# New South Wales Civil and Administrative Tribunal - Administrative and Equal Opportunity Division

The NSW Civil and Administrative Tribunal (the Tribunal) awarded a job applicant $10,000 compensation for disability discrimination after a prospective employer refused to employ him because he had borderline personality disorder, in contravention of s 49D(1)(b) of the *Anti-Discrimination Act 1977* (NSW) (the Act).

# Facts

In September 2015, the applicant applied for a position as a coach driver with Murrays Australia Pty Ltd. At a medical assessment for the job, the applicant disclosed that he had been diagnosed with borderline personality disorder, and that he was taking certain prescription medications.

In his report, the assessing doctor stated that the applicant “appeared agitated, irritable and was difficult during the interview? paranoid”, and that he was difficult with staff and appeared argumentative. The doctor also said that the applicant was “temporarily unfit to drive”, pending further medical investigation by an independent psychiatrist.

No further investigation was conducted, and Murrays Australia decided not to hire the applicant.

The applicant claimed that Murrays Australia had directly discriminated against him on the ground of his disability by not offering him a position as a coach driver. Murrays Australia argued that it had refused to employ the applicant because he was unable to comply with the inherent requirements of the job.

# Decision

The Tribunal found that the applicant had a disability within the meaning of s 4 of the Act. It also found that Murrays Australia was liable under s 53 of the Act for its employees’ decisions that the applicant should not be further assessed, and should not be offered employment.

The Tribunal was satisfied that:

• Murrays Australia treated the applicant less favourably than it would have treated a person without borderline personality disorder in the same or similar circumstances, and

• at least one of the reasons that Murrays Australia did not employee the applicant was because he had borderline personality disorder.

The Tribunal then considered Murrays Australia’s inherent requirements defence. It was held that Murrays Australia had not established that the applicant was unable to perform the inherent requirements of the job.

The Tribunal accordingly awarded the applicant $10,000 compensation for loss and damage suffered by reason of Murray Australia’s conduct.

<http://www.austlii.edu.au/au/cases/nsw/NSWCATAD/2017/112.html>