March 2014 mental injuries and the migraine/tension headaches is, in itself, insufficient, and there needs to be a medical explanation as to how the ongoing condition has been caused by the originally covered injuries.[18] Materials of a general nature, drawn from medical journals, are of limited assistance unless properly explained by an expert in the context of the appellant's case.[19]

[70] The appellant submits as follows:

(a) Dr Al-Beer diagnosed migraines on 22 July 2014, and noted that these started approximately three months earlier, which corresponds with the timing of the event on 8 March 2014.

(b) Dr Page's report dated 10 September 2014 makes it clear that the appellant was suffering from migraines at that point in time.

(c) The evidence shows that she did not suffer from headaches or migraines before the March 2014 event.

---

16 Section 27.
17 See n12, at [67] and [70].
18 See n14, at [33]
19 See n15, at [43] and [45].

(d) The Oxford Handbook of Clinical Medicine, and all other medical textbooks googled online, classify tension headaches and migraines as two separate and distinct clinical diagnoses. Both clinical conditions can cause dysfunction of behaviour or cognition or even psychology. It is clear that both tension headaches and migraines are valid separate mental injury diagnoses from a medical perspective. Tension headaches and/or migraines can occur early at the onset of PTSD or anxiety/generalised anxiety disorder. Tension headaches and/or migraines can also occur in conjunction with PTSD, anxiety/GAD and depression/major depressive disorder (MDD). In this case, noting the absence of symptoms prior to the event, and the diagnosis of migraines shortly afterwards, there is a clear causal link.

(e) Judge McGuire, in allowing her appeal, accepted that her tension headaches/migraines and chronic cough were from the March 2014 events.

(f) Mr Thuya Sithu, in November 2021, mentioned clinical diagnosis of the appellant's physical pain, neck strain as well as tension headaches/migraines, directly caused by the assault event.

(g) Dr Surjit Randhawa, GP, in December 2022, advised that the appellant's tension headaches/migraines/neck sprain in 2014 were substantially directly caused by the sexual/physical assault on her.

[71] This Court acknowledges the above submissions and evidence. The Court accepts that the appellant experienced migraines/headaches from or around the time of her March 2014 mental injuries, that the appellant reported these to Dr Al-Beer in July 2014, who diagnosed migraines, and that the appellant reported these to Dr Page in September 2014 and again to other medical practitioners, including Mr Thuya Sithu in August-November 2021. However, as noted above, a temporal connection between the appellant's March 2014 mental injuries and her migraine/tension headaches is, in itself, insufficient, and there needs to be a medical explanation as to how the ongoing condition has been caused by the originally covered injuries.

[72] The Court also accepts, as stated in the Oxford Handbook of Clinical Medicine and by Mr Thuya Sithu, that, when one suffers from stress, anxiety, depressive moods and overwhelmed physiological reactions, pain such as tension headaches and migraines can be triggered. However, as noted above, general statements from journals are of limited assistance out of context, and, further, causation is not proved by risk, supposition or conjecture.

[73] The Court notes the appellant's reference to the judgment of Judge McGuire, granting cover to the appellant for mental injury suffered as a result of sexual abuse. However, Judge McGuire did not find that the appellant's tension headaches/migraines were caused by the March 2014 mental injuries. Judge McGuire recorded the appellant's submissions to that effect, but nowhere in the reasons for his decision did he make a finding of this nature.

[74] The Court also refers to the following considerations.

[75] First, the appellant reported (in particular) to Ms McLennan, Clinical Psychologist, and Mr Matthew Manderson, Neuropsychologist, a range of psychosocial and work-related stressors from early 2014, in addition to the sexual abuse she suffered. She reported separation from her husband due to work demands, verbal abuse by her husband, bullying, escalating conflict and hostility in the workplace, and the illness and death of her grandmother. She later also experienced the Medical Council investigation and loss of her role, relocating to Australia, unemployment, financial strain and legal proceedings. All of these factors would have contributed significantly to stress. It is therefore difficult to find, on a balance of probabilities, that the March 2014 mental injuries were a significant causal factor of headache or migraine.

[76] Second, in the seven years after the March 2014 mental injuries, the appellant was assessed by a number of mental health specialists. None of these specialists diagnosed the appellant's migraines or headaches as mental injuries suffered by her as a result of the March 2014 mental injuries. The diagnoses of these mental health specialists, which are preferred to the views of general practitioners (such as Dr Randhawa), are as follows:

(a) Dr Page (Psychiatrist) diagnosed, in September 2014, that the appellant did not currently meet the criteria for any DSM 5 diagnosis.

(b) Ms Polymeneas (Psychologist) diagnosed, in May 2015, that the appellant had depression and anxiety relating to her marriage breakdown and the issues she had with her place of employment in New Zealand.

(c) Ms McLennan (Psychologist) and Mr Manderson (Neuropsychologist) diagnosed, in October 2019, that there was limited clinical evidence to suggest that the appellant was currently experiencing symptoms related to PTSD; and there were few reported symptoms or clinical features of either a MDD or Anxiety Disorder.

(d) Ms Price (Psychologist) reported, in December 2019, that the results of a depression and anxiety stress scale questionnaire yielded scores indicating severe depression.

(e) Dr Lee (Psychiatrist) diagnosed, in April 2020, major depression commencing from approximately 2015.

(f) Dr Turner (Psychiatrist) diagnosed, in April 2021, MDD, severe with psychotic features, but not the result of anything done to her by another person.

(g) Ms Woods (Psychologist) diagnosed, in August 2021, low mood, anxiety symptoms consistent with GAD (General Anxiety Disorder), and evidence of some PTSD symptomology.

[77] Third, Dr Thakurdas, Medical Advisor, advised that there was insufficient support for migraines and/or tension headaches' cover. Dr Thakurdas noted that migraines and tension headaches were typically non-specific, multifactorial symptoms rather than injury diagnoses *per se*.

[78] Fourth, Ms Louw, Psychologist, noted the multiple sources of psychosocial stress evident in the appellant's medical records since 2014, and advised that it was

therefore not possible to identify headache or migraine as a specific function (or direct consequence) of either the sexual abuse or the associated covered mental injuries. Ms Louw also affirmed that tension headaches and migraines are non-specific, multi-factorial and ubiquitous symptoms that are not included in the diagnostic criteria for either PTSD or MDD, and are therefore not considered to be signs or symptoms of these disorders.

Conclusion

[79] In light of the above considerations, the Court finds as follows:

(a) Appeal 155/22: the appeal against the decision of the Reviewer dated 29 August 2022 is dismissed. This Court upholds the Corporation's decision dated 23 May 2022, advising that the date of the appellant's mental injury was 26 May 2015.

(b) Appeal 181/22: the appeal against the decisions of the Reviewer dated 6 October 2022 is dismissed. This Court upholds: (1) the Corporation's three decisions dated 20 May 2022 declining the appellant's applications for rehabilitation assistance; and (2) the Corporation's decision dated 1 August 2022 declining additional cover for migraines and headaches as mental injuries.

[80] I make no order as to costs.

P R Spiller
District Court Judge

Solicitors for the Respondent: Medico Law.