

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Santos Ltd v Simon Blackwood (Workers' Compensation Regulator)* [2016] QIRC 067

PARTIES: **Santos Ltd**
(appellant)

v

Simon Blackwood (Workers' Compensation Regulator)
(respondent)

CASE NO: WC/2015/251

PROCEEDING: Appeal against decision of the Workers' Compensation Regulator

DELIVERED ON: 16 June 2016

HEARING DATES: 11 - 13 January, 6 May 2016

SUBMISSION DATES: 18 March 2016 (appellant's submissions)
4 April 2016 (respondent's written submissions)
11 April 2016 (appellant's submissions in reply)

MEMBER: Deputy President Kaufman

ORDERS :

- 1. The appeal is dismissed**
- 2. The decision of the Workers' Compensation Regulator is confirmed**
- 3. The appellant is to pay the respondent's costs of, and incidental to, the appeal in an amount to be agreed between the parties or, failing agreement, on application to the Commission**

CATCHWORDS: WORKERS' COMPENSATION - APPEAL BY EMPLOYER - where personal injury is accepted - whether personal injury is an injury for the purpose of s 32 of the *Workers' Compensation Act 2003* - scope of appeal - whether personal injury arose

before or after stated date of injury - where personal injury is caused by management action - whether management action was reasonable - whether management action was reasonably taken

CASES:

Church v Blackwood [2015] ICQ 031

Delaney v Q-COMP Review Unit; (2005) 178 QGIG 197

Reid v Workers' Compensation Regulator [2016] QIRC 047

State of Queensland (Queensland Health) AND Q-Comp AND Beverley Coyne (No. C90 of 2002) (2003) 172 QGIG 1447; [2003] QIC 118

APPEARANCES:

Mr B. McMillan of counsel, instructed by BT Lawyers, for the appellant

Mr S. Gray of counsel, instructed directly by the Worker's Compensation Regulator

Reasons for Decision

- [1] On 22 October 2014, Mr John Thomas Willcox lodged a Notice of Claim for Damages¹ with WorkCover Queensland ("WorkCover") for an injury described as "Depression and Anxiety" said to have been sustained during the course of his employment as Team Leader, Landholder Relations with Santos Ltd ("Santos").
- [2] By its decision dated 6 March 2015 WorkCover rejected Mr Willcox's claim. By application for review dated 4 June 2015 Mr Willcox applied for a review of the decision by the Regulator. By its decision dated 14 August 2015 the Regulator set aside WorkCover's decision and determined that the claim should be accepted. Santos now appeals that decision to the Queensland Industrial Relations Commission.
- [3] This appeal requires consideration of whether Mr Willcox has sustained an injury within the meaning of section 32 of the *Workers' Compensation and Rehabilitation Act* 2003 (the Act) and, if so, whether that injury is excluded from falling within the definition of "injury" by operation of section 32(5) of the Act.

¹ Exhibit R18.

- [4] Santos accepts that Mr Willcox was a worker and that he has suffered a personal injury namely, an Adjustment Disorder-Depressed Mood.² Accordingly, the matter for decision is whether Mr Willcox's personal injury is an "injury" within the meaning of that word in section 32 of the Act.

Events leading to WorkCover Claim

- [5] In his Notice of Claim for Damages Mr Willcox outlined the events leading to his personal injury. The evidence led during the hearing is generally consistent with that outline. I have reproduced it insofar as it is relevant and verifiable, below. Relevantly, Mr Rodney (Rod) Kent was, during the relevant period, Mr Willcox's manager and the person whom Mr Willcox directly reported.

"Background context

In May 2012 I applied for and was appointed to the position of Team Leader (Landholder Relations) by my employer, Santos.

I commenced in this role on 4 June 2012, by which time Rod Kent had been appointed to the position of Manager of Landholder Relations. I felt from the outset that Rod Kent did not support my appointment, but I focused on my work performance. I was awarded a financial bonus for the 2012 year and a pay rise for the 2013 year.

In November 2012, my wife Christine commenced employment (through Hays employment agency) with Santos as a Business Co-Ordinator in the Roma office.

In or about February 2013, I raised concerns with Sam Klaas, the Regional Manager of Upstream Operations, about Rod Kent's management style.

...

On 21 March 2013, Rod Kent flew to Roma with Adam Jones from Human Resources (HR). I was called to a 'Please Explain' meeting at which a number of performance issues were put to me by Rod Kent. During this meeting, Rod advised that he would be terminating my wife's employment with immediate effect, due to her early departure from a Legal Obligations Training session which was held on 7 March 2013.

...

² Exhibit A16; Written Submissions on behalf of the appellant.

I had a further meeting with Rod Kent and Adam Jones on 22 March 2013 and I responded to the matters which they had raised. After the meeting, I was issued with a first and final warning letter.

Following this, I made a formal complaint about Rod Kent's conduct. Ryan Olsen from HR telephoned me once to discuss my concerns, but no statement was taken, no details were given to me of the steps that HR were taking and I was not offered any employee assistance.

I attended my GP Dr Alwyn Rapatsa on 15 April 2013, reporting that I was experiencing stress at work and that I had a difficult relationship with Rod Kent. I was referred for counselling and placed on medication.

I met with Judy Venn, Psychologist, initially on 7 May 2013.

By letter dated 13 May 2013, I was advised of the outcome of my complaint. In summary, Santos advised that 'it was determined that on a couple of occasions Rod's actions (or in some circumstances lack thereof) were not appropriate. There was however insufficient evidence to substantiate the allegation of workplace harassment, on the balance of probabilities'.

The letter went on to state that Santos was taking steps to address the situation and to support the re-establishment of a working relationship between Rod Kent and myself.

...

Nevertheless, I continued working and felt that my team was performing well.

...

25 July 2013 - Event leading to decompensation and departure from employment:

On 25 July 2013, Rod Kent and Adam Jones from HR convened a meeting with me in Roma. I was advised of the meeting by way of SMS text message from Rod Kent the day before. I was not told what the meeting was about nor was I advised that there was to be a disciplinary issue raised.

At the meeting, Rod Kent advised me that he had received a 'very serious' complaint, that I had approved my own telephone account.

...

The meeting was the final straw for my mental health. I recall becoming very upset and telling Rod Kent words to the effect that he had finally 'won'.

...

... I offered my resignation, which was formalized by an agreement dated 2 August 2013. My mental health remains adversely impacted."

- [6] There were also five further relevant events involved in the lead up to Mr Willcox's resignation from Santos. They all concern Mr Willcox's relationship with Mr Kent and were all contained in Mr Kent's letter of 21 March 2013 to Mr Willcox.³ The five events are outlined below.

Christmas party

- [7] Mr Willcox organized a Christmas party for his staff and team in 2012. The process and protocol surrounding individual teams organizing parties, separate or otherwise, appears to have been unclear to Mr Kent.⁴ This was an early incident that caused a degree of tension between Mr Kent and Willcox.⁵ Mr Kent seems to have been of the view that it was contrary to Santos' policy for teams to have their own Christmas parties.

Maranoa Workers' Club

- [8] Mr Willcox had been investigating options for relocating his team into a single building as it had been operating out of an office which had been too small. It is unclear whether Mr Willcox was told to investigate these options. Certainly Mr Kent was critical of him for having done so. However, it does appear as though Mr Kent did request that Mr Willcox keep him informed of any enquiries made of possible locations being considered. Mr Kent thought that Mr Willcox should not have informed the Maranoa Workers' Club that Santos might consider leasing it for office space as Mr Klaas, the then regional manager for the Maranoa area, had previously said that they would not.⁶

Expenses

- [9] From the commencement of his wife's employment at Santos, Mr Willcox, as the senior employee, had been able to approve her expenses in the Oracle computer system.⁷ However, to do so conflicted with Santos' expenses policy.⁸ The following passage is instructive:

³ Exhibit R7.

⁴ Exhibit R2.

⁵ T1:8-9.

⁶ T1:9.

⁷ T1:29.

⁸ T1:38.

McMillan: Now, if I can take you to early 2013 and beginning, perhaps, at the start of the year in January, is it the case that there were some other more significant issues that came to your attention in relation to matters of protocol involving John Wilcox?

Kent: Yes. So...

McMillan: What were they?

Kent: What occurred then was the finance people in Adelaide do audits and a finance person from Adelaide rang me and asked me if I was John's supervisor and I said, yes, I am and then he proceeded to ask me about the relationship between John and Christine and then he raised concerns with me about expenses that John had approved on Christine's behalf.

McMillan: Now, as best you can recall, can you tell us what it was that – what the substance of the issue that was raised with you by the Adelaide office was?

Kent: It related to, there was the actual expense itself, because it was during a Christmas period, it was a hotel bill and a restaurant bill in Toowoomba for a fact-finding thing that John had done, again, something he hadn't asked me about. He sort of said he was going to go look at some location for an off-site on his Christmas break and I didn't actually expect to get the expenses for that, but we did and we paid those and we had a conversation about that, but that's what raised the red flag with HR – with, sorry, with finance, was expenses during the Christmas period at hotels and in restaurants causing them to call me. It also was a concern due to the policy to do with not having one spouse approve another spouse's expense and in this instance there were – John was the most senior employee. It was Santos' protocol and policy that the most senior employee put the expenses forward if there was joint expenses with junior staff, which Christine was junior to him.⁹

- [10] On 17 January 2013 after the Christmas expenses had been flagged, Mr Kent had an informal chat with Mr Willcox about the approvals process.¹⁰ Mr Kent asked that Mr Willcox stop approving Mrs Willcox's expenses¹¹ and timesheets.¹² Mr Kent stated during the hearing that, after the 17 January conversation, Mr Willcox had "mostly" stopped that practice.¹³

⁹ T1:10.

¹⁰ T1:11; Exhibit R7.

¹¹ T1:11.

¹² Exhibit R7.

¹³ T1:38.

Conduct at a legal obligations seminar

- [11] On 7 March 2013, Mr Willcox attended a "Legal Obligations" seminar held by Santos. There is conflicting evidence about Mr and Mrs Willcox's behaviour during the seminar but it is clear that they both left the session early¹⁴ and that Mr Willcox made a derogatory comment on departure about the session's quality.¹⁵ The presenter of the seminar would later complain about Mr Willcox's behaviour, and this, in turn, would result in the disciplinary meetings on 21 or 22 March 2013.

Mrs Willcox's attendance at the 'Agriculture and CSG Coexistence Project' seminar

- [12] Mrs Willcox attended the Agriculture and CSG Coexistence Project on 12 March 2013. In Mr Kent's letter of 21 March,¹⁶ Mr Willcox was asked to respond to the following in relation to:

"Why the Business Coordinator, Christine Willcox, who is also your wife and a contractor, accompanied you on the trip at the expense of the company. As previously agreed, the primary role of the Business Coordinator is supervising administrative staff in Roma, so we do not understand why it would have been necessary for Christine to attend this seminar.

Why you didn't discuss the seminar with me or the Maranoa Regional Manager at the weekly Leaders Meeting. My previous clear direction to you have been to always involved the Maranoa Regional Manager on these issues in the early stages."

[All errors in original]

- [13] Mr Willcox's written response was:

"I was directed by Mr. Rod Kent several months ago to participate in this program - in an email of the Thursday 2/8/2012 Rod Kent instructed me to "nominate a person to attend to provide comment and possibly work on this or attend". The initial email that Mr. Kent was responding to was an invitation from David McFarlane as the Santos rep on the UQ Project. That email was also addressed to the Maranoa Regional Manager, Mr Sam Klaas and several of his team.

John and Christine Willcox were invited to attend the CSG & Agriculture Co-Existence meeting by Mr. David McFarlane and Mr. Scott Dalzell. Christine was also fulfilling an obligation to meet with Mr. Tim Laver and Mr Matthew Venamore to have input into the development of new system and the revamp of SRM. The setting up of new systems was one of the top priorities for the role

¹⁴ R6; T3:21.

¹⁵ T3:71.

¹⁶ Exhibit R7.

of Business Co-Ordinator and Christine's input into this had been acknowledged as very valuable. Christine attended the CSG & Agriculture Co-Existence meeting prior to these meetings with Tim Laver and Matthew Venamore. In her role as Business Co-Ordinaror and PA to the Team Leader Field Christine took extensive notes during the meeting to provide a comprehensive report to Mr. Rod Kent. While Christine was meeting with Mr. Venamore I met with John Phalen to discuss the handover of Rachael Bell and Shed Meetings. I also met with Nick Leddy and Steve Paramasivim.

The directions of Mr. Kent have been to fill out a travel advice prior to travelling to Brisbane. This travel advice was filled out in full and submitted a week prior to the meeting - a email on the 4/3/2013 was sent. I cannot be responsible for Mr. Kent's inattention to detail and the fact that he did not peruse the travel advice which was emailed to Mr. Kent and Ms Rose Holden on the 4/3/2013, 8 days prior to the meeting. Mr. Kent was clearly advised of the purpose for travel well prior to the travel taking place and had ample opportunity to question or ask for further details.

As regards reporting to the Maranoa Regional Manager, I do report directly to the Maranoa Regional Manager on an operational basis. Where I can I keep him informed. If I am required to report directly to the Maranoa Regional Manager I need to be advised of this in writing."¹⁷

[All errors in original]

- [14] Both accounts, albeit that each casts a different light, underscore the inadequate communication channels between Mr Kent and Mr Willcox.

Medical evidence

- [15] Four health professionals provided evidence in this matter. Dr Louise Badenhorst, General Practitioner; Dr Alwyn Rapatsa, General Practitioner; Ms Judith Venn, Mental Health Accredited Social Worker; and, Dr Prabal Kar, Psychiatrist. An outline of Mr Willcox's interaction with each of these individuals follows.

Dr Louise Badenhorst

- [16] Mr Willcox has visited Dr Badenhorst at her surgery since 2008. Their first recorded consultation was on 20 August 2008 at Northwest Health in Tamworth.¹⁸ Of relevance to this matter is that Mr Willcox saw Dr Badenhorst on 28 February 2011, the records note that he was "struggling with low mood and low libido. Stress

¹⁷ Exhibit R10.

¹⁸ Exhibit A22.

at work". Dr Badenhorst recorded that Mr Willcox had been using Aurorix before with good effect.¹⁹ Aurorix is prescribed for depression.

[17] Mr Willcox's next substantive consultation with Dr Badenhorst, which related to his mental health, would be at the Windmill Practice in Tamworth on 26 June 2014, well after 25 July 2013, the date upon which he alleges he sustained his personal injury. Dr Badenhorst noted that Mr Willcox had been feeling depressed; that he had been working on a farm and looking for work; that he had been doing some consulting work but was not getting much; that he had financial problems, amongst other things. On that occasion Dr Badenhorst prescribed Zoloft. Over the following year Mr Willcox would also see Dr Badenhorst on 17 July, 12 September, 31 October, and 9 December 2014. Each occasion was related to his depression.²⁰

[18] When questioned by counsel for the appellant as to whether Mr Willcox's presentation in 2011 was different to his presentation in 2014 Dr Badenhorst stated as follows:

"That's a hard question. My honest opinion and what I can remember from my notes is a note that, initially, I obviously did consider it when I stated [indistinct] and [indistinct] that it was his pre-existing depression that I was treating him for."²¹

Dr Alwyn Rapatsa

[19] Dr Rapatsa is a General Practitioner based at the Maranoa Medical Centre in Roma. On 15 April 2013 Mr Willcox attended upon Dr Rapatsa. "Depression" is noted as the reason for Mr Willcox's visit on 15 April.²² Dr Rapatsa, at that 15 April consultation, referred Mr Willcox to Ms Judith Venn for counselling. The referral letter mentioned that Mr Willcox was under enormous stress at work and that "he has a difficult relationship with his boss. This started three weeks ago." The reference to "three weeks" places the origin of the difficulties at or around the meetings on 21 and 22 March 2013, during which Mrs Willcox's contract with Santos was terminated. It follows that the "boss" referred to was Mr Kent.

Ms Judith Venn

[20] Ms Venn is a social worker based in Roma. Mr Willcox met with Ms Venn, in Roma, on 17 May, 27 and 28 June 2013. Her notes document Mr Willcox's thoughts on Santos, his relationship with the company and his colleagues, his plans for the future and possible exit strategies.²³ Ms Venn's evidence during the hearing did not

¹⁹ T2:82.

²⁰ Exhibit A23.

²¹ T2-88.

²² Exhibit A19.

²³ Exhibit A18.

yield any further information beyond Dr Rapatsa's initial diagnosis of depression, but it does reinforce the conclusion that Mr Willcox was experiencing some stress and anxiety around that time.

Dr Prabal Kar

[21] Dr Kar is a psychiatrist. He conducted an assessment for the purposes of preparing a report on Mr Willcox on 20 November 2014. The report is also of that date.²⁴ Dr Kar provided a supplementary report on 2 July 2015.²⁵ In his first report, Dr Kar diagnosed Mr Willcox with an Adjustment Disorder with Depressed Mood.

[22] In his supplementary report Dr Kar, after reviewing further evidence provided to him, stated:

"... Adjustment Disorder is diagnosed based on DSM-IV symptom criteria. Adjustment Disorders are stress-related conditions. Mr Willcox alleged certain stressors and he had distress in response to those stressors. Whether his distress was because of real stressors, or whether his distress was because of things he perceived to be stressors but were actually his misinterpretations, and whether his stressors are compensable or from malicious actions by the employer or its management is a matter for the Court. It is clear that Mr Willcox did feel stressed and that he had developed a stress-related psychiatric condition, which I have diagnosed as an Adjustment Disorder with Depressed Mood, based on his symptom presentation and severity.

If the Court finds that there were no genuine stressors as Mr Willcox has claimed, then his Adjustment Disorder would be based on his interpretation or misunderstanding and therefore the Court may not view his adjustment Disorder as a compensable psychiatric injury.

If, on the other hand, the court believes that Mr Willcox's understanding of the stressors was not a misunderstanding, then the court may view those stressors as compensable stressors causing the Adjustment Disorder."²⁶

[23] In neither his initial nor his supplementary reports did Dr Kar adumbrate or demarcate the various stressors suffered by Mr Willcox before and after the date of the claimed injury. Rather, Dr Kar discussed, generally, examples of Mr Willcox's stress. A number of stressors were put to Dr Kar in the form of questions around which he was required to structure his answers. These stressors, as put to Dr Kar in his 20 November 2014 report ran from (a) - (f). The supplementary report added (g) - (i). They are extracted below:

²⁴ Exhibit A16.

²⁵ Exhibit A17.

²⁶ Exhibit A17.

- (a) The claimant being disciplined in March 2013.
- (b) The claimant's spouse's contract ceasing with Santos.
- (c) The claimant being disciplined in July 2013.
- (d) The claimant resigning from his employment in July 2013.
- (e) The claimant's perception of Santos sabotaging his future employment prospects.
- (f) Pre-existing psychiatric illness.
- (g) Pre-existing personality traits or disorder.
- (h) Financial Stress.
- (i) Any other factors that you can identify.²⁷

[24] In response to answering the question on the cause of Mr Willcox's psychiatric illness, especially in relation to the above factors, Dr Kar wrote that it was not "any single stressor that gave rise to Mr Willcox's Adjustment Disorder. The factors mentioned above at (a) to (i) all played a role, particularly (a), (b), (c), (d) and (e)."²⁸ I note that factors (e) to (f) are not related to Mr Willcox's employment.

[25] On being questioned about Mr Willcox's prior medical history, especially those instances where Mr Willcox had seen a General Practitioner about stress, anxiety or depression, Dr Kar said the following:

"... there is evidence in the past of him having experienced anxiety, stress and depression symptoms. There appear to have been - from the records available to me, they appear to have been intermittent. They do not appear to have been consistent or persistent. They appear to have caused him stress at times to the point that he has sought help from the doctor. He has been prescribed antidepressant medication like [indistinct] and moclobemide. But though he has had stress from - from factors that were affecting him at different times, generally he has functioned, and there was no impairment. I do not find evidence of him having a chronic psychiatric condition that would - that would cause him a chronic impairment. I did find him having intermittent symptoms of some anxiety, and my understanding is it was quite possible that he was responding to his stressors, but it was not a genuine diagnosis of psychiatric disorder."²⁹

[26] On then being asked when Mr Willcox's symptoms were elevated to the point of a diagnosable psychiatric illness, Dr Kar said:

"When I saw him, he was - he was in significant distress when I reviewed him, so at that point, I could make a psychiatric diagnosis based on his distress. And there was, from his statement to me, at assessment some level of impairment, which I assessed on the PIRS so I know that at that point there

²⁷ Exhibit A17.

²⁸ Exhibit A17.

²⁹ T2:28-29.

was a psychiatric condition. Going back, I was given the history, which appeared to have occurred in 2013 until he left the company over several months."³⁰

[27] Dr Kar characterized Mr Willcox's impression that Santos had "blacklisted" him and his financial difficulties as "current active stressors."³¹

[28] Dr Kar outlined how an Adjustment Disorder - Depressed Mood would be diagnosed in the following exchange with Mr McMillan:

McMillan: Could you explain to us, please, the process or the nature of an adjustment disorder with depressed mood and the particular features that you would look for that would distinguish that diagnosed psychiatric condition from, say, someone who simply had a low mood over an intermittent but extended period of time?

Kar: Well, adjustment disorders are considered stress-related conditions, so there must be an identifiable stressor or stressors; then the emotional or psychiatric symptoms are considered to – or judged to have occurred in response to those stressors. **And the main criteria to diagnose whether this is simply, you know, being stressed or upset about something or having – or whether it has crossed the threshold into a genuine psychiatric diagnosis as diagnosable in the DSM-IV requires the presence of marked or significant distress and/or the significant impairment of functioning. So if there is marked or significant distress on its own or it is accompanied by significant distress – impairment of functioning which is considered from the distress or from the psychiatric condition, then it becomes clinically significant enough to be given a psychiatric diagnosis. It is a stress-related condition and adjustment disorder.** So he reported to me a number of stressors as given in the history, and – that occurred – occurred over a period of time, some of the stressors having occurred when he was working with Santos, and some of the stressors that occurred after he left employment and was trying to find work for himself in the community. And he was under distress when I – he was distressed when I saw him, and he gave the reasons why he was distressed.³²

[My emphasis]

[29] Also of some importance is the following exchange between Mr McMillan and Dr Kar:

³⁰ T2:29.

³¹ T2:30.

³² T2:22.

McMillan: What is it about his presentation on the 25th of July 2013 that distinguishes his mental condition at that time from the presentation recorded in the notes in 2011 through to July 2012?

Kar: I would say the level of despair. He was so despairing that he gave up and that he decided to resign. I felt, from the history that he gave me, he was fighting to keep his job. He wanted to stay on, but he went to [indistinct] work which convinced him that [indistinct] that he realized that nowhere – wherever he turned, he wouldn't be getting any help [indistinct] and then that led to a state of despair where he gave up the job and resigned when he lost – lost hope. So this loss of hope and his action of giving up a job that he loved, it shows a high level of distress and I used that from the history that I had before me, that he was in such a lot of distress that he would be [indistinct] to resign.³³

[30] It seems to me, on the basis of Mr Willcox's evidence and that of Dr Kar, that on 25 July 2013 Mr Willcox's being stressed or upset crossed the threshold into a genuine psychiatric illness.

Onus of proof

[31] Authorities, which bind me, are to the effect that in matters of this nature the appellant bears the onus of proof.³⁴ Consequently, Santos must prove, on the balance of probabilities, that the worker did not suffer an injury within the meaning of section 32 of the Act. As the appellant accepts that Mr Willcox was a worker and has suffered a personal injury, namely Adjustment Disorder – Depressed Mood, to succeed on appeal, Santos must satisfy the Commission that:

- Mr Willcox's psychiatric injury did not arise out of, or in the course of, his employment with the appellant; or,
- if it did, that the employment was not a significant contributing factor to the injury; or
- if it was, the personal injury suffered by Mr Wilcox is excluded by operation of section 32(5) because it arises from:
 - i. reasonable management action taken in a reasonable way; or
 - ii. Mr Willcox's perception of reasonable management action taken against him.

³³ T2:52.

³⁴ *State of Queensland (Queensland Health) AND Q-Comp AND Beverley Coyne (No. C90 of 2002)* (2003) 172 QGIG 1447, 1448; [2003] QIC 118.

Scope of appeal

[32] Mr McMillian, counsel for Santos, nominated three periods in which Mr Willcox's injury may have arisen: either before Mr Willcox's employment with Santos, during his employment, or after his employment.

[33] Although Mr Willcox had suffered periods of anxiety and depression prior to his employment with Santos, the evidence does not support a finding that the psychiatric injury diagnosed by Dr Kar arose before Mr Willcox started to work at Santos.

[34] Mr McMillian also referred to s 235A of the Act, which provides as follows:

"Date of relevant health practitioner consultation taken to be date of injury

(1) For the application of this chapter in relation to an injury sustained by a worker that happens over a period, the date on which the worker first consulted a relevant health practitioner about the injury is taken to be the date of the worker's injury."

[35] It is not necessary to discuss this section as I am not satisfied that this is an injury that occurred over a period of time. Although Mr Willcox's vulnerability to experience a psychological injury may have increased over time, the evidence strongly supports the conclusion that his personal injury occurred on 25 July 2013, the date he claimed. That is the date on which Mr Willcox sustained his personal injury. His claim is made on the basis that his injury occurred on 25 July 2013, and this is consistent with the evidence.

[36] The judgment of Martin J, President, in *Church v Blackwood* is authority for the proposition that on an appeal of this nature, which is conducted as a hearing *de novo*, the "review decision" being appealed sets the boundaries of the appeal.³⁵ Here, the review decision was in relation to Mr Willox's claim for compensation for an injury that he asserted occurred on 25 July 2013. Mr Willcox's claim was made on that basis, WorkCover dealt with the claim on that basis and the Regulator's review was predicated on that date. It follows that for the purposes of this appeal the issue is whether Mr Willcox suffered a section 32 injury on 25 July 2013.

[37] Having regard to the medical evidence and that of Mr Willcox, I am satisfied that Mr Willcox sustained a personal injury on 25 July 2013.

[38] Dr Kar's evidence, in particular, leads to the conclusion that Mr Willcox suffered a personal injury on 25 July 2013. I accept the doctor's observation that Mr Willcox was experiencing such a large degree of distress at that point that he decided to

³⁵ *Church v Blackwood* [2015] ICQ 031, [29]-[30].

resign from the job he enjoyed at Santos. This conclusion is supported by the somewhat desperate emails sent by Mr Willcox on that date.³⁶

[39] I do not accept the appellant's submission that Mr Willcox's personal injury arose from, or was a manifestation of, Mr Willcox's prior history of depression and anxiety. Those diagnoses may indicate that Mr Willcox was prone to stress or depression at certain points in time, but there is no evidence to connect Mr Willcox's condition in 2011 to the personal injury he sustained on 25 July 2013.

[40] As the date on which Mr Willcox sustained his personal injury is 25 July 2013, section 32 as it stood at that date defines "injury" for the purposes of this appeal. The section, prior to the amendment of 29 October 2013, with its commencement backdated to 15 October 2013, reads:

"Meaning of injury

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

...

(3) **Injury** includes the following -

(i) a personal injury;

...

(5) Despite subsections (1) and (3), *injury* does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances--

(a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;

(b) the worker's expectation or perception of reasonable management action being taken against the worker;

..."

Management action

[41] It is clear that Mr Willcox's personal injury is one that arose out of, or in the course of, the taking of management action; in particular, but not limited to, the meetings of 21 March and 25 July 2013. Accordingly, to exclude the injury from the definition of injury in section 32 of the Act, the appellant must persuade me that the management action was reasonable and taken in a reasonable way.

³⁶ Exhibits R16 and R17.

[42] The actions of an employer within a workplace do not occur within a vacuum. They inform the narrative of a workplace and environment in which employees operate.

[43] In this matter, it is necessary to examine the management action within the context of the relevant events within the workplace at the time. As Industrial Commissioner Neate recently said:

"Where it is factually possible and appropriate to do so, an appellant may seek a global assessment of multiple aspects of management action out of which, or in the course of which, the condition has arisen, and thereby exclude the operation of s 32(5)."³⁷

[Footnote omitted]

[44] A global approach is the correct approach in this matter.³⁸ The various exchanges between Messrs. Kent and Willcox, and to a lesser extent Mr Klaas, to which I have referred, together with the disciplinary meetings constitute the management action to which I must have regard in determining whether it was reasonable and taken in a reasonable way.

The meeting of 21 March 2013 and the termination of Mrs Willcox's employment

[45] The appellant submitted that the actions taken by Mr Kent to terminate Mrs Willcox's contract do not go to the issue of the reasonableness of the management action, or the reasonableness of the way in which it was taken, as it relates to Mr Willcox for the purposes of section 32(5). I accept the appellant's submission so far as it goes.

[46] The action taken to terminate Mrs Willcox's employment, whilst falling within the concept of management action, is management action taken in connection with her employment, but clearly is not management taken in connection with Mr Willcox's employment.

[47] However, the matter does not end there. Apart from the timing of the ending of Mrs Willcox's employment simultaneously with the disciplinary meeting involving her husband in March 2013, Mr Kent, for no obvious reason, informed Mr Willcox during that meeting that his wife had been sacked. It is unsurprising that this was one of the stressors that is said to have contributed to Mr Willcox's decompensation.

[48] The conversation took place during the disciplinary meeting involving Mr Kent and Mr Willcox. The evidence supports the proposition that being told of his wife's sacking in these circumstances was one of the stressors contributing to Mr Willcox's psychiatric condition. Although the holding of the disciplinary meeting was

³⁷ *Reid v Workers' Compensation Regulator* [2016] QIRC 047, [195].

³⁸ *Delaney v Q-COMP Review Unit* [2005] QIC 11; 178 QGIG 197, 198.

reasonable management action, it was not taken in a reasonable way; it was quite unreasonable to inform Mr Willcox of his wife's predicament at that time and in that manner. Although Mr Willcox's psychiatric disorder, to some extent, arose out of, perhaps in the course of, reasonable management action taken in connection with his employment, Santos has been unable to satisfy me that this aspect of management action was taken in reasonable way.

The meeting of 25 July 2013

[49] Further, I am not satisfied that what occurred on 25 July 2013 was management action taken in a reasonable way. Mr Willcox was merely advised via an SMS text from Mr Kent the previous day that he would be in Roma the following day. On 25 July Mr Kent and Mr Jones met the appellant and gave him a letter dated the same day, requiring him to attend a formal interview the following day.³⁹ The letter advised him that Santos had received a complaint "that you have engaged in conduct that may be in breach of Santos' Code of Conduct, Conflict Interest policy and Travel & Expenses Policy.... On the basis of the nature and seriousness of the conduct complained of, Santos is conducting a confidential investigation." It went on:

"Santos now wishes to meet with you to discuss the complaint, ask you questions and provide you with an opportunity to respond to the allegations raised.

It is alleged that you:

- Instructed a direct report to process and pay your May Telstra bill (see attached) which you then approved via Oracle on 19 July 2013 contrary to the Conflict of Interest and Travel & Expenses policies (see attached).

This is of particular concern to the company given your final warning that was issued on 11 April 2013, for reasons including, inappropriately approving expenses incurred on your behalf by your wife, Christine Willcox, who at the time was engaged as a contractor by Santos.

Requirement to attend for interview

As a requirement of your employment contract, you are required to attend an interview with Rod Kent, Manager Land and Adam Jones, Human Resources Business Partner. The interview will be an opportunity for you to respond to the allegation. Details of the interview are as follows:

³⁹ Exhibit A6.

Date & Time: Friday 26 July at 9am
Location: Roma office, 21 Currey Street, Roma
Interviewer: Rod Kent [phone number]

You may bring a support person to accompany you to the interview. You may also access the Santos Employee Assistance Program on [phone number] should you require any confidential support prior to or after the interview.

It is a requirement that you keep this matter confidential. You must not discuss the confidential investigation with other Santos employees, contractors or members of the public (however, this does not preclude you communicating with your leaders or your support person during the confidential investigation). We also remind you of Santos' requirement of no-victimisation as stated in Santos' Equal Opportunity Policy, of which any breach will be taken seriously by Santos.

If you have any questions please contact Adam Jones on [phone number].

Yours sincerely,

Rod Kent
Manager, Land
GLNG US Ops - Landholder Relations"

[50] According to Mr Willcox the allegations were comprehensively discussed at the time, despite the intention that there be a meeting to do so the following day.⁴⁰ He said that he felt "gutted" and saw this disciplinary process as being designed to get rid of him. He broke down and offered his resignation, which was not accepted. The meeting intended for the following day did not eventuate. Mr Willcox's resignation was accepted the following week.

[51] The meeting was disciplinary in nature and was undoubtedly the taking of management action. Mr Willcox broke down after receiving the letter.

[52] In instances such as this, where an employee has breached a company policy more than once, an employer could not be said to be acting unreasonably in conducting a meeting with the employee to discuss the policy and the breaches of that policy. As is outlined above, an early tranche of expense approvals caused Mr Willcox to previously have been issued a final warning. I am satisfied that Santos' decision to call the meeting on 25 July 2013 was reasonable management action.

⁴⁰ T3:86.

[53] Mr Willcox's meeting was convened at short notice with Mr Jones as well as Mr Kent participating.⁴¹ He was not told in the SMS what the meeting was to be about and, importantly, was not advised that a disciplinary issue was to be raised. On 25 July he was confronted by Mr Kent and Mr Jones handing him a letter making serious allegations that, if found to be substantiated, would likely lead to the termination of his employment. Despite the reasonableness of calling a meeting to discuss a breach of company policy, especially a policy concerning expenses, to do so in the manner I have described is arguably unreasonable. Regard must also be had to the nature of the alleged infraction. It concerned Mr Willcox's signing-off on what appears, at least on one view, to have been a pre-approved reimbursement for his legitimate telephone expenses. There is no suggestion that Mr Willcox had been acting fraudulently. The calling of the meeting, in the manner in which it was done, appears to me to have been somewhat extreme.

[54] Santos has been unable to satisfy me that this aspect of management action was taken in a reasonable way.

Arising out of, or in the course of, employment

[55] Where, as is the case here, an injury arises wholly out of, or in the course of, management action, it follows as a matter of logic that:

- The injury arose out of, or in the course of, the employment; and
- The employment was a significant contributing factor.

[56] However, for the sake of completeness, I would, in any event, find that Mr Willcox's injury arose out of, or in the course of, his employment and that the employment was a significant contributing factor thereto.

[57] The events leading to 25 July 2013, including the telling Mr Willcox during the earlier disciplinary meeting of 21 March 2013 about the termination of Mrs Willcox's contract, the poor lines of communication between Mr Kent and Mr Willcox that allowed for animosity to grow between the two, and the final disciplinary meeting on 25 July 2013 involving Messrs. Kent, Jones and Willcox, are all matters which are, uncontroversially, related to Mr Willcox's employment with Santos. It follows that his injury arose out of, or in the course of, his employment.

[58] I also find that Mr Willcox's employment was a significant contributing factor to his personal injury. Specifically, I find that Mr Willcox's personal injury manifested itself during the meeting on 25 July 2013, and that the events leading to that meeting, including the timing of the advice of the termination of Mrs Willcox's

⁴¹ T3:85.

contract during a disciplinary meeting with Mr Willcox on 21 March 2013 were factors that contributed to Mr Willcox's personal injury.

[59] More specifically, given that this is an appeal by Santos, my finding is that it has not persuaded me that Mr Willcox's personal injury did not arise out of, or in the course of, his employment, nor that the employment was not a significant contributing factor to the injury.

Conclusion

[60] I am not satisfied that, looked at globally, the management action taken by Santos, which ultimately resulted in Mr Wilcox's decompensation on 25 July 2013, was reasonable management action taken in a reasonable way. In coming to this conclusion I have particular regard to the conduct of the disciplinary meeting in March 2013, the apparent failure to satisfactorily follow up with Mr Kent after the complaint against him by Mr Willcox had been dealt with, and the calling and conduct of the meeting in July 2013.

[61] The appellant has not discharged its onus. It follows that the appeal must be dismissed. As is usual with matters of this nature, costs will follow the cause.