Sample Victorian WorkCover Report and Opinion

Dear Sir/Madam,

Re: Betty Smith
6 Central Avenue, Brimcreek
Date of Birth:
Date of Injury: 30 May 2009
Your Reference: KW:TT:901147

I saw the abovenamed on 8 November 2012 with regard to her WorkCover claim. I had available copies of the 10 reports(omitted)

Your client was informed that the interview was for the purpose of a medico-legal assessment and report and confidentiality could not be guaranteed. Your client was also informed the interview was not for the purpose of providing treatment. The format of the interview was conveyed to your client who gave verbal permission for the report to be released. The information contained in this report is derived from both the interview with your client and from the accompanying documentation. The opinion expressed in this report is dependent on the accuracy of the information provided.

Betty Smith is a fifty-year old ex-supermarket cashier currently at a psychiatric rehabilitation centre, who had been living with her separated husband and three of her four children at the family home in Brimcreek, having been there since late 1999. On 30 May 2009 she injured her lower back during the course of her employment with Safeway, a division of Woolworths, who are self insurers. She ceased work in mid-November 2009 and began receiving WorkCover weekly payments. Subsequently she had a variety of treatments including surgery and has had continuing pain and discomfort since then. She has had a history of a bipolar disorder initially manifest in 2001 with further flare-ups over the years. She has also had a history of heart disease.

She said that since her back condition she has also developed significant symptoms of depression. She was last hospitalised for a psychiatric condition on 1 October 2012 until 11 October 2012. She said that she has been informed that her WorkCover payments will cease at the end of December 2012.

She was born in Melbourne, the seventh of ten children with two brothers and seven sisters. Her father had been in the RAN but developed a severe infection leading to a cardiac condition and was medically discharged. He later worked as a carpenter. In 1959 the family moved to Broadfield. She had a tonsillectomy at the age of eleven in 1968.

She attended Broadfield High School and left school at the end of year 8 when she was fifteen years old.

After leaving school she commenced work as a machinist making leather bags at a factory in Broadfield. At the age of sixteen her father moved the rest of the family to the country, past Ballarat, as he thought his lifespan would be limited. She stayed with her sister in Melbourne and continued to work in the leather factory for two years. Her father died suddenly of a heart attack at the age of forty-seven in 1973.

She did other work including factory work and working in a service station. Her mother remarried in 1975.

She met her future husband in 1977. During that year she had a breast lump removed. In 1978 she began working as a clerical assistant at a bookshop and remained there for about five

years. She married in 1981. Her husband was a locksmith. She said that he led a single existence and she and her husband separated after twelve months.

She returned to school full-time and completed year 11 at an Institute of Technology.

She and her husband reconciled after twelve months or so and she commenced working at nearby. She did clerical accounting.

Her stepfather died in 1985.

She had a daughter born by Caesarean section in November 1986 and was off work for six months. She returned to work and became pregnant again and ceased work in December 1989. Her son was born in March 1990, her second daughter in March 1992 and her third daughter in July 1994. She developed postnatal depression after the birth of her third child and was admitted to a Psychiatric Hospital for eight days and was then in a Mother and Baby Unit for a month. She was seeing a psychiatrist in Broadfield and took antidepressant medication for about six months and then stopped that treatment and ceased psychiatric treatment. Her depression settled.

She was at home looking after her family doing home duties.

In September 1998 she returned to work on the advice of her general practitioner as she thought this may help her mood. She began working with Safeway in Brimcreek as a part-time cashier.

The family moved to their present home in Brimcreek in late 1999. In 2000 she moved to the Safeway supermarket at Broadfield Park. In 2001 she was working in the office. She said her supervisor bullied her. She became increasingly anxious and had difficulty sleeping and was becoming very agitated, angry and upset and could not seem to slow down. She said she had a "breakdown" and was treated by the Broadfield Psychiatric Unit and was prescribed Epilim, a mood stabiliser, and an antidepressant medication. She made a WorkCover claim. She was assessed by a psychiatrist who diagnosed her with a bipolar disorder and her claim was rejected. She recovered over about four months and returned to work as a cashier at Broadfield Park. She has remained on Epilim ever since then. She stopped taking the anti-depressant medication. She had monthly reviews by the Broadfield Psychiatric Unit for about twelve months.

In 2003 she and her husband purchased a unit in the City as an investment. This was rented and managed by an agent.

In September 2004 she had a "heart attack" with chest pain for a few days. She was in hospital for a week. She began taking Cartia and Crestor. She continues to take that medication.

She became increasingly manic and was seen by a worker with the Broadfield Psychiatric Unit and was admitted to the psychiatric inpatient unit for six weeks. She continued to be reviewed by them for twelve months.

Her eldest daughter could not cope with her illness and left home and has not been back home to live since then.

She was off work for three months. She resumed work at Broadfield Park Safeway.
In 2007 she became menopausal but did not use hormone replacement therapy.

She felt under increasing pressure at work during that year and was also having problems with her husband and children and became manic again. In September 2007 she was seen again at the Broadfield Psychiatric Unit but was not hospitalised. Her dose of medication was increased. She was off work for another three months. She returned to work at Broadfield Park. In September 2008 she transferred to the Safeway store in Highfield, where she worked as a front-end controller, supervisor and cashier. She was working 28 hours per week over four days.

She said she had occasional back pain but it had not stopped her from doing anything. She said it usually happened if she had been working on a "big register" for eight hours. She said most supervisors rotated cashiers between the express lane, where the work was much lighter, and the "big register" where she was dealing with trolleys laden with groceries.

She said she was a keen water skier and the family usually went to the Murray River every second or third weekend during the summer and for six weeks in December and January every year. The family had their own ski boat.

She went snow skiing every two or three years for a weekend and occasionally for a week at a time. She also enjoyed sewing for her family and for herself. She said the relationship with her husband was reasonable at that stage and she had a reasonable relationship with her children.

THE INJURY

She said that the injury that led to this claim occurred on Saturday 30 May 2009 at work at about 6:00 pm when she was to have her tea break. She noticed a large box on the floor in an aisle and thought it was a hazard to customers. She thought the box was empty and when she picked it up she felt a sudden sharp pain in her lower back and immediately put the box down.

She continued to work the remainder of her shift and thought she had strained a muscle and tried to ignore the pain. She said she reported the incident. She was rostered for work the next day, Sunday 31 May 2009, and told the supervisor that she had pain in her back and asked if she could work on the express lane and did so. She said she managed to work the shift, although she had increasing back pain. She worried about injuring her back if she kept working and decided to see her general practitioner.

On Monday 1 June 2009 she saw her general practitioner who diagnosed a lower back strain and certified her to undertake light duties only. She was then only working on the express lane and was working the same hours. She was using over-the-counter medication including Nurofen for pain relief.

Her symptoms persisted and she returned to see her general practitioner on 7 August 2009. He referred her for an x-ray of her lumbar spine. Her understanding was that the x-ray demonstrated some curvature to the left of her lumbar spine and no disc or facet joint abnormality.

She continued to work on modified duties, although she remained in pain. She saw a physiotherapist and had manipulation and massage for her lower back, however her pain persisted and she developed pain radiating into her right leg. She saw the physiotherapist for about a month but her symptoms were becoming worse rather than better. She was not able to resume waterskiing or snow skiing and had difficulty sitting for long.
She said she and her husband had a financial adviser and she began thinking about changing her line of work and began working with him hoping to become a mortgage broker. She was

working in a voluntary capacity for about 10 hours per week intermittently and did so for some weeks.

On 2 September 2009 her general practitioner sent her for a CT scan of her lumbar spine. The report dated 2 September 2009 concluded a central and right paracentral disc protrusion at L4/5 contacting the right L5 nerve root with a broad based disc bulge at L5/S1 contacting but not impinging the S1 nerve roots. Her general practitioner certified her for light duties but specified she was not to lift any objects weighing over 5 kilograms and referred her to an orthopaedic surgeon.

She saw the orthopaedic surgeon on 29 September 2008 and he advised her to continue with conservative treatment including physiotherapy and anti-inflammatory medication. He referred her to another orthopaedic surgeon and to a pain management specialist.

In late October 2009 she was in severe pain and required time off work.

The pain was so severe that she eventually ceased work on the week of 15-19 November 2009 and has not worked since then. She made a WorkCover claim to Woolworths. This was successful. The financial adviser told her that he could not have her work with him even in a voluntary capacity as she was receiving WorkCover payments and she did not continue with that activity.

She saw her new orthopaedic surgeon on Saturday 21 November 2009 soon after she had stopped work. At that time her lower back pain extended down her right leg. Her medication included Codral Forte and Panadol. He ordered an MRI scan of her lumbosacral spine that revealed a right sided L4/5 disc prolapse and arranged for her to have a CT guided L4/5 epidural injection of local anaesthetic and a corticosteroid.

She had a CT guided lumbar spine injection on 30 November 2009. She said the injection did not provide her with any long-term pain relief and her orthopaedic surgeon arranged for her to have a CT myelogram of the lumbosacral spine that was done on 9 February 2010. The CT scan myelogram revealed a right sided lateral recess stenosis at L 4/5 with under filling of the right L5 nerve root.

In view of her persistent severe symptoms, her orthopaedic surgeon performed an L 4/5 laminectomy, right L4/5 discectomy and decompression of the L5 nerve root on 7 April 2010 at the Epworth Hospital. He noted in his report dated 19 August 2010 that at surgery significant central canal stenosis was observed at L4/5 and a contained right sided L 4/5 disc prolapse was found subjacent to the right L5 nerve root. The disc prolapse was excised and the nerve roots decompressed.

She said she was in hospital for about five days.

There was some initial improvement but after two or three weeks she developed increasing sharp pain in her back extending down her right leg that has persisted.

She had a further MRI scan of her lumbar spine performed on 29 June 2010 that she believed showed L4/5 and L5/S1 multilevel disc degeneration without focal disc protrusion or significant canal stenosis. Bony foraminal stenosis was seen at the higher L3/4 level. She commenced taking pregabalin 75 mg at night.

She said the pain radiated into her leg, was constant and present all of the time even when she took Panadeine Forte. She said she developed lower back pain after sitting for a short while. She began taking pregabalin 75 mg twice a day. She also took Panadeine Forte,

Duragesic and Tegretol. She said she experienced constipation because of the medications and developed haemorrhoids that began to bleed in mid-2010 but she had no treatment for her haemorrhoids.

In mid-2010 her orthopaedic surgeon ceased clinical practice and referred her to Mr Port, another orthopaedic surgeon. Mr Port did not recommend further operative treatment and advised her to have physiotherapy. Mr Port reviewed her post-operative MRI scan and believed there was no evidence of any ongoing nerve root compression or recurrent disc prolapse. She began having physiotherapy twice per week. She had that for some time.

She was referred to a pain management specialist, Dr Peters, and she first saw him on 29 November 2010. Dr Peters performed a transforaminal epidural in May 2011. She said the procedure was not successful in alleviating her pain.

She had difficulty getting home help and contacted her Union. The Union representative was concerned about her mental state and suggested she see a psychologist.

In mid-2011 she began seeing Jim Hercules a psychologist, and was seeing him every two weeks funded by Woolworths.

She began to develop manic symptoms and her cigarette consumption increased. She said she was unable to do household tasks and was distressed because her house was dirty and frustrated that she was having difficulty getting home help. She continued to have low back pain and right leg pain.

She believed that because of her age and her limited skills base and the significant lumbar spine surgery she had undergone she would have great difficulty finding work and being able to perform work in the future.

She had taken over the management of the unit in the City and found that the tenant was in considerable arrears and she had great difficulty getting him to pay any of the outstanding amount. She was still frustrated by her difficulty getting home help and became increasingly irritable, anxious, not sleeping and distressed.

A CAT Team became involved and in August 2011 she was admitted to the North Eastern Hospital Psychiatric Unit and remained there for six weeks. She was regarded as having a psychotic manic episode. Her dose of Epilim was increased and she was also taking olanzapine.

Her marital relationship effectively broke down during that time and she and her husband separated under the same roof.

She continued to be reviewed as an outpatient by the Broadfield Psychiatric Unit. She resumed treatment with a psychologist every two weeks.

She said her sleep was disturbed and she often got up during the night. She was no longer able to water-ski or snow ski. She was very limited in her ability to sew and could no longer make bridal wear or do mending for her family and friends.

At the suggestion of her general practitioner in February 2012 she commenced a Certificate IV in Accountancy on a full-time basis at the Broadfield College of TAFE attending four days per week. She was driving there and back.

She made application in the County Court of Victoria at Melbourne claiming damages pursuant to the provisions of S.134AB(16)(b) of the *Accident compensation Act* 1985.

She completed the first semester of her course and did very well.

She was visiting one of her sisters in the country in late September 2012 but on 26 September 2012 she developed severe chest pain. She was flown by ambulance to a metropolitan hospital and kept overnight. She was told she had "broken heart syndrome" and was prescribed Betaloc and continues to take that medication. She was discharged home.

She said that her husband said she had become mentally ill again and he contacted the local CAT team and she was admitted to the Broadfield Psychiatric Unit on 1 October 2012 and remained there until 11 October 2012 when she was transferred to her current place of residence, a psychiatric rehabilitation centre in Broadfield where she can stay for 28 days. She is due to be discharged on 9 November 2012. She will go home briefly and has several medical appointments to keep. She hopes to move to Brisbane in early December and live with her sister and stay there for at least twelve months. Her studies were suspended after she became unwell but she hopes to do similar studies in Brisbane.

CURRENT CONDITION

Her weight has been stable but drops during relapses. She is now sleeping poorly with initial and mid insomnia because of pain and worry.

She complains of constant low back pain extending down her right leg to her right foot with a stinging like sensation. She has no paraesthesia in either feet. She can sit for 30-60 minutes, walk for up to an hour and has difficulty bending, twisting, and lifting. She has difficulty with mopping but can make beds and do some food preparation and cooking. She can do a little gardening and some laundry and can put clothing on the line but does little ironing. She drives locally and can do some shopping carrying small parcels.

The relationship her husband has broken down and the relationship with her children is poor as they have blamed her for the family problems. She said they are unsympathetic to her back pain and the limitations that has caused.

She is rarely happy. She said she feels flat most of the time. Her self-esteem and self-confidence has dropped. She feels bored, restless, frustrated, lonely, isolated, irritable, exhausted, agitated, unmotivated, and has problems with memory and concentration. She is less sociable and has less interest in her appearance. She has no libido and no sexual activity.

She said that one or two days a week when the pain is much worse she becomes even more depressed and during those times she feels hopeless, helpless, useless, and worthless and becomes tearful. She said her depression generally settles over a few hours. She said these symptoms are very different from the symptoms she has when her bipolar disorder becomes manifest when she usually has manic episodes. These are characterised by high levels of anxiety, difficulty stopping, speaking rapidly and feeling filled with energy and being very irritable and intolerant.

She has not been able to resume water skiing, snow skiing, and does very little sewing now. She continues to see her psychologist every two weeks but is having no other specific treatment at the moment. She uses Epilim 1500 mg per day, Panadeine Forte 4-6 per day taking six once per week, Crestor 40 mg per day, Cartia 100 mg per day and Betaloc and now

smokes 20 cigarettes per day. She drinks alcohol very occasionally. She does not use illicit drugs and has had no problems with gambling.

FAMILY HISTORY

She is the seventh of ten children with two brothers and seven sisters. Her father was in the RAN and later became a self-employed carpenter and died aged forty-seven in 1973. Her mother is now aged eighty-four. Her stepfather died in 1985. One brother is a dairy farmer and the other brother is a retired carpenter. Three sisters work as personal care attendants. One sister is unemployed. One sister works as an integration aide. One sister works with Safeway in the meat section and one sister lives in Brisbane and is a retired supermarket cashier.

Her husband is a technician and is aged fifty-five. Her twenty-six year old daughter is a fashion designer living with a relative. Her twenty-two year old son is a full-time student with TAFE and lives at home, her twenty year old daughter is unemployed and lives with a friend and her eighteen year old daughter has just completed her VCE.

FAMILY MEDICAL HISTORY

Her father died aged forty-seven in 1973 of a heart condition. Two sisters and her mother have had a hysterectomy. One sister had a carpal tunnel operation and a WorkCover claim in 2008. One brother has mild emphysema and has a congenital cardiac condition. Her stepfather died of lung cancer. There was no direct family history of mental illness but her cousin has a bipolar disorder.

PERSONAL MEDICAL HISTORY

She had a tonsillectomy in 1968, a breast lump removed in 1977, a myocardial infarction in 2004 and again in late September 2012.

She had postnatal depression in 1994 and had psychiatric treatment at that time. She apparently recovered. She had a "breakdown" in 2001 and was then diagnosed with a bipolar disorder and was an inpatient in a psychiatric unit. She had a further manic episode in 2004 after a heart attack and was again hospitalised in a psychiatric unit. She had a further manic episode in September 2007 but was not hospitalised at that stage but was off work for three months. She had a further cardiac condition on 26 September 2012 and shortly afterwards was regarded by her estranged husband as manic and was hospitalised at the Broadfield Psychiatric Unit for eleven days and is now in a rehabilitation unit in Broadfield.

She uses Epilim 1500 mg per day, Panadeine Forte 4-6 per day taking six once per week, Crestor 40 mg per day, Cartia 100 mg per day and Betaloc and now smokes 20 cigarettes per day. She drinks alcohol very occasionally. She does not use illicit drugs and has had no problems with gambling.

MENTAL STATE EXAMINATION

Appearance and Behaviour

On mental state examination the claimant was a pleasant, polite, and cooperative woman who attended the interview alone. She was of short stature and of thin build with long wavy fair hair who had a lined face and was not wearing make-up and looked her stated age. She had a quiet manner and a sombre expression. She weighed 44 kg.

Speech

Her speech was fluent and normal in rate and volume but fluctuated at times when she was feeling distressed

Affect

Her affect was restricted and she appeared mildly depressed and anxious during the course of the interview.

Thought Stream and Form

Her thought stream and form was within normal limits. There was no formal thought disorder.

Thought Content

The content of her thinking was about her ongoing symptoms and the effect this had had on her life. She was frustrated by her limitations and would like to be able to go back to work but did not think she would be able to cope. She was frustrated by the response of her family to her back condition. There were no clear suicidal thoughts or intent.

There was no evidence of any delusions (persecutory or otherwise).

Perception

There were no formal abnormalities of perception such as hallucinations.

Cognition

Her attention, concentration, working memory and speed of information processing appeared within normal limits.

Insight and Judgment

There was some insight present. Her judgment appeared to have been disturbed but has improved.

Behaviour

There have been significant changes in behaviour and she has become more isolated and irritable.

OPINION

Betty Smith suffered a back injury during the course of her employment with Safeway on 30 May 2009 and despite a variety of treatments including surgery continues to have low back pain and right-sided sciatica.

She has also been diagnosed with a cardiac condition and this first became manifest in 2004 with a further flare-up in September 2012. She takes medication for her cardiac condition.

She had an episode of postnatal depression in 1994 from which she seemed to recover fully and there was no manifestation of any mental health problems until 2001 when in the context of apparently being bullied at work she appears to have developed a manic episode and was diagnosed with a bipolar disorder and had a period of hospitalisation and was off work for some months.

She developed a further manic episode following her cardiac condition in 2004 and was again hospitalised in a psychiatric unit. She had similar but less severe symptoms in 2007.

Following this back injury she appears to have had a further manic episode in August 2011 and was again hospitalised for some weeks.

More recently she had a further cardiac episode in late September 2012 and shortly afterwards her estranged husband became concerned about her mental state, she was reviewed by the local mental health team and readmitted to a psychiatric unit, remaining

there for about eleven days, and was then transferred to a psychiatric rehabilitation program where she remains. She expects that after discharge she will move to Perth shortly thereafter.

There seems little doubt that she has suffered from a bipolar mood disorder with recurrent manic episodes and a recent episode of depression or health problems have been the major factor contributing to the family breakdown. Her bipolar mood disorder that is unrelated to her employment.

However some component of her mental state has been contributed to by ongoing pain and discomfort and the restrictions that this has imposed on her lifestyle and her capacity for work. This has led to the development of a mild chronic Adjustment Disorder with depressed mood as an understandable response to her chronic pain condition. To this extent her employment has been a material contributing factor with regard to her current mental state.

Her quality of life is diminished affecting her work capacity, her relationships and her recreational enjoyment. Her prognosis for improvement is limited. The reduction in her quality-of-life arises from her ongoing physical symptoms and her bipolar mood disorder and only to a limited extent by her mild chronic adjustment disorder with depressed mood.

Her condition is not yet stable with regard to her bipolar mood disorder. Her most recent episode was in October 2012. She does require continuing psychiatric management.

Her work capacity appears to be primarily limited by her physical condition. When her bipolar mood disorder is controlled she is capable of returning to her pre-injury employment taking only into account her mental state. Her mild chronic adjustment disorder with depressed mood does not restrict her work capacity.

She has the ability to be retrained and be rehabilitated for suitable employment and indeed did very well in her accountancy course during the first half of 2012. If her mental state is stable she is likely to be able to complete such a course.

It appears that she has difficulty coping with being placed under pressure and in that context her bipolar disorder becomes manifest again. With the assistance of ongoing counselling and psychiatric treatment it is probable that her bipolar mood disorder can be well controlled and would then not limit her employment opportunities. Her prognosis with regard to her mental state remains uncertain.

[I have made all the inquiries that I believe are desirable and appropriate and that no matters of significance which I regard as relevant have to my knowledge been withheld. I have prepared my report according to the requirements of the "Expert Witness Code of Conduct" adopted by the Supreme and County Courts of Victoria and confirm that I have read the Code and agree to be bound by it].

[I have also prepared my report according to the following:

Civil Procedure Act 2010
Requirements for Expert Witnesses

The *Civil Procedure Act 2010* ("the Act") came into effect on 1 January 2011. Its main purpose is to reform and modernise the laws, practice, procedure and processes in relation to civil proceedings in the Supreme Court, the County Court and the Magistrates' Court, and to provide for an overarching purpose in relation to the conduct of civil proceedings to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

To achieve that purpose, the Act outlines a number of overarching obligations. **These apply to expert witnesses in a civil proceeding.** They are:

(i) to act honestly.
(ii) to cooperate in the conduct of civil proceedings, with the parties and the court.
(iii) not to engage in conduct that is misleading or deceptive or likely to mislead or deceive.
(iv) to narrow the issues in dispute.
(v) to ensure costs are reasonable and proportionate (being proportionate to the complexity or importance of the issues in dispute, and the amount in dispute).
(vi) to use reasonable endeavours to act promptly, and minimise delay.

In addition, each person to whom the overarching obligations apply has a paramount duty to the court to further the administration of justice in relation to any civil proceeding in which that person is involved]

Statement of Expertise

Dr Michael Epstein has been a psychiatrist since 1975 and a Fellow of the Royal Australian and New Zealand College of Psychiatrists since 1976. He has an extensive clinical practice which continues. He was the founding director of the Austin Hospital Crisis Service. He was consultant psychiatrist to Fairlea Women's Prison between 1990 and 1996. He was Honorary Secretary of the Royal Australian and New Zealand College of Psychiatrists between 1991 and 1997. He has written extensively on medico-legal matters. He is a co-author of the Clinical Guidelines to the Rating of Psychiatric Impairment and hence has completed the necessary psychiatric module of the Impairment Training Course for the AMA Guides (4th Edition). He has also completed the neurology module involving Chapter 4 of the Fourth Edition of the AMA Guides. He has trained Victorian psychiatrists in the use of the Guidelines. The Clinical Guidelines have been replaced with The Guides to the Evaluation of Psychiatric Impairment for Clinicians (GEPIC). He is also co-author of the GEPIC and has since trained approximately one hundred psychiatrists in their use. He has been a consultant to the Western Australian Government and a consultant to the Commonwealth Government on Mental Health Service Issues. He has completed training in the Evaluation of Permanent Impairment [Mental & Behavioural Disorders] for the New South Wales WorkCover Authority and the Motor Accidents Authority. He is a member of the Medical Panel and the Forensic Leave Panel and is on the AMA/VWA/TAC Committee. He is on the Victims of Crime Assistance Tribunal's panel of independent psychiatrists. He has a particular interest in stress-related illness.