

FILED

20 OCT 2000

OFFICE OF THE INDUSTRIAL
REGISTRAR

**BEFORE THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES**

No. IRC of 3124/2000

Form 43

VALDA JUNE KERRISON
Applicant

**TECHNICAL AND FURTHER
EDUCATION COMMISSION**
Respondent

AFFIDAVIT:

Deponent: Mr Raoul Salpeter
Sworn: October 2000

On 20 October 2000 I, Raoul Salpeter of 60-70 Elizabeth Street, Sydney, in the state of New South Wales, make oath and say:

A. I am employed as a Solicitor for and on behalf of the New South Wales State Crown Solicitor.

B. I am involved in this matter on behalf of the client, the New South Wales Department of Education and Training.

C. I say in relation to the "Application for Declaration under s.154" the following:

i. in relation to ground 1 it is not denied.

ii. in relation to grounds 2 to 4

a) the New South Wales Government Medical Officer ("GMO") issued a certificate recommending the retirement of the applicant for health reasons. That certificate was issued on 16 June 1995, a copy of that certificate is attached and marked "A".

Filed by:

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- b) The GMO is an employee of the Central Sydney Area Health Service and has functions referred to the position pursuant to provisions in various pieces of legislation.
- c) On 23 June 1995 an officer of my client wrote to the applicant formally informing her of the decision of my client to retire her on health grounds. A copy of that letter is attached and marked "B". A further letter was sent on 30 June 1995 (Annexure "C").
- d) The issuing of the certificate by the GMO was pursuant to a request made of the Office by my client to examine the applicant in a letter dated 1 May 1995 (Annexure "D").
- e) The Managing Director of the TAFE Commission authorised the medical assessment in a letter dated 17 January 1995 (Annexure "E") sent to the Director of North Coast Institute.
- f) The TAFE Commission has power under s.20 of the Technical and Further Education Commission Act 1990 (the "TAFE Act") to retire a member of staff. It is as follows:

"Incapable office may be retired

If:

- (i) a member of the staff of the TAFE Commission is found to be unfit to discharge or incapable of discharging the member's duties, and
- (ii) the member's unfitness or incapacity appears to be of a permanent nature and has not arisen from actual misconduct on the part of the member (or from causes within the member's control),

the TAFE Commission may cause the member to be retired."



- g) In carrying out its duties to determine if a member of staff should be retired the TAFE Commission followed the Supplement to TAFE Gazette No 42 of 1993. (Annexure "F". That document stated inter alia:

" The TAFE Commission has an [sic] statutory obligation to ensure the health and safety of staff in the workplace (Occupational Health and Safety, 1983)....

The TAFE Commission will arrange for medical assessments for people seeking employment with the TAFE Commission, statutory monitoring of staff in positions required by legislation, and medical separation....

To help ensure fair practices and prevent discrimination the TAFE Commission supports the establishment of an appeal mechanism for staff who believe they have been adversely affected by a medical statement."

- h) The Gazette further states:

"A Medical Assessment for employment is gathering medical data and carrying out a number of appropriate medical tests to assist in the process of determining an applicant's (or staff member's) fitness to carry out the duties of the position in response to the health requirements of the position.

A Medical Provider is selected by the TAFE Commission according to the Premier's Department Guidelines 2/9/92, to perform the medical assessment and to provide recommendations. The recommendations will assist in the decision making process. A medical provider may also give feedback to the person being assessed with respect to any identified unfavourable aspects of the assessment. A list of Medical Providers is provided in Attachment 1....



A medical assessment is required if a staff member is thought to be:

- unfit to discharge or incapable of carrying out his/her duties: and
- the condition appears likely to be of a permanent nature: and
- the condition has not arisen from actual misconduct.

See the Separations Policy for further guidelines in this area....

For routine medical assessments for appointments to a position, Health Quest, formerly the Government Medical Officer (GMO) or a nominated TAFE Commission medical provider can be used. Health Quest is to be used to assess a staff member's fitness to return to work or to assess the need for medical separation....

Staff who have been referred to Health Quest for a medical assessment and consider themselves adversely affected by the assessment have a right of appeal. See the Sick Leave Policy for further details.

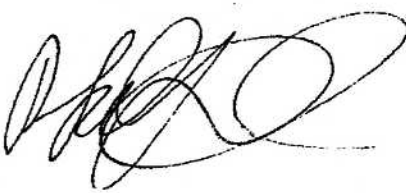
If a dispute arises from an assessment by a nominated TAFE Commission medical provider, the applicant may provide a medical opinion, which is contrary to the provider's assessment, to Health Quest for a definitive opinion. This needs to be arranged so that recruitment action is not significantly delayed."

iii. In relation to grounds 5 – 7:

- a) The Medical Appeals Panel (MAP) is an administrative body established to provide a mechanism for appeals against medical assessments by the GMO.
- b) The Panel is independent of the GMO and provides a readily accessible means of appeal for all persons who consider themselves adversely affected by an assessment by that Office.



- c) The names of all persons receiving an assessment by the GMO are automatically advised to the MAP.
- d) The MAP then advises all candidates by letter of a right to appeal against the GMO's assessment. Attached to the letter are an appeal form and two copies of a waiver form – one headed "Department's Copy" the other "Medical Appeals Panel Copy".
- e) Should the candidate wish to lodge an appeal they complete the appeal form and return it to the MAP Secretary no later than 21 days from the date of the said letter. The waiver form is to be completed if the candidate does not wish to contest the assessment.
- f) The appellant is not required to appear before the MAP and so may wish to include with their appeal form any supporting documentation they feel should be considered by the Panel. If supporting information cannot be included with the appeal form when lodged - but there is possibility of it following - then the Panel needs to be advised in writing of this by the appellant.
- g) Upon receipt of the appeal form, the MAP, on the authorisation of the appellant, requests the appellant's file from the GMO.
- h) The MAP notifies the appellant's department/employer in writing of the lodgement of an appeal. The appellant's form is also acknowledged by the MAP and an appeal number is allocated.
- i) The appeal form, (and any other supporting information from the appellant) together with the HealthQuest file is referred to the Chairman of the MAP.
- j) The Appellant's completed "Notice of Appeal in Respect of Assessment of HealthQuest" and the GMO's file are reviewed, with particular attention to variations between the medical practitioners/s who have been nominated to be consulted in respect of the appeal by the Appellant, and the medical and paramedical reports already on the GMO's file.



- k) Medical reports from those medical and paramedical practitioners who have been nominated by the Appellant, but whose reports are unavailable on the GMO's file, are sought.
- l) When all requested and available medical and paramedical reports are to hand, the file is again reviewed with the particular objective of deciding whether sufficient information is available to enable a decision to be made, or whether the Appellant should be referred to one or more of the Panel's Medical, Orthopaedic, Psychiatric or other Medical Consultants, for further independent information and report, in which case this is specifically requested.
- m) When satisfied that all relevant available information has been received, and any collateral problems resolved, the appeal is determined.
- n) The Chairman writes to inform the Appellant, with copies to the GMO and the employer, of the outcome of the Appeal. In situations where the Panel upholds an Appeal for medical retirement the Chairman also writes, if appropriate, to the Team Leader, Superannuation & Administration Authority to advise the decision, to indicate the medical condition which caused the Appellant's retirement, and if appropriate to advise the time interval after which a review of the continuation of the pension will be warranted.
- o) The MAP is constituted by a permanent Chairman who may call upon a panel of specialist consultants to provide expert if required.

iv. In relation to points 8 and 9

- a) the applicant, after review of her health by the GMO, was provided with a certificate of retirement dated 16 June 1995. The investigation by GMO was done on 19 May 1995.

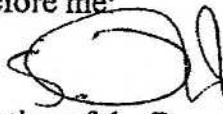


- b) After an opportunity was provided to the applicant to appeal the decision to medically retire, the MAP disallowed her appeal (Annexure "G") on 13 September 1996 stating inter alia.

".... Your medical file has been carefully reviewed, with reports from your psychiatrist who you nominated, and on the basis of the available medical evidence the Panel is of the opinion that the assessment of HealthQuest was appropriate at the time of your examination. Your appeal is therefore disallowed...."

- c) As a result of the disallowance the applicant's employment has terminated as from that date. The termination was made pursuant to s.20 of the TAFE Act.

Sworn by the deponent)
at Sydney)
The 20th day of)
October 2000)
Before me:)


Justice of the Peace/Solicitor

