

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 106 ACR 13/21

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

Hearing: 26 May 2022

Heard at: Auckland/Tāmaki Makaurau

Appearances: Appellant in person
Mr L Hawes-Gandar and Ms F Becroft for the Respondent

Judgment: 2 June 2022

**RESERVE JUDGMENT OF JUDGE C J McGUIRE
[Entitlements/Social Rehabilitation - Part 4 Accident Compensation Act 2001]**

[1] This appeal was brought by the appellant against a decision by the respondent dated 3 August 2020 in which it declined funding for a neck brace.

[2] On 19 May 2021, the Corporation revoked its decision and approved funding for the requested neck brace.

[3] The Corporation's position therefore is that the appeal is now moot and there are no substantive issues to be determined.

[4] The appellant raises various other issues in relation to the historical management of his claim. The respondent's position is that these matters are outside of the scope of this appeal.

Background

[5] Mr Easthope has cover in respect of an accident that occurred on 17 May 1986 when he was spear tackled while playing a game of rugby league. The diagnosis which the Corporation has recorded as being caused by the accident is "dislocation of shoulder (including clavicle/blade) horizontal – side left".

[6] The Corporation does not have the original claim file, so it is unclear what if any treatment was provided. However, in 2011, the claim became active again, when a request was lodged for surgery to treat arthritis in his left shoulder.

[7] The Corporation initially declined the request for surgery. However, this decision was quashed at review and the Corporation was directed to carry out further investigations into whether the shoulder condition was caused by the accident. The Corporation arranged for Mr Easthope to be assessed by Orthopaedic Surgeon, Adam Durrant, who recorded:

In 1986, Mr Easthope was spear tackled playing rugby league. He sustained left shoulder and neck symptoms, however, these were "not investigated or well managed at the time". I understand his neck pain resolved but he has had ongoing discomfort in his left shoulder...

[8] Mr Durrant concluded that the accident had probably led to an advancement of degenerative changes within the shoulder leading to the need for surgery. Surgery was carried out in 2012.

[9] Mr Easthope has had further orthopaedic assessment and treatment. This has included steroid injections, pain management, physiotherapy and medical imaging.

[10] Applications were made for further shoulder surgery in 2014 and 2016, both of which were approved by the Corporation. Mr Easthope chose not to proceed with either surgery.

[11] On 7 July 2020, the Corporation received a request from the Orthotic Centre for a new neck brace to replace the old one which had become worn.

[12] The clinical advisor noted that there was no recorded neck injury diagnosis relating to the accident and that funding for the previous neck brace appeared to have been approved in error. He also noted that the covered neck sprain under the neck claim would have been expected to have resolved already. Therefore, he recommended that funding for the neck brace be declined.

[13] The Corporation issued its decision on 3 August 2020.

[14] The decision was upheld by Reviewer, Mr Lawless, in a decision dated 22 December 2020. Mr Lawless found that the spondylosis in the appellant's neck was not proven to have been caused by the accident. Mr Lawless however recommended that ACC investigate and determine what injuries had been caused by the accident if it had not already done so.

[15] The Corporation assigned a case manager to gather relevant medical records and arrange a specialist medical case review to determine what injuries had been caused by the accident. The appellant initially agreed with this process but on 2 February 2021, he withdrew his consent for the Corporation to gather his medical records. The case manager advised Mr Easthope that the Corporation was not able to continue investigating without his consent and that the appellant could contact him again in the future if he changed his mind.

Appellant's submissions

[16] Following ACC's decision of 3 August 2020 to decline funding for a neck brace and a review decision dated 22 December 2020 upholding ACC's decision, the appellant filed, with the Appeal Registry, a number of submission documents. Of significance are the following:

- (a) In an email to the Registry and to ACC of 23 February 2021, Mr Easthope complains that ACC is repeating 26 years' of misbehaviours and wrong medical reports. He says:

Does ACC agree with my 17 May spear tackle accident? That dislocated my left shoulder and others...

Does ACC agree that I was in fact spear tackled playing rugby league dislocating my left shoulder...

- (b) In a further email to the Registry and to ACC dated 23 February 2021, the appellant again refers to the effects of the spear tackle and consequential left shoulder injury. He speaks of ACC saying he “was going to be a big trouble if there is nothing wrong with my left shoulder”, the implication being that this is some kind of threat from ACC. He says:

I am the patient and no one listens and no one takes my harm seriously.

- (c) In a further email submission of 30 March 2021, he speaks of ACC:

Not adhering to Court requested claimant/respondent actions, amounts to ACC’s blanket abuses towards my health care...”

On 17 May 1986 playing rugby league, I was spear tackled and hurt myself in three places – the one injury NZ medicine focused on, my left shoulder, ACC destroyed my file and it took me 26 years to have surgery... no doctor looked at any of my other injuries because they fobbed me off. They only focused on my left shoulder and told me “you look okay” “move on”.

- (d) In a further email submission on 22 July 2021, the appellant amongst other things said:

In July 2021 – some 34 years post neck injury and ACC has accepted and covered my neck brace from 17 May 1986...this intentional authoritarian delay to proper medical treatment (and a neck brace is not the only treatment I require) this 34 years amounts to medical torture.

...I have a lower back injury to include as well...

My neck injury – I cannot place my neck in a comfortable position in order to deep sleep for more than 2? 3? hours at any one sleeping/sleep time. I fall asleep due to absolute exhaustion and turn, inside deep sleep and immediately awoken.

- (e) In further email submissions of 28 July 2021, the appellant amongst other things says:

...I have a cervical MRI scan of June 2010 and still doctors gaslight me on the deformities presenting in my neck – I suffered this injury on 17 May 1986 where I was spear tackled. I can assure everyone, I feel these 4 cervical deformities in my neck and I'm saying I suffer horrendous nerve pain damage whereas, due to this nerve damage, when I raise my injury pain voice, AOS are called or I'm labelled a dangerous violent man. I'm not violent. My reaction, vocal and otherwise, are the consequence of cervical injury/nerve pain.

I remind everyone, there are seven cervical bones in everyone's neck – four of mine are deformed and I feel them all.

...Due to injury pain, I sleep short 2-3 hour deep sleep. I can medicate longer deep sleep however this medicated deep sleep is more problematic for my health and wellbeing.

Due to injury pain, I have no family of my own.

Due to injury pain, I am socially isolated.

Due to delayed treatment and proper medical advice, I suffer cancer causing health indicators.

(f) In a further email update of 17 May 2022, he says, amongst other things:

In the 26 years of waiting for surgery, I got up on my own and found work.

I'm unqualified and can only work manual labour and because of my past...I was employed in the most physical jobs available...

I worked and failed at Crew Cut Lawn Mowing, Kmart Class 5 Driver...DHL Class 4 Driver, Speedy Couriers... Kiwi Express Couriers – because I looked okay I was given all heavy loads...

My final "paid" employment was caring for my beloved mother.

...

I think I lost all jobs because of untreated pain, I was probably coming across very arrogant and aggressive...It took 36 years and a brilliant doctor to tell me I had cervical narrowing and cervical narrowing is a major if not, the major life influence causing my pain and suffering.

...

Hope (case manager) says "There's no plan." I asked Hope "does ACC have any plan for me?" Hope says "no".

The plan I was referring to was the plan to reintegrate me back into society/working...This "no plan" is another life defining ACC breach of the ACC Act 2001.

ACC has steadfastly ignored my health care e.g. Prof Kanji has approved:

- (1) A spine/traction machine.
- (2) A memory foam mattress to help me with my injuries.

Hope immediately referred this specialist request to the ACC Clinical Advisor. In my tortured experience, the (Clinical Advisor) is there to refuse all rehab/assisted care for me.

...

Here is one thing doctors nor ACC can deny – no doctor and ACC has ever had a rehab plan for me – on or about 1989, doctors and ACC not only destroyed the order for surgery on my active file – now in 2022 whereas I have asked – ACC’s statutory plan for me to get myself up and running – in 36 years of barbaric medical and ACC administration torture – no official can show the Court that medical professionals and ACC officials ever bothered to get me up and healthy from a harrowing May 2016 spear tackle.

I’m asking the Court reviews all my entitlements to begin as at 17 May 1986 i.e. my lower back, my cervical spine, my left shoulder – lump sum and independence allowance.

...

Prof Kanji has applied for ACC funding of a memory mattress and a traction machine – ACC case manager Hope has referred this request to the ACC Clinical Advisor and in my four decades of ACC experience, the (Clinical Advisor) is working at ACC to say no and saying no to this reasonable request equals ACC would rather I be an opiate mediated junky than to fund...a non-drug addiction spinal treatment or any other means/applications to help me cope with the disabled life ACC via corruption, place me into.

- (g) In a further email submission of 23 May 2022, the appellant reminds the Court of the social contract set out in paragraph 3 of the ACC Act:

According to ACC May 2022 rejection – my neck is only a sprain! Yet the aspen neck collar is prescribed for sprains? I have a permanent neck sprain (since May 1986). My neck sprain/injury prevents me sleeping properly and due to my spinal injury (since May 1986) I have a urinary problem to name but 2 permanent medical issues attached to my accepted claim(s) but I can’t get non-opiate medical help with a mattress and traction machine – not according to ACC, no.

Since May 1986, ACC not offered me any rehab plans whatsoever – it’s 2022 – ACC’s stance is – it’s only ever sprains and my injuries yet all these sprains prevent me working – I asked ACC lawyers to provide all historical and statutory plans helping me, get myself up

and going...ACC lawyers can't because there isn't any positive ACC rehab plans.

[17] At the appeal hearing, Mr Easthope paraphrased the issues important to him in a concise and focused way. He said the main post-traumatic harms from the spear tackle are his cervical narrowing; dislocation and pain.

[18] Mr Easthope also referred to the assessment report and treatment plan dated 24 May 2022 from Musculoskeletal Pain Specialist Dr Kanji. Dr Kanji includes in his report the following:

Terence has been declined for traction devices for the lower back. The MRI scan dated 4 July 2019 of the lumbar spine shows a disc prolapse at L3/4 and annular tear at L5/S1. These are both potential pain generators. They are not a sprain and may cause chronic lower back pain, especially due to loading for everyday activities (bending, lifting, sitting and twisting activities).

...

Management plan

I have suggested a memory foam mattress as this may reduce pressure on the spine and hopefully improve the frequency of waking. Can ACC please assess him for a new mattress.

He would also like to trial an inversion table for his lower back pain. I would also endorse this as a trial of treatment. These tables are available for about \$200. Unfortunately, he cannot fund himself at present.

...

In May 1986 while playing rugby league, he was spear tackled with his head/shoulder pushed into the ground. He developed left shoulder, cervical spine and lumbar spine pain from this time. He has had investigations over the years including an MRI scan of the cervical spine on 10 June 2013 which shows disc prolapses at C5/6 and C4/5.

A lumbar spine MRI scan performed in July 2019 shows a right sided annular tear and disc bulge at L5/S1.

An MRI scan of the left shoulder on 7 April 2019 shows a defined defect at the greater tuberosity at the point of insertion of the supraspinatus and infraspinatus, in keeping with prior dislocation and impaction and adjacent Hill-Sachs lesion is also present. An X-ray of the left shoulder performed in June 2021 shows inferior glenohumeral joint arthritis.

...

Impression

Terence has several pain generators including the left shoulder, cervical spine disc prolapse, lumbar spine annular tear. The left shoulder and cervical spine are likely to stem from his incident in 1986 with exacerbations of symptoms over the years.

Respondent's submissions

[19] Both Mr Hawes-Gandar and Ms Becroft rightly directed their submissions not at the subject of the present appeal, which is moot, but at the way forward. Ms Becroft noted that the only thing to do was to go back to ACC and find out where the claim is, based on Dr Kanji's assessment report and treatment plan dated 24 May 2022. The question may arise whether the assessment report and treatment plan of 24 May 2022 is wide enough to deal with the matters that the appellant complains of, so that ACC can make decisions on the matters that Mr Easthope now seeks to be dealt with, namely the cervical narrowing, dislocation and pain.

[20] It appears however that the respondent has turned down the appellant's request for the foam mattress and the inversion table.

[21] In discussion that followed in court, Mr Easthope acknowledged that Hope, his new case manager, was better and was looking all his injuries holistically but that the claims for the foam mattress and inversion table had still been turned down.

Decision

[22] This appeal from a jurisdictional standpoint is confined to the decision ACC made on 20 August 2020 declining funding for a neck brace for the appellant. That decision has now been reversed and therefore, in respect of that particular appeal, there remain no grounds for anything further to occur. The appeal is therefore dismissed.

[23] However, what this appeal has highlighted is the extraordinarily damaging effect the appellant's spear tackle injury of 1986 has had on him, physically, mentally, socially and in terms of his self-worth as a positive, intelligent, prosocial and contributing human being.

[24] The “accident” was plainly horrendous. The injuries and pain that it has caused are ongoing and have affected, on the evidence before me, all facets of the appellant’s life. They have affected his ability to work and hold down significant employment, in spite of the appellant’s best efforts to do so. And the marginalising effects of his injury have more than likely played a part in his offending and his relationships with others including law enforcement authorities.

[25] That said, there is substantial information before the Court not only as to Mr Easthope’s intelligence but also as to his prosocial outlook. Six years of care of his invalid mother is eloquent evidence of that.

[26] I note that in his judgment dated 15 December 2016 in respect of three earlier appeals of Mr Easthope, Judge Powell said:¹

... It is clear from talking to Mr Easthope at the hearing and read his submissions to the Court that his May 1986 injury has had a significant ongoing effect on him for many years. While eventually appropriate treatment has been and now continues to be provided by the Corporation, it is unclear the extent to which Mr Easthope has at the time been aware of his entitlement to treatment and whether this has delayed the provision of treatment. In order to avoid the situation occurring in the future, the Corporation is encouraged to ensure that Mr Easthope and claimants like him are provided with appropriate case managers who can proactively and helpfully advise on the types of entitlements (including treatment) that are available and appropriate with regard to the nature of the injuries that have been suffered, as well as the steps required to be undertaken by the claimant in order to access such an entitlement. It is hoped that if such arrangements are put in place, it will ensure that Mr Easthope future experience with the Corporation is as productive and cooperative as possible.

[27] Judge Powell’s comments remain as relevant now as they were six years ago.

[28] By his own admission, Mr Easthope sees his present case manager in a positive light and someone who looks at all his injuries holistically. It is therefore to be hoped that for the future it will not be such a battle for Mr Easthope to access the entitlements that he is due. Now is an ideal opportunity for Mr Easthope to work cooperatively with his new case manager.

[29] I cannot help but observe that it should not have taken until after the filing of this appeal for the funding of the new neck brace to occur. The denial of that claim

¹ *Easthope v Accident Compensation Corporation* [2016] NZACC 321 at [11].

appears to have relied to a significant extent on the fact that there was no neck injury cover under the particular claim and that the supply of an earlier neck brace did not mean that ACC had to fund all similar requests. Such conclusions fly in the face of an undeniably awful injury to his neck, shoulders and spine arising from the spear tackle in 1986.

[30] Nevertheless, for the foregoing reasons the appeal is dismissed.

[31] There is no issue as to costs.



Judge C J McGuire
District Court Judge

Solicitors: Medico Law, Auckland for the respondent.