IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

[2021] NZACC 49 **ACR 176/18**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	GRAEME TINNING Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 11 February 2021
Heard at: Christchurch/Otautahi

Appearances: Mr K Murray, advocate for the appellant
Mr H Evans and Ms S Tzonis for the respondent

Judgment: 16 March 2021

RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Vocational Independence – Section 6; Section 80; Sections 107-110 Accident Compensation Act 2001]

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[1] The issue on this appeal is whether the respondent correctly decided that Mr Tinning was vocationally independent in three work types. At review, the Reviewer concluded that ACC's decision be modified and that Mr Tinning was vocationally independent in the work types of Product Examiner and Production Clerk. In doing so, she modified the ACC's decision accordingly and deleted the Sales Representative (Industrial Products) work type.

Background

[2] The appellant was employed for a period of seven and a half years prior to the middle of 2007 as a fitter welder and mechanical engineer, working full time for Professional Body Services in Christchurch. On 25 June 2007, the appellant injured himself in a workplace accident. At the time he was pulling a heavy steel channel. It slipped and caused him to jolt his arms. As a result, the appellant has cover for bilateral elbow and forearm sprains.

[3] At the time the appellant thought he had just sprained his elbows and continued to work for several days until he could no longer do so.

[4] With persisting symptoms, the appellant was referred to and seen by Mr John Rietveld, Orthopaedic Surgeon, in September 2007. Mr Rietveld considered the appellant to have experienced a "double crush phenomena" and suggested scans as well as nerve conduction studies.

[5] Nerve conduction studies were eventually completed on 20 February 2008. They revealed mild compression of the median nerve in the wrist and ulnar nerve at the elbow bilaterally.

[6] The appellant was seen again by Mr Rietveld in March 2008. He noted mild changes on nerve conduction studies and referred him to Dr Parkin, Neurologist. Dr Parkin saw the appellant in June 2008 but on his examination was unable to identify any clear neurological explanation for his persisting symptoms.

[7] The appellant was referred to and seen by neurosurgeon, Mr Bonkowski, in September 2008. Mr Bonkowski noted that since the accident the appellant:

> … has had a great deal of pain in the elbows and forearms, tingling and nocturnal paraesthesia which effect the fingers, predominantly the ulnar fingers of both hands and he has also developed a perception of weakness in both arms, to the extent where he cannot work with them.

[8] Mr Bonkowski also noted "A strong element of chronic pain syndrome starting to colour the entire process and is not strictly organic."

[9] Mr Rietveld reviewed the appellant again in May 2010 and suggested pain management input through Burwood Hospital in Christchurch.

[10] In December 2010, a comprehensive pain assessment was completed, and it was determined that the appellant had chronic non-specific widespread musculoskeletal pain syndrome to his central neural sensitisation/fibromyalgia.

[11] Mr Tinning was unable to return to any sustained period of work and remains incapacitated for pre-injury employment as a fitter welder. From August 2010, his claim was managed on ACC's behalf by Total Rehabilitation Services.

[12] Total Rehabilitation Services commenced the first vocational independence process in 2008. The process concluded in June 2012 with Dr. Xiong, Rehabilitation Specialist, completing a vocational independence medical assessment ("VIMA") in which he found the appellant fit for seven roles. Dr Xiong did not identify any other rehabilitation options

[13] In a decision of 25 June 2012, the respondent said Mr Tinning had vocational independence in seven work types.

[14] A successful challenge was made to Total Rehabilitation Services' decision regarding vocational independence at review. In a decision dated 18 February 2013, the Reviewer concluded that the vocational independence process was flawed. The reason for that decision was that six work types identified (Handyperson, Insurance Risk Surveyor, Insurance Loss Adjuster, Product Examiner, Warehouse Administrator, and Despatching and Receiving Clerk) were not reflected in Mr Tinning's rehabilitation plan. In relation to the remaining job of Sales Assistant, it was considered that Mr Tinning did not have the skills required for that job.

[15] The management of Mr Tinning's claim was subsequently transferred from Total Rehabilitation Services Limited to ACC.

[16] Subsequently, Mr Tinning underwent an activity focused programme through to February 2014.

[17] On 10 September 2014, a Complex Initial Occupational Assessment was completed by vocational consultant Shelley Munro.

[18] Ms Munro identified 22 work types as being suitable, based on Mr Tinning's transferable skills. However, for a number of them she noted that he would benefit from computer training and additional customer service training.

[19] On 22 October 2014, Dr Alec Marshall, Occupational Medicine Specialist, carried out a Complex Initial Medical Assessment report. Dr Marshall agreed with the diagnosis of chronic pain syndrome effecting his arms and the left neck and face.

[20] Of the 22 work types identified in the Initial Occupational Assessment Dr Marshall concluded 11 were sustainable. He discounted work types which he considered had medium to heavy physical demand and required constant standing, sitting or bending.

[21] ACC then referred Mr Tinning for a work readiness programme with Southern Rehab. This was completed in March 2015 and included pre-employment preparation, a functional programme and computer training.

[22] ACC arranged for Mr Tinning to have computer training, which commenced on 12 April 2015 and concluded on 16 June 2015.

[23] The computer training completion report concluded by saying: "Graeme has therefore successfully completed computer training that is typically encountered in the work type options of: Cost clerk, sales representative, maintenance planner and production clerk."

[24] In a work readiness plan and progress report dated 29 June 2015, Ms Munro recorded:

> Graeme has indicated that he does not wish to engage in a work trial at this stage because he would prefer to follow his advocate's plan for him. I understand from Graeme that Kevin Murray is going to accompany Graeme to CPIT to organise completion of the pre-entry requirements for the quantity surveying qualification (independent of ACC).

[25] In July 2015, ACC funded training and installation of Dragon software onto Mr Tinning's laptop.

[26] By letter of 21 July 2015, ACC confirmed to Mr Tinning that they had approved the provision of Dragon Speak software training in the use of Dragon Speak and Bluetooth. Subsequently, Mr Tinning received a number of hours training in the use of the Dragon software and got to a point where he was able to use it proficiently.

[27] In a Work Readiness Plan Service Outcome report dated 16 June 2016, registered occupational therapist, Lauren Irvine, recorded:

> As discussed with ACC a work trial in the medically cleared work types was reoffered to the client under this programme. Although the client and his advocate were willing to consider a work trial proposal in one of the medically cleared work types they identified the following barriers:
>
> - Tertiary qualifications are required to pursue engineer, draftsman, quality controller, safety inspector and purchasing officer work types.
>
> - The remaining jobs fall at the entry level and do not commensurate with the earning levels at the time of the client's injury.
>
> Therefore based on the issues identified above, and given this is the client's second work readiness programme, ACC requested that Work Rehab now close the programme.

[28] On 7 October 2016, Dr Hall-Smith, Occupational Medicine Specialist, saw the appellant and completed a medical case review. Amongst other things he said:

> I find it quite difficult to understand the precise mechanism of injury, but the metal channel flexed in some way and one end hit the ground sending what he described as a shock wave into his arms.

[29] Dr Hall-Smith then traversed various MRI, x-ray and other reports on the file. He noted that Dr Parkin prepared a report on 25 June 2008 in which he noted amongst other things:

> … a very prominent failure to apply full effort when testing every muscle group … thus, there was very prominent failure to apply full effort including of a clearly non organic kind.

[30] Dr Hall-Smith also referred to Mr Bonkowski's report of 4 September 2008 where he said:

> … 12 months down the line I would have expected any small intramuscular tears to have largely inched themselves across and it is somewhat surprising to hear that he is so disabled by continuing pain this long down the line. This together with a subjective perception of upper limb weakness does suggest there is a strong element of chronic pain syndrome starting to colour the entire process and it is not strictly organic.

[31] Dr Hall-Smith also referred to a letter of 17 September 2013 from Professor Shipton, Pain Management Specialist, to ACC's case manager. Professor Shipton said:

> There appears to be a consensus that he has a chronic pain syndrome. Treatment options such as changing his medication in a multidisciplined activity focus programme have been offered to him. These are entirely appropriate for his chronic pain syndrome. The rationale for this treatment has been explained to him on at least two occasions. It appears from the reports that he himself has chosen not to pursue these options.

[32] After discussing the appellant's injury and the various reports that had been obtained since the accident, Dr Hall-Smith concluded his report by saying:

> I am unable to suggest any additional rehabilitation interventions that are likely to be of benefit to him given the lack of a clear underlying diagnosis, the presence of some non organic features as described by those specialists by whom he has been assessed, and reluctance to engage in some of the treatments that have been suggested over the years since the initial injury event. On that basis I would consider that his rehabilitation is complete.

[33] Dr Hall-Smith identified seven work types in which the appellant would be capable of working for 30 hours or more per week.

[34] On 12 April 2017, psychologist, Carolyn Field, completed a vocational independence occupational assessment ("VIOA") report.

[35] The report noted that four jobs had been excluded from the individual rehabilitation plan due to lack of experience or qualifications. On page 3 the completed vocational rehabilitation activities were noted.

[36] The report referred to the computer training the appellant had undertaken as well as his previous employment history.

[37] On page 10 of the report Ms Field identified the role of Product Examiner, which is one of the two jobs that are the subject of this appeal. Ms Field said:

> Mr Tinning has worked as a welder mechanical engineer, fitter, structural fabrication welder and boiler maker and has over 28 years' experience in the engineering industry. Through his work he has gained some experience undertaking quality checks and evaluating completed job quality. He has detail and decision making skills and can observe, monitor, problem solve, listen, explain and supervise others. He is vocationally ready for this occupation at entry level.

[38] The second job type, Production Clerk, which is the subject of this review is referred to on page 11 of the report. She said:

> Mr Tinning has worked as a welder, mechanical engineer, fitter, structural fabrication welder and boiler maker and has over 28 years' experience in the engineering industry. Through this work he has gained some experience planning jobs, keeping records, organising materials, scheduling jobs, reading plans and drawings, measuring jobs, calculating costs and estimating materials required for jobs.
>
> He has planning, detail and numeracy skills together with some basic computer skills.
>
> He has already been provided with Dragon Speak software. He is vocationally ready for this occupation at entry level.

[39] On 25 July 2017, Dr Antoniadis, Specialist Occupational Physician, conducted a vocational independence medical assessment.

[40] Dr Antoniadis set out the appellant's diagnostic presentation and under the heading "current limitations and restrictions", he said:

> At this point Mr Tinning is, on the basis of his elbow pain in particular, limited to roles that exclude moderate to heavy physical demand with moderate to heavy lifting, pushing, pulling or carrying. He is limited with regards forceful gripping and holding particularly on a sustained basis with either left or right hand and also restricted in relation to frequent to constant use of hand, power and machine tools apart from office based equipment.
>
> I would suggest that roles that require frequent twisting of the body and neck would be precluded on the basis of his neck disorder. In my opinion he is entirely suited to sedentary to light physically demanding work including work activity that requires lifting and carrying on a frequent basis in the light weight range.
>
> In my opinion he is entirely suited to driving roles provided there are also some opportunities for occasional breaks.
>
> Mr Tinning is entirely suited to roles that require him to use hand tools within an office setting and roles that require frequent use of computer keyboard or mouse are entirely suitable for him provided that this is not on a constant basis. He has knowledge in the use of voice activated software.

[41] In his opinion Dr Antoniadis found the work roles of Product Examiner and Production Clerk to be suitable and sustainable options.

[42] Under the heading "recommendations for management and rehabilitation", Dr Antoniadis said:

> At this time I do not feel that he requires any further medical investigation or intervention either through orthopaedic or medical involvement. He does not require any further radiological investigations. He does not require any further pain management. He did appear largely resistant to the input he had been offered in the past but had been provided with a period of activity focused input. Mr Tinning does have an ability to manage his chronic upper extremity pain and limitations in relation to his neck through pacing himself and limiting the level of physical activity particularly in the moderate to heavy weight range he does have effective use of analgesia and his doses of such appear stable.
>
> Mr Tinning agreed that at this point there was no further interventions that are likely to benefit him. He was however hopeful that over time he would be able to reduce his use of analgesics and this was also encouraged strongly by his general practitioner and particularly in relation to the use of oxycontin.

[43] In a decision letter of 4 December 2017, ACC advised the appellant that it considered he was able to work 30 or more hours a week in the work types of:

[a] Sales Representative (Industrial Products);

[b] Product Examiner;

[c] Production Clerk.

[44] Mr Murray sought the opinion of Stuart Macann, career practitioner and vocational rehabilitation consultant since 1993. He confirmed the he did not consider Mr Tinning had the requisite level of computer skills to obtain any job that had a computer component including that of a Sales Representative (Industrial Products) and Production Clerk.

[45] He considered that there was inconsistency in the VIOA where Ms Field had considered Mr Tinning able to undertake the Sales Representative job of industrial products but not for retail.

[46] In relation to the work type of Product Examiner, Mr Macann conceded that Mr Tinning probably had the skills to examine products for the welding and boiler making industries. However, he noted that companies do not hire product examiners in these areas. At page 4 of his report he noted:

> In fact, I could not find a product examiner job anywhere in New Zealand. The closest I could find are meat inspector, quality control assessor or quality assurance assessor. These three jobs are specialised and require extra knowledge and/or specific training as in the case of meat inspector. Graeme does not have the industry knowledge or any experience in being a quality controller assessor or a quality assurance assessor.
>
> Graeme does not meet the next working day rule for the job of product examiner.

[47] Mr Macann did not consider the work type of Production Clerk as being a real job as it has been taken over by computer technology. He concluded:

> It is my understanding that at the time these three job options were chosen by Ms Field she decided that Graeme had sufficient transferable skills to be immediately employed in any one of the three jobs, thus complying with the "next working day" rule.
>
> Graeme has no experience in any of these jobs. Two of the jobs do not exist. However, if a wider view is taken in that there are jobs that may be close to them I consider Graeme does not have the skills to obtain these jobs.
>
> I conclude by saying that based on my findings I therefore consider Graeme not suitable for the three jobs stated in the ACC decision letter and for ACC to make him vocationally independent was premature.

The Appellant's Submissions

[48] The appellant's submissions are focused prominently on a report obtained from Stuart Macann.

[49] In his report of 17 January 2018, Mr Macann provided his independent occupational assessment of the then three job choices selected for the appellant and whether he had achieved vocational independence in these jobs.

[50] He refers to Mr Macann's statement at page 2 of Mr Macann's report that "Graeme does not have the level of computer skills to obtain any job that has a computer component".

[51] On the issue of the appellant's suitability as a Product Examiner, Mr Macann said:

> It could be argued that Graeme has the skills to examine products for welding and boiler making defects. The issue is that companies do not hire product examiners in these areas.

[52] Mr Macann said:

> The closest I could find are meat inspector, quality control assessor or quality assurance assessor. These three jobs are specialised and require industry knowledge and/or specific training, as in the case of meat inspector. Graeme

> does not have the industry knowledge or any experience in being a quality control assessor or a quality assurance assessor.

[53] As to the job type of Production Clerk, Mr Macann said:

> My research suggests the job of production clerk is not a real job anymore in New Zealand's job market. If it ever was it has been taken over by computer technology and production environments.

[54] Mr Macann is critical of Ms Field's report saying:

> Assessors must show that the work option exists in the current New Zealand labour market. It would appear that Ms Field did not do so.

[55] Mr Macann concludes that the appellant was not suitable for the three jobs stated in the ACC decision letter and that for ACC to determine the appellant vocationally independent was premature.

[56] Mr Murray submit that for the Production Clerk role the appellant needed five to ten years' experience to get back to a pay level similar to what he formally had.

[57] Mr Murray also contrasts the computer training that the appellant had (some ten hours) and students at school having some 640 hours computer training. Mr Murray submits that the appellant would need computer training for a year or the equivalent of some 200 hours.

[58] Mr Murray makes a similar submission in relation to the introduction of the appellant to Dragon software.

[59] Mr Murray refers to s 80 which describes the purpose of vocational rehabilitation as including the provision of activities for the purpose of maintaining or obtaining employment that is both suitable for the appellant and appropriate for the appellant's level of training and experience.

[60] Mr Murray refers to Mr Macann's computer test report dated 19 February 2018 where he stated:

> I put Graeme through the MS Excel test. The results are attached. Graeme achieved a beginner level on the test. The beginner level is the lowest level and is not adequate for the work environment.
>
> Graeme can send emails and browses the internet. His keyboard skills are of the "hunt and peck" variety, but largely on his phone, rather than his keyboard. He cannot yet demonstrate business computer competence and is below level 1.
>
> Graeme has completed limited computer training as part of his rehabilitation.

[61] Mr Murray is critical of the occupational assessment of Carolyn Field, submitting that Ms Field truncates her assessment by not fully discussing the issues pertaining to Mr Tinning's abilities to undertake the computer tasks required in the basic jobs described by her. He also submits that she does not explain how the courses provided show that Mr Tinning could undertake the computer requirements of those identified jobs.

[62] Mr Murray summarised the six legal principles set out in *Martin v Accident Compensation Corporation*:[1]

[i] The Corporation's right to require a claimant to participate in a work assessment arises only after the claimant has completed any vocational rehabilitation that ACC is liable to provide under his or her rehabilitation plan.

[ii] Initial vocational and medical assessments aid in assessing the rehabilitative steps required and are an additional evidential aid in checking the reasonableness of the final outcomes of the medical and vocational assessments.

[iii] Final vocational and medical assessments are then carried out that must factor in the ability of the claimant to, both vocationally and physically,

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1 *Martin v Accident Compensation Corporation* DC Wellington 232/2005, 2 August 2005 at [31].

carry out the range of tasks which a particular job option may encompass in its normal and usual requirements. The issue is employment specific not job specific.

[iv] A finding of capacity for work has serious implications for the claimant and should not be made unless supported by strong evidence.

[v] The legislation should not be approached in a pedantic and overly technical way but should be looked at in the round to ensure that the provisions have been carried out in a realistic way.

[vi] A discretionary power must be exercised reasonably and the decision-maker must take into account only relevant considerations.

[63] Mr Murray also referred to Judge Powell's decision in *Chapman v Accident Compensation Corporation*.[2] In that case, Judge Powell said:[3]

> [13] Given the importance of the Vocational Independence process to claimants like Mrs Chapman it is imperative that a VIMA be clear and coherent, and that in a transparent manner analyses the work type work sheet requirements so that a claimant knows the basis upon which a particular work type is found to be medically suitable. Ultimately Mr Kelman's VIMA in respect of Mrs Chapman, falls well short of providing a sound basis for a vocational independence decision by the Corporation.

[64] Mr Murray concludes neither the work types of Cost Clerk nor Production Clerk are suitable.

The Respondent's Submissions

[65] In written submissions Mr Evans referred to the High Court decision in *Martin v Accident Compensation Corporation.*[4]

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2 *Chapman v Accident Compensation Corporation* [2015] NZACC 128.
3 At [13].
4 *Martin v Accident Compensation Corporation* [2009] 3 NZLR 701 (HC).

[66] Ronald Young J said:[5]

> [35] … If therefore there is to be a merits-based review of the conclusion that a claimant is vocationally independent, a wider assessment of the facts is inevitable at the review and appellate level.

[67] He went on to write:[6]

> [36] In summary, therefore:
>
> (a) when assessing vocational independence by the Corporation the *Ramsay* principles apply [is there cogent evidence that there was a material flaw in the medical assessment];
>
> (b) the review and any appeal to the District Court are to be determined according to the statutory review and appeal rights: *Wildbore* and *Austin, Nichols*. The *Ramsay* principles have no application to such reviews or appeals to the District Court.
>
> (c) the approach in (b) therefore requires the reviewer or District Court to consider all the relevant evidence and to decide if they are satisfied the claimant is vocationally independent. The medical assessor's opinion is to be given no pre-eminence solely because of its statutory basis.
>
> (d) if the reviewer or District Court reach a different conclusion on the evidence as to vocational independence than the Corporation (or reviewer) then the decision is wrong, the obligation on the appellant met and a different decision should be substituted.
>
> (e) in assessing expert medical evidence factors such as (non-exhaustive) the extent and relevance of the practitioners' qualifications and experience, the comprehensiveness of the evidence gathered, the quality of the report, where the preponderance of opinion lies and the validity of criticism of other medical opinions, will all be relevant in deciding the ultimate question.

[68] Mr Evans further submits that cases such as *Ewart v Accident Compensation Corporation* held that a claimant's self-assessment or self-reporting of his or her own limitations is insufficient to displace medical assessment.[7]

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5 At [35].
6 At [36].
7 *Ewart v Accident Compensation Corporation* DC Napier 51/2002, 18 February 2002 at [32].

[69] In relation to the appellant's computer skills, Mr Evans first refers to the computer training completion report from June 2015 which showed that the appellant completed 31 hours of computer training which included seven hours on Microsoft Word and seven hours on Microsoft Excel.

[70] Mr Evans referred to the Reviewer's conclusion that:

> Ms Field considered Mr Tinning's work experience meant he had developed skills in planning, keeping records, reading plans and drawings and calculating costs which he considered were transferable skills which could be utilised for these two work types (product examiner and production clerk). Relevantly, she considered that Mr Tinning was only suited for an entry level position for each of these work types.

[71] Mr Evans submits that this is a very important consideration in the context of this case and that ACC has never suggested that Mr Tinning is capable of working at the level of an experienced Product Examiner or Production Clerk. Both of the work type details recognised that on the job training is available and therefore calls into question the reality of Mr Macann's suggestion that hundreds of hours of basic computer training would be required in order for Mr Tinning to undertake this work.

[72] Mr Evans responds to Mr Macann's proposition that the two job types are no longer available. Mr Evans says that Mr Macann's report overlooks and ignores the fact that both the jobs of Product Examiner and Production Clerk are listed as being occupations in existence in New Zealand in accordance with the ANZSCO list.

[73] Mr Evans submits that the fact that Mr Macann could not find any jobs when he researched Seek or Trade Me is irrelevant because, as the Reviewer noted, he was only looking for jobs that were currently advertised. He submits it also ignores the fundamental proposition that whether there are jobs currently available in the work type is not the test for vocational independence.

[74] He submits that Ms Field has not overlooked any important consideration or given undue emphasis to any point that would allow this Court to conclude that her conclusions were unsafe or unwarranted.

[75] As to the Vocational Medical Assessment, Mr Evans submits that there is no competing medical assessment relied upon by the appellant. He also notes that the conclusions of Dr Antoniadis are entirely consistent with those of Dr Rupert Hall-Smith and Dr Xiong.

[76] Mr Evans submits that the rehabilitation provided to Mr Tinning has been thorough and comprehensive and that there is no reason why this Court should conclude that Mr Tinning is not able to complete the work types of production clerk or product examiner.

The Appellant's Submissions in Reply

[77] Mr Murray submitted the test was:

> Was Mr Tinning ready for work the following day? Did he have the necessary skills?

[78] Mr Murray submits that his client did not have the work skills and that Mr Macann's tests proved that.

Decision

[79] Section 80(1) of the Act states that the purpose of vocational rehabilitation is to help a claimant to:

> (b) obtain employment; or
> (c) regain … vocational independence.

[80] Section 80(2) provides:

> Without limiting subsection (1), the provision of vocational rehabilitation includes the provision of activities for the purpose of maintaining or obtaining employment that is—
>
> (a) suitable to the claimant; and
> (b) appropriate to the claimant's levels of training and experience.

[81] Section 107 provides that the Corporation may determine vocational independence of a claimant who is receiving weekly compensation.

[82] Subsection 107(3) provides:

> The purpose of the assessment is to ensure that comprehensive vocational rehabilitation, as identified in a claimant's individual rehabilitation plan, has been completed and that it has focused on the claimant's needs, and addressed any injury related barriers, to enable the claimant—
>
> (a) to maintain or obtain employment; or
> (b) to regain or acquire vocational independence.

[83] The principles summarised by Ronald Young J in *Martin v Accident Compensation Corporation* are engaged on this appeal.[8]

[84] The first of these principles is: is there cogent evidence that there was a material flaw in the medical assessment? It has not been argued by the appellant that there has been a material flaw in the medical assessment. Accordingly, that provision is satisfied.

[85] Next the Court is required to consider all relevant evidence and to decide if it is satisfied that the claimant is vocationally independent. In this regard the medical assessor's opinion is to be given no pre-eminence solely because of its statutory basis.

[86] In this case, the focus has not been on the medical assessor's opinion but rather on the actual vocational rehabilitation given.

[87] In this case there has been a significant focus on the computer training provided to the appellant. Mr Murray contrasts the 31 hours provided to the appellant with the 640 hours that would be provided to a student at school.

[88] However, the computer training completion report from 2015 concluded as follows:

> - Graeme was a dedicated student and as soon as he could work alone at home he did. The trainer observed that Graeme was very keen to work at home to seal his new learning and complete enough to enable him to remember a lot of the tools in each part of the allocated training.

[8] *Martin v Accident Compensation Corporation,* above n 4.

- He was a beginner learner and the trainer was pleased with his dedication, even if some parts were difficult for him.

- Graeme has therefore successfully completed computer training that is typically encountered in the work type options of cost clerk, sales representative, maintenance planner and production clerk.

[89] Mr Murray submits on the basis of Mr Macann's report that the appellant did not have the competency required for the job but only that of a beginner.

[90] However, the focus in s 80 is on vocational rehabilitation for the purpose of obtaining employment that is suitable for the claimant and appropriate to the claimant's levels of training and experience.

[91] The Act does not require vocational rehabilitation that ensures a person is able to obtain employment in a particular job type at an advanced level.

[92] It needs to be said that the provisions relating to vocational rehabilitation are informed by the social contract that underpins the ACC legislation which is enabling the person who has suffered injury by accident to become a participating member of society again and part of that participation is to be in employment. Once in employment the hope and expectation is that the claimant once again will be able to progress in that vocational type as they become more familiar with the role; and they gain progressive experience and the additional skills and proficiency that come from working at that role for 30 hours a week or more.

[93] Mr Macann's report of 17 January 2018 suggests that the two job types of Product Examiner and Production Clerk appear not to exist in the New Zealand job market.

[94] Mr Evans answers this by saying that the occupations in question are in the Australian and New Zealand Standard Classification of Occupations list which reflects contemporary requirements in the Australian and New Zealand labour markets. Plainly, the fact that job types are identified is not a guarantee that placements in those job types will always be available. That is the nature of the job market.

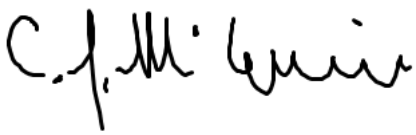
[95] In this case the process of reaching the present position on the part of the respondent that the appellant had vocational independence, goes back to 2012 when he was prematurely found to be vocationally independent in seven work types.

[96] The process was recommenced in 2014 with further occupational and medical assessments, and the appellant completed the computer training in 2015. There was a further medical case review in October 2016. In April 2017, there was a further VIOA and a vocational independence medical assessment in July 2017.

[97] In this case there has been no significant challenge to the medical assessment. I find that medical assessment of 25 July 2017 completed by Dr Antoniadis to be thorough and realistic. I accept it.

[98] The Vocational Independence Occupational Assessment report of 12 April 2017 conducted by Ms Field I find to have been both thorough and realistic. Each of these job types are within the physical and mental demands that the appellant is found to be capable of. In each case they are recognised to be entry level positions with the expectation of on the job training.

[99] Accordingly, I conclude therefore on the balance of probabilities that the respondent's decision in finding the appellant was vocationally independent in the two roles was correct. Accordingly, I must dismiss the appeal. Should there be any issue as to costs the parties have leave to file memoranda in respect thereof.



Judge C J McGuire
District Court Judge

Solicitors: Young, Hunter, Christchurch, for the respondent