Alarcon and Australian Postal Corporation (Compensation) [2015] AATA 475 (2 July 2015)

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| Division | **General Division** |
| File Number(s) | 2013/4904; 2013/4905 & 2014/0814 |
| Re |  |
|  | APPLICANT |
| And |  |
|  | RESPONDENT |

# Decision

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| Tribunal | **Senior Member J F Toohey**  **Dr M Couch, Member** |
| Date | **2 July 2015** |
| Place | **Sydney** |

The Tribunal affirms the decision under review.

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**Senior Member J F Toohey**

***CATCHWORDS*** *– compensation – disease – psychological condition – diagnosis – personality disorder with paranoid ideation – whether events complained of occurred – applicant’s perception – whether employment contributed to a significant degree to exacerbation – Tribunal not satisfied events occurred as applicant claimed – not satisfied condition exacerbated by employment – decisions under review affirmed*

**Legislation**

Safety Rehabilitation and Compensation Act 1988 ss 4, 5A(1), 5B(1), 5B(3), 14

**Cases**

Comcare v Mooi [1996] FCA 1587

Wiegand v Comcare (2002) 72 ALD 795

Kirkpatrick v Commonwealth (1985) FCA 440

Australian Telecommunications Commission v Tsikas (1985) 5 AAR 173

# REASONS FOR DECISION

**Senior Member J F Toohey**

**Dr M Couch, Member**

**Introduction**

1. Nellie Alarcon has been employed as a postal delivery officer since 2000. She claims compensation under the *Safety Rehabilitation and Compensation Act* 1988 (SRC Act) for aggravation of a psychological condition as a result of incidents at work in 2012 and 2013. The respondent denies liability to compensate her.
2. Over the course of her employment, and in these proceedings, Ms Alarcon has complained of persistent harassment and bullying by managers, supervisors and other staff from around 2003 until the present day. These proceedings concern three incidents only, and the following reviewable decisions denying liability to compensate her:

i) a decision dated 18 March 2013 in respect of a claim lodged on 28 March 2012 for “anxiety/depression” sustained on 28 February 2012;

ii) a decision dated 5 August 2013 in respect of a claim lodged on 15 December 2012 for “mental breakdown” sustained on 15 December 2012;

iii) a decision dated 6 August 2013 in respect of a claim lodged on 26 May 2013 for “depression, anxiety and stress” sustained on 9 April 2013.

1. The first claim appears also to have been the subject of a reviewable decision in the same terms dated 22 January 2014. The reasons for this are not clear but nothing turns on it. We have to decide whether the respondent is liable to compensate Ms Alarcon for her claimed injury or injuries.
2. When these proceedings commenced, Ms Alarcon was represented by a solicitor. On 16 April 2015, her solicitor advised she had ceased to act for Ms Alarcon. On 23 April 2013 Mr Ismael Isidto, a former employee of Australia Post who had provided a witness statement for these proceedings, notified the Tribunal that he was assisting Ms Alarcon. He did so until the start of the second week of the hearing when he advised that he was withdrawing his assistance. From that point, Ms Alarcon was assisted by her partner, Mr Paul Contessa, also an employee of Australia Post, who gave evidence during the first week of the hearing.

**Relevant legislation**

1. By s 14 of the SRC Act, the respondent is liable to compensate Ms Alarcon for an injury that results in death, incapacity for work, or impairment.
2. Section s 5A(1) provides that *injury*means:
   1. a disease suffered by an employee; or
   2. an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment; or
   3. an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment), that is an aggravation that arose out of, or in the course of, that employment.
3. Section s 5B(1) provides that *disease* means:

(a) an ailment suffered by an employee; or

(b) an aggravation of such an ailment;

that was contributed to, to a significant degree, by the employee's employment.

1. *Ailment* means any physical or mental ailment, disorder, defect or morbid condition whether of sudden onset or gradual development: s 4. *Significant degree*means a degree that is substantially more than material: s 5B(3).
2. It is common ground that Ms Alarcon’s claims are for the aggravation of a pre-existing psychological condition and are to be determined according to s 5B.

**Background**

1. Ms Alarcon came to Australia from the Philippines in 1991. She has four children. She separated from her husband in 2003. Before joining Australia Post in 2000, she worked for eight to ten years as an assistant nurse in a nursing home.
2. Ms Alarcon claims that, from around 2003 (or, according to another account, 2005) she was bullied and harassed by supervisors, managers and other staff at Australia Post. She maintains there is a conspiracy to “get rid” of her. A persistent theme in her complaints is others’ “jealousy” of her because her efficiency makes them “look bad”. She says she has been accused of “killing overtime” because she works so quickly and efficiently. She denies any difficulties with other workers in previous jobs but agrees that she had some difficulty with another worker at the nursing home who she says was “jealous” of her and made trouble for her.
3. Ms Alarcon also does not dispute that she has had “significant mental problems” for many years. She attributes these to the conspiracy against her by others at Australia Post. The evidence shows consultations with, and treatment by, general practitioners, a psychiatrist and a psychologist, and admission to hospital, over several years. The diagnosis of her condition is in dispute. We consider this further below.
4. The evidence shows that, in September 2006, general practitioner, Dr Noori Abdulla, certified Ms Alarcon unfit for work for two days for work-related stress. In April 2008, a rehabilitation counsellor reported that ”both Clyde and myself” had concerns about Ms Alarcon’s “abnormal” behaviours “possibly indicating some form of emotional/mental stability (sic)”. Among a range of behaviours, the counsellor noted Ms Alarcon’s “seemingly paranoid expressions that everyone is out to get her” and “[r]ecurring statements that numerous people were not doing their job properly”. He suggested a psychological evaluation be conducted.
5. On 29 August 2008, general practitioner, Dr Caroline Davidson, signed a letter for a GP Mental Health Plan and certified Ms Alarcon unfit for work from 27 July 2008 to 5 September 2008 due to depression and anxiety which had its onset in 2006. Further certificates show periods off work due to “depression anxiety and sleeplessness” in October 2009, “severe anxiety and depression” in November 2009, and anxiety and depression in June 2011.
6. Dr Davidson recorded on 3 August 2009 that Ms Alarcon presented for depression when her relationship with her then boyfriend ended. The circumstances are discussed below. Ms Alarcon’s condition appears to have deteriorated after the relationship ended. In October 2009, she presented at the Emergency Department of Mona Vale Hospital with “acute anxiety following an exacerbation of a long running work place harassment issue.”
7. In October 2011, Ms Alarcon started seeing psychiatrist, Dr Stuart Saker, for treatment on referral from Dr Davidson. She saw Dr Saker on approximately 26 occasions up until May 2015. His evidence is considered below.
8. In 2011, Dr Davidson referred Ms Alarcon to a psychologist, Ms Rita Azzi. On 5 June 2012, Ms Azzi recorded that Ms Alarcon had “paranoid thoughts” about the actions of other staff that were designed to make her look bad. She recorded:

*Attempted to rationalise thoughts, difficulty accepting challenges convinced the workplace is “working against me”*

*rejects challenges states “they are really teasing me, talking about me, laughing every time I look at them*

1. Over the course of her employment by the respondent, Ms Alarcon has made repeated allegations of unfair treatment and a conspiracy with fellow workers. From 2003, she says, she was bullied by managers and supervisors, and fellow workers resented her because she was “too efficient.” In 2006, two supervisors “yelled at me and threw papers in my face.” In 2009, she had a “mental breakdown” at work when a manager forced her to sit next to a man who she claimed had sexually assaulted her. She claims other workers repeatedly tampered with her sorted mail so as to make her look bad. By June 2013, she had made written or oral complaints about nine other members of staff because of their “non-stop harassment”.
2. On 15 September 2010, during a quarterly review, Ms Alarcon alleged that Australia Post was colluding against her and, according to the supervisor who conducted the review, worked herself up to “an uncontrollable state”. On 13 January 2011, she was found in the locker room, “sobbing uncontrollably, wringing her hands and rocking” after becoming upset at a comment by a fellow worker. On 9 September 2011, she was again found in a locker room “crying uncontrollably.” Ms Alarcon does not dispute that these incidents occurred but she claims the supervisor, Ms Dianne Busby, falsified her contemporary diary notes of them.

**Ms Alarcon’s contentions**

1. Ms Alarcon does not dispute that she has a history of psychological problems but she disputes the diagnosis of personality disorder with paranoid ideation made by Mr Thomas O’Neill, clinical psychologist, and Dr John Champion, psychiatrist. She says we should prefer the diagnosis of “Major Depressive Disorder and Panic Disorder with agoraphobia” as a result of “workplace harassment and bullying from 2003 to 2014” made by Dr Saker. She maintains that three incidents in particular exacerbated her condition.

**The respondent’s contentions**

1. The respondent submits that we should prefer the diagnoses of Mr O’Neill and Dr Champion. The respondent submits that Ms Alarcon viewed events “through the prism of her condition” and that nothing that happened at work caused or aggravated her condition. In particular, the respondent says, the events complained of did not occur, or did not occur in the manner alleged by Ms Alarcon.

**The evidence**

1. Prior to the hearing, Ms Alarcon submitted a number of statements from fellow workers. One, whose statement appeared to lend some support to her account of the incidents, declined to make himself available to give oral evidence. After discussion with Ms Alarcon at the hearing, it was agreed that several others who had provided written statements could not assist the Tribunal because their statements made clear they had not witnessed the incidents complained of. Those witnesses were not called.
2. Ms Alarcon gave written and oral evidence. Written and oral evidence was also given by Mr Contessa and by Australia Post employees Jake Abeto, Satpal Singh Sethi and Aristona Koukkhanen.
3. For the respondent, oral evidence was given by Bruce Davies, Ms Busby, Steve Charman and Rosalie Harper-Jung, all employees of the respondent, and by Phillip Lewis, the general manager of Telstra security, who gave evidence about CCTV footage of the incident on 9 April 2013.
4. Mr O’Neill, Dr Champion and Dr Saker provided written reports and gave oral evidence.

**The incident on 28 February 2012**

1. Ms Alarcon asserts that, on 28 February 2012, Bruce Davies, with whom she had had a difficult relationship for some time, called out her name and put out his tongue, “saying ‘fuck you’ and raising his fingers in the fuck you sign.” He was with his supervisor, Steve Charman, at the time; they both laughed and Mr Charman whispered something in Mr Davies’ ear. By reference to the length of the Tribunal hearing room, Ms Alarcon estimated the men were at a distance of more than 12 metres.
2. Ms Alarcon says she complained to her supervisor, Dianne Busby, and repeatedly requested a “P400” form to register a complaint but “none was forthcoming” and Ms Busby yelled at her. She felt that no one was going to help her and she collapsed; an ambulance was called and she was taken to Royal North Shore Hospital where she was admitted overnight. She was off work for some days after this incident.
3. Mr Davies denies the allegation. He gave evidence that he had returned to work that day after undergoing surgery to two fingers which he injured with a lawnmower at home. Photographs produced to the Tribunal show stitches to both fingers and the bandages Mr Davies was wearing when he returned to work. He says he raised his hand and waved to attract the attention of a fellow employee, showing her his fingers and indicating that he was back at work. He denies seeing Ms Alarcon at the time and denies using the words she alleges.
4. Mr Charman gave evidence supporting Mr Davies’ account. He says he was standing “within about two feet” of Mr Davies and recalled seeing him raise his hands in the air but did not see him raise his fingers and did not hear him say “fuck you”. He recalls there being approximately 14 people in the area at the time; Ms Alarcon was not in the immediate area and was located on the other side of the building.
5. Ms Busby gave evidence that Ms Alarcon “had issues and complaints against almost every supervisor that she worked under”, as well as with other workers, and she was “known for her uncontrollable behaviour with screaming, yelling, crying and accusations against other staff members.”
6. Ms Busby disputes Ms Alarcon’s claim that she did nothing about her complaint about Mr Davies’ conduct. She says she told Ms Alarcon she would speak to Mr Davies and find out what happened; when he explained he was trying to attract another worker’s attention, she warned him that his actions could be misconstrued and were not acceptable in the workplace. She also spoke to Mr Charman who denied hearing Mr Davies say “fuck you”, and to the staff member he claimed to be gesturing to who said she did not see the incident.
7. Ms Busby gave evidence that, because of the distance between where Mr Davies was standing and where Ms Alarcon was working, “there was no possible way” Ms Alarcon could have heard Mr Davies say the words alleged or determined that Mr Charman whispered to him. She says when she conveyed this to Ms Alarcon, she demanded to see CCTV footage of the incident; subsequent investigations showed it was not captured on CCTV. Ms Busby denies refusing to give Ms Alarcon a “P400” and says she gave Mr Contessa one to take home to her when he asked for it.
8. Ms Busby gave evidence that, when Ms Alarcon returned to work, she organised a “welcome back” for her at which Ms Alarcon raised the incident again, asked to see the CCTV footage and “ranted about being bullied”. Ms Busby says she told Ms Alarcon she was ending the discussion and left her office; after some time Ms Alarcon “threw herself onto the floor in the corridor outside my office and began wailing and hitting her head against the brick wall.” When Ms Alarcon continued like this, Ms Busby decided that “professional help” was needed and called an ambulance which took her to Royal North Shore Hospital.
9. Ms Azzi’s clinical notes show that she first saw Ms Alarcon after this incident on 6 March 2012 when Ms Alarcon “[r]eported had a mental break down at work on Friday”; she was admitted to emergency and discharged later in the afternoon and was “hitting her head on the wall of the ambulance”. Ms Azzi noted Ms Alarcon claimed that harassment and bullying was still occurring in the workplace; she had reported incidents to the union and was “getting her paper work in order”.
10. Ms Azzi also saw Ms Alarcon on 30 March 2012. She recorded that Ms Alarcon was:

*stressed about car accident claims dispute over who was at fault – cost 6000 to repair daughters car – claims [her] mail is missing – someone is playing games with my mail – someone is playing games with me to create trouble.*

*Client appears to be having paranoid thoughts someone is “setting me up out to get me”*

*…*

*Client fidgeting with her bag strap – rubbing them together, pulling her fingers, limited eye contact … Appointment with psychiatrist 28th March*

1. On 28 March 2012, Ms Alarcon lodged a claim for compensation for an injury that she indicated she first noticed in September 2006. Asked on the form whether she reported the injury or illness to her supervisor, she wrote “It’s been a long time ago cannot remember exact date”. Nothing on the claim form indicated it concerned the incident with Mr Davies. It is not in dispute that it is taken to relate to that incident but the contents of the claim form and notes of consultations with Ms Azzi make no reference to that incident.
2. Ms Alarcon maintains she told Dr Davidson about the incident with Mr Davies but there is no record in Dr Davidson’s notes of the incident. On 20 March 2012, Ms Azzi recorded “client has difficulty challenging thoughts, rationalising thoughts”. She does not record mention of the incident with Mr Davies.
3. Over the following months, both Dr Davidson and Ms Azzi recorded complaints by Ms Alarcon that others at work were setting her up to make her look bad, interfering with her mail and harassing her. On 15 June 2012, Dr Davidson’s notes include the comment that Ms Alarcon “felt harassed by another worker today – fidgety – paranoid”. On 26 June 2012, Ms Azzi recorded there were inconsistencies in her description and that she had “difficulty challenging” Ms Alarcon’s thoughts as she was “very determined someone was out to ‘ruin her’”. In notes of further consultations in July and September 2012, Ms Azzi noted similar allegations and that Ms Alarcon was “non-responsive to therapy, non-responsive to challenges to thoughts continues to add to her story when attempting to challenge.” In October 2012, Dr Saker, her treating psychiatrist, recorded that she was worried she was being watched and followed by her “enemies” at work who she believed were gossiping about her and trying to sabotage her.

**The incident on 15 December 2012**

1. In his report dated 27 February 2013, Mr O’Neill recorded that Ms Alarcon told him she became very upset on 14 December 2012 when she received a letter from her employer notifying her of a counselling meeting which it planned to schedule “to address… concerns for her performance at work”. She told Mr O’Neill she was accused of not following orders, and would likely be “performance managed”, and she refused to attend the meeting. She told him the notification distressed her and it was part of the ongoing attempt to “get rid of her”. Giving oral evidence, Ms Alarcon denied being upset at the letter and denied telling Mr O’Neill that she was. Whether this incident had any bearing on events the following day is not clear.
2. On 15 December 2012, Ms Alarcon alleges, Mr Davies “tried to run me over with a wheelie bin” when he deliberately pushed it into a Unit Loading Device (ULD) close to where she was standing, making a loud noise in an attempt to intimidate and frighten her. Giving oral evidence, she said she was pushing a “Canberra trolley” towards the dock when Mr Davies saw her, “grabbed a wheelie bin” and ran towards her, hitting the ULD and spinning it through 90 degrees. She says it was “an aggressive and scary incident” and “even after he pushed the wheelie bin into the ULD, he continued to push the bin and yelling at me”, swearing and yelling, saying “fuck you” and banging the bins. She later told Mr Abeto that Mr Davies was going to kill her. She was off work for three days following this incident.
3. Mr Davies gave evidence that he was wheeling an empty bin towards a narrow area where a number of ULDs were positioned; on seeing Ms Alarcon coming towards him, he diverted to the other side of the area so as to avoid her because of the history between them. He gave evidence that, as he attempted to do so, the bin hit the side of a ULD, causing it to move approximately 10 centimetres. He then straightened the bin and continued walking towards the dock area. He denies using abusive language towards Ms Alarcon and says no one mentioned to him any loud noise.
4. The only person to give evidence who witnessed this incident was Mr Singh. He impressed us as a truthful witness. He gave evidence that he was working close by at the time and clearly recalled this incident. He saw Mr Davies pushing an empty wheelie bin in one direction and Ms Alarcon walking in the opposite direction. As they approached each other, Mr Davies steered the bin to the right so as not to cross Ms Alarcon’s path and, in doing so, clipped the corner of the ULD, causing a loud noise. In a written statement, Mr Singh described the ULD as moving “slightly” on impact; giving oral evidence he thought it moved through about 45 degrees; Ms Alarcon was still about two metres away and was not in any danger. He did not hear Mr Davies say anything to her. Ms Alarcon turned to him (Mr Singh) and said words to the effect of “Satpal, did you see that, he is trying to kill me.”
5. The acting production manager, Mr Anthony Wierzbicki, investigated this incident and produced a written report. He interviewed “key personnel” including Ms Alarcon, Mr Davies, and Mr Singh who confirmed he saw the ULD “move slightly” towards Ms Alarcon. Mr Wierzbicki reported that he and a colleague attempted to replicate the incident; the ULD moved approximately 15 degrees and even “using increased force”, it moved only approximately 20 degrees. He was not persuaded that Mr Davies had intended deliberately to upset or physically harm Ms Alarcon and concluded that her interpretation “was taken out of proportion.” Mr Wierzbicki confirmed that the incident was not captured on CCTV.

**The incident on 9 April 2013**

1. The third incident of which Ms Alarcon complains occurred on 9 April 2013 when she alleges Mr Davies “dangerously and aggressively” dropped a ULD next to her without warning in an area he was not allowed to drop it, creating “a loud bang”. She was “completely unaware” he was approaching her. She says she was traumatised and suffered panic attacks, anxiety and major depression as a result.
2. Ms Aristona Koukkhanen provided a written statement supporting Ms Alarcon’s claim. Giving oral evidence however, she said the signature on the statement was not hers and conceded that she was not in the area at the time of the alleged incident. The most she could say was that she heard a “very loud noise” at the time but she could not identify its source. We place no weight on her evidence.
3. Mr Davies denies the allegation. He gave evidence that he was positioning an empty ULD as part of his normal duties into the area that all staff members know is used for that purpose. He says he believes Ms Alarcon deliberately entered that area when she saw him approaching; he placed the ULD on the ground “in a safe and normal manner” and then observed Ms Alarcon “yelling and screaming abuse” at him. He and another worker, Rosalie Harper-Jung, left the area and went to the office of Mr John Liu, the manager; Ms Alarcon and two union representatives followed them and Ms Alarcon “stormed into the office” and “began yelling abuse” at him and Ms Harper-Jung.
4. Ms Harper-Jung gave evidence supporting Mr Davies’ account. She says she clearly recalls this incident as she was standing waiting for Mr Davies to bring an empty ULD to the area so she and others could load mail onto it. She noticed Ms Alarcon standing in an area where staff do not normally stand and noticed her watching Mr Davies approach; as he lowered the ULD to the ground, Ms Alarcon began screaming and claiming he was trying to hurt or kill her. She says Mr Davies said nothing and walked from the area. When she said words to Ms Alarcon to the effect that Mr Davies did not do anything, Ms Alarcon screamed at her to “shut up, shut up”. Ms Harper-Jung supported Mr Davies’ claim that Ms Alarcon “stormed into” the manager’s office where she and Mr Davies were discussing the incident and “started yelling and pointing at me and calling me a liar”.
5. Unlike the other two incidents of which Ms Alarcon complains, this incident was captured on CCTV. Mr Wierzbicki investigated this incident as well. According to his report, which is in evidence, the CCTV footage showed Ms Alarcon watching Mr Davies as he approached and, as he did, she “walked and positioned herself into the same area where the ULD was being placed”. Our impression, having seen the CCTV footage, is that is just what occurred.
6. The CCTV footage clearly supports Mr Davies’ and Ms Harper-Jung’s accounts. Ms Alarcon is seen for several minutes standing in the area, apparently not working. Mr Davies is seen to approach and apparently offload a ULD near her before moving away and returning a short time later with a second ULD. Contrary to her claim that she was not aware that he was approaching and that he dropped the ULD near her without warning, she is clearly seen to turn to look at him as he approaches the area where she is standing. Ms Harper-Jung is seen two or three metres away from Ms Alarcon apparently observing her.
7. Ms Alarcon claims the footage we saw was tampered with. However, her evidence about this was confusing. When shown the footage, she maintained there was other footage of the incident and that what we saw had been sped up in parts, and parts were missing. She referred in particular to lettering that appears on the footage, claiming she had viewed the footage without the lettering, and was adamant that the time shown at the bottom of the screen was different from the clock on the wall at the time. When pressed later to clarify her evidence, she said she had never seen footage of the incident on 9 April 2013; she claimed that, on 29 May 2013, she saw footage of the incident on 15 December 2012 which had been tampered with. Mr Wierzbicki’s evidence, referred to above, which we accept, is that the incident on 15 December 2012 was not captured on CCTV. At best, Ms Alarcon must be confused about this.
8. Mr Darren Lewis, the general manager of operations at Telstra SNP Monitoring, which provides CCTV and other security services to the respondent, gave oral evidence that, having seen the footage, he was very confident it had not been tampered with in any way; had that occurred, discrepancies would be seen in the timekeeper at the bottom of the footage. Mr Lewis said it was possible that the time itself, which is set within the system by a technician, could have been entered incorrectly, putting it at odds with the clock on the wall; alternatively, the wall clock could have been incorrect. He explained that the lettering on the screen which Ms Alarcon maintained showed the footage had been tampered with was a form of self-test set by the system which cannot be added or removed manually.
9. We accept Mr Lewis’s evidence and are satisfied that the CCTV footage we saw accurately portrays the incident on 9 April 2013.

**Medical evidence**

*Mr O’Neill’s evidence*

1. Mr O’Neill is a clinical psychologist with 28 years’ experience. He saw Ms Alarcon for approximately five and a half hours over appointments on 19 and 27 June 2012 for the purpose of clinical and psychometric valuation, and he saw her again on 27 February 2013.
2. In a report dated 28 June 2012, Mr O’Neill concluded there was “a significant element of persecutory ideation, mistrust and resentment” in Ms Alarcon’s account of events at her workplace and “significant and multiple inconsistencies” in her presentation. On six scales used to assess the feigning of mental disorder, she scored above the cut-off, indicating that the profile was “more comparable to individuals asked to feign mental disorders in simulation research, and rarely seen in clients responding truthfully” and she was “outperformed by those with significant organic brain diseases on the test of memory malingering”. Giving oral evidence, Mr O’Neill said Ms Alarcon’s results were worse than persons with Alzheimer’s disease and psychotic conditions.
3. Mr O’Neill gave evidence that, while feigning does not preclude the possibility of genuine psychological disturbance, it indicated in her case Ms Alarcon was not a reliable informant. He concluded there was “no clear evidence to indicate a psychological injury that is significantly work-related”.
4. When he saw Ms Alarcon again in February 2013, Mr O’Neill concluded she presented with “significant evidence of personality disorder with a combination of borderline and paranoid features, and symptoms of anxiety and depression that appear to be related to her perception that she is being victimised, persecuted, bullied and harassed”. He thought she might meet criteria for major depression and generalised anxiety but these were predominantly driven by her perception of persecution and harassment by people in the place of employment and her conviction that certain staff were colluding to hide evidence to substantiate her claims. He believed “the predominant presentation is that of personality order, in particular with significant paranoid ideation and emotional lability”.
5. Giving oral evidence, Mr O’Neill explained in detail the nature and purpose of the tests he administered to Ms Alarcon including the questions designed to ascertain possible feigning. He gave evidence that even persons with schizophrenia do not “endorse” the blatant symptoms she claimed to experience, and a person with symptoms to that degree, which he has rarely seen in any patient, would likely be hospitalised. He gave evidence that a personality disorder is not itself incompatible with working full-time but it was unlikely a person with the degree of symptoms reported by Ms Alarcon would be able to work full-time.
6. In Mr O’Neill’s view, Ms Alarcon has a long standing, pre-existing personality disorder that had become “amplified by her perception of persecution in the workplace”. The fact that she did not appear to respond to either cognitive behaviour therapy or medication confirmed his view that she has a personality disorder. He could find no evidence to substantiate past or current claims of bullying. In his view, the evidence pointed to “significant psychiatric and personality disturbances within herself, that construe the world in a way that leads to further distress”. He did not believe there was any new psychological disorder or exacerbation or aggravation attributable to events at work.
7. Mr O’Neill gave evidence that Ms Alarcon’s history of difficulties with, and complaints about, other workers, and her perception of the incidents she complains of in these proceedings were consistent with his diagnosis of a pre-existing personality disorder with paranoid ideation.

*Dr Champion*

1. Dr Champion saw Ms Alarcon for assessment in January 2014. He provided a report of his examination. In October 2014 he provided a supplementary report after being provided with reports from Mr O’Neill and Dr Saker, and a lengthy report of a psychiatric assessment of Ms Alarcon’s fitness for duty by Dr Catherine Loverick in July 2013.
2. In his first report, Dr Champion reported there was “strong evidence”, based on Mr O’Neill’s findings, that the claimed severity of Ms Alarcon’s complaints was unreliable and the “simulation of illness in this case is likely to be in the service of very strong paranoid perceptions, most probably of delusional intensity at times, of bullying and harassment in the workplace”. He thought “[t]he combination of the simulation of disorder and strong paranoid perceptions is best diagnosed as a Paranoid Reaction in response to personality factors impacted by many non-work factors which include: social isolation, a broken marriage, parental deaths, heavy narcotic use and dysfunctional sleep habits over more than a decade”. He thought her current antidepressant medication could be exacerbating her problems. He did not consider her work conditions or experiences were the basis of any aggravation, acceleration or exacerbation or deterioration of her underlying problems.
3. Giving oral evidence, Dr Champion said he did not consider, in a person with Ms Alarcon’s symptoms, it was possible to rely on her account. He disagreed with Dr Saker’s diagnosis and said the measure of six months stable relationship or employment did not represent standard psychiatric thinking about personality disorder; the quality of a relationship or work may be questionable but the link itself was virtually meaningless. He thought Ms Alarcon’s responses to the incidents complained of a likely manifestation of a paranoid interpretation of ordinary events. He confirmed that he did not think her employment caused or exacerbated her condition.

*Dr Saker*

1. Dr Saker first saw Ms Alarcon in October 2011 after she was referred by Dr Davidson. He has seen her approximately 28 times. He provided a series of brief reports to Dr Davidson, and a more detailed report dated 2 May 2014 to Ms Alarcon’s former solicitor in which he stated his view that she has permanent impairment directly caused by psychological injury from bullying and harassment from work “from 2003 to 2014”. He diagnosed her with major depressive disorder and panic disorder with agoraphobia stemming from that harassment.
2. Giving oral evidence, Dr Saker said he discounted a diagnosis of personality disorder because persons with personality disorder never have a functioning personality whereas Ms Alarcon had “long-term jobs and relationships”. He defined long-term as lasting longer than six months.
3. When pressed about his understanding of Ms Alarcon’s relationships and work conditions, Dr Saker knew very little. He also knew very little of any of the incidents she complains of; the only incident he had any specific knowledge of was when a bin was dropped near her causing a loud noise. We take it this was the incident on 9 April 2013. Dr Saker conceded that he relied entirely on Ms Alarcon’s account and her attribution of her symptoms to her workplace. He agreed that he accepted her version of events and he took it, because she had been at Australia Post since 2000, that she performed reasonably well.
4. Dr Saker’s relationship with Ms Alarcon as her treating psychiatrist is necessarily different from the relationship she had with Mr O’Neill and Dr Champion. As her treating psychiatrist, he was less critical of her account and took it at face value. However, his opinion is of little assistance to us. It is based entirely on Ms Alarcon’s account without any understanding of the incidents she complains of and his diagnosis discounting personality disorder appears based on questionable assumptions.

**The diagnosis of Ms Alarcon’s condition**

1. Turning first to the diagnosis of Ms Alarcon’s condition, we prefer, and accept, the diagnosis of personality disorder with paranoid ideation made by Mr O’Neill and Dr Champion. Mr O’Neill based his conclusions on detailed psychometric testing which we accept as rigorous and reliable. Dr Saker, on the other hand, based his diagnosis and his conclusion that Ms Alarcon’s condition was caused by bullying and harassment entirely on her own account. We accept the evidence of Mr O’Neill and Dr Champion that her account is inherently unreliable because of her condition.
2. We are satisfied that Ms Alarcon has a personality disorder with paranoid ideation that colours her interpretation of events. We are satisfied that it pre-existed the incidents she complains of. We are satisfied that it is a condition “outside the boundaries of normal mental functioning and behaviour”: *Comcare v Mooi* [1996] FCA 1587*.*
3. Although Ms Alarcon denies any psychological condition prior to around 2003 when she says bullying and harassment started at work, her evidence about difficulties with a worker in former employment suggests that her condition pre-dated her employment with the respondent. In any event, we accept the opinion of Mr O’Neill and Dr Champion that her condition is long long-standing and was in existence before any of the events complained of. As set out below, we are not satisfied that her employment, in particular the incidents complained of, played any part in causing or aggravating her condition.

**Consideration**

1. The respondent submits that Ms Alarcon’s evidence is unsatisfactory in a number of respects and is unreliable. The respondent refers to the following matters in particular.
2. Ms Alarcon claims she was raped by a fellow employee after he took her home from a work function in 2007. She claims he used repeated threats of violence to force her into a relationship with him for a year after this incident. She claims she was terrified of him throughout the relationship until she could no longer stand it and decided to leave him. In what appears to be at odds with her account of the end of the relationship, Dr Davidson recorded on 3 August 2009 that Ms Alarcon presented for depression. She noted:

*crying and upest (sic)*

*her boyfriend married someone else while seeing her*

*MSE - teary, crying, distressed*

1. Ms Alarcon denies being upset that the man decided to marry someone else. The respondent contends Ms Alarcon’s account is inherently implausible and at odds with Dr Davidson’s records. The respondent also refers to a number of inconsistencies in Ms Alarcon’s accounts to her doctors.
2. Ms Alarcon’s oral evidence was frequently difficult to follow, inconsistent and contradictory. Whether because she was not frank with the Tribunal or whether a manifestation of her illness, or a combination of both, we agree that her evidence about the incidents complained of is not reliable and, except where supported by other evidence, cannot be relied on. As can be seen, there is very little evidence to support her claims; even Mr Singh, the only person to witness the incident on 15 December 2012, gave scant support to her version of events.
3. Turning to the particular incidents complained of, the evidence does not support Ms Alarcon’s account of the first incident. We prefer the evidence of Mr Davies, Mr Charman and Ms Busby. We accept Ms Busby’s evidence that, from where she was, it was not possible for Ms Alarcon to hear Mr Davies say the words alleged. We accept that he waved his fingers in the air but are not satisfied it was directed at Ms Alarcon. The fact that she collapsed soon after is not evidence that Mr Davies behaved as she claims, particularly when she had acted in similar fashion on previous occasions.
4. In relation to the second incident, we do not accept Ms Alarcon’s version. It is not in dispute that Mr Davies hit a ULD near to where she was standing but, despite their apparent history of difficulties, there is no evidence to support the conclusion that he did so deliberately. The evidence is that he was trying to move out of her way. Her claim that he swore and continued banging bins is not supported by her own witness.
5. In relation to the third incident, we find that the CCTV accurately portrays what occurred. Nothing in it supports Ms Alarcon’s claim; it supports the evidence of Mr Davies and Ms Harper-Jung that Ms Alarcon was aware that Mr Davies was approaching, and that she appears to have been waiting, or to have placed herself in that position, possibly so as to found a complaint about him.
6. We accept that Ms Alarcon may genuinely believe events occurred as she alleges but it does not follow that her employment has contributed to a significant degree to her condition or that the respondent is liable to compensate her.
7. In *Wiegand v Comcare* (2002) 72 ALD 795, Von Doussa J said:

… *If the incident or state of affairs actually occurred, and created a perception in the mind of the employee (whether reasonable or unreasonable in the thinking of others) and the perception contributed in a material degree to an aggravation of the employees ailment, the requirements of the definition of disease are fulfilled.*

1. The relevant test in these proceedings is contribution to a *significant degree* rather than a *material degree* but the test of liability remains the same: the incident or state of affairs must actually occur and any perception created in the mind of the employee must contribute to the relevant degree to an aggravation of the ailment.
2. The mere belief, no matter how genuine, that work has been a contributing factor is not sufficient. In *Kirkpatrick v Commonwealth* (1985) FCA 440, the Court said:

*… It was contended the employment, out of which that injury arose, was itself a contributing factor to the contraction of the mental disease. But the fact is the leg disability had nothing to do with the work injury. And thinking cannot make it so. The fact that the applicant thought his disability arose out of his work, and therefore thought it compensable, may have been potent factors in the development of his neurosis. But these were thoughts in his mind. They did not mean that his employment actually was a contributing factor in the development of his neurosis. The contrary view would lead to absurd consequences.*

1. Merely because Ms Alarcon believes that her work caused her condition does not make it causally related. In *Australian Telecommunications Commission v Tsikas* (1985) 5 AAR 173, the Court said:

*There is of course, an important difference between, on the one hand, the sequelae making a sick mind sicker and thus perhaps contributing to incapacity and, on the other hand, a sick mind latching onto the factors described so that, in one sense, they play a part in the illness, but not in such a way as to add to existing incapacity.*

**Conclusion**

1. For the reasons we have given above, we prefer the evidence of Mr O’Neill and Dr Champion to that of Dr Saker, and find that Ms Alarcon has a personality disorder with paranoid ideation. We are satisfied that it is long-standing and pre-existed the events of which she complains in these proceedings.
2. We are not satisfied, on the information before us, that any of the incidents of which Ms Alarcon complains in these proceedings actually occurred as she claims. We are not satisfied that her perception of what did occur contributed to a significant degree to an aggravation of her pre-existing condition.
3. We affirm the decisions under review.

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| 1. I certify that the preceding 84 (eighty-four) paragraphs are a true copy of the reasons for the decision herein of Senior Member J F Toohey and Dr Couch, Member. |

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Associate

Dated 2 July 2015

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| --- | --- | --- | --- |
| Date(s) of hearing | | **18 – 21 May & 25 – 28 May 2015** | |
| Representatives for the Applicant | | **Self**  **Mr Ismael Isidto, Friend**  **Mr Paul Contessa, Friend** | |
| Representatives for the Respondent | **Mr Paul Jones, Counsel**  **Mr Graham Jones, Graham Jones Lawyers** |