

**PURSUANT TO S 160(1)(b) ACCIDENT COMPENSATION ACT 2001 THERE IS A
SUPPRESSION ORDER FORBIDDING PUBLICATION OF THE APPELLANT'S NAME
AND ANY DETAILS THAT MIGHT IDENTIFY THE APPELLANT**

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 119 ACR 290/19

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

Judgment on the papers.

Submissions: The Appellant is self-represented
 S Churstain for the Respondent

Date of Judgment: 27 June 2022

**JUDGMENT OF JUDGE P R SPILLER
[Late filing of an appeal to the District Court –
s 151, Accident Compensation Act 2001]**

Introduction

[1] The appeal in the above matter was lodged by GG on 12 November 2019. The appeal is from the decision of a Reviewer dated 2 October 2019. The Reviewer decided that he did not have jurisdiction to consider the Corporation's decision of 9 November 2018, and he dismissed an application for review of the Corporation's decision of 1 May 2019 declining to assist with the cost of treatment.

[2] Included in the documents lodged by GG on 12 November 2019 was an explanation as to why the lodging of her appeal had been delayed. GG noted that she had left it to the last day for lodging, hoping to hear from the Privacy

Commissioner regarding issues that should have been considered prior to the review decision that she was appealing, and, when she tried to get the correct appeal form, both the District Court and the Corporation provided incorrect information.

[3] On 13 June 2022, a telephone conference was held in preparation for the hearing of this appeal on 4 July 2022. The Court noted that GG's appeal had been lodged out of time and the Court had not as yet granted leave for the late filing, as required by section 151(3) of the Act. The Court directed that by 23 June 2022, GG apply for leave to appeal out of time, with reasons why her appeal was late.

[4] On 20 June 2022, GG noted that she had nothing to add to the reasons for late filing of the appeal as stated in her explanation provided above.

[5] On 21 June 2022, Ms Churstain for the Corporation submitted that given the delay of 13 days, the Corporation did not oppose the late filing of the appeal.

Relevant law

[6] Section 151 of the Accident Compensation Act 2001 (the Act) provides:

- (1) An appellant brings an appeal by sending a notice of appeal to, or filing a notice of appeal in, a specified registry.

...

- (3) The notice must be received by the specified registry—
 - (a) within 28 days after the date on which the reviewer gives a copy of the review decision to the appellant; or
 - (b) ...
 - (c) within any longer time allowed by the District Court.

[7] In *Almond v Read*,¹ Arnold J (for the Supreme Court) outlined the following principles to guide the exercise of the discretion to grant or deny an extension of time to lodge an appeal:

[37] Accordingly, where a litigant takes steps to exercise the right of appeal within the required timeframe (including advising the other party), but misses the specified time limit by a day or so as a result of an error or miscalculation (especially by a legal adviser) and applies for an extension of time promptly on

¹ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801, (2017) 23 PRNZ 533.

learning of the error, we do not think it is appropriate to characterise the giving of an extension of time as the granting of an indulgence which necessarily entitles the court to look closely at the merits of the proposed appeal. In reality, there has simply been a minor slip-up in the exercise of a right. An application for an extension of time in such a case should generally be dealt with on that basis, with the result that an extension of time should generally be granted, desirably without opposition from the respondent.

[38] The ultimate question when considering the exercise of the discretion to extend time under r 29A is what the interests of justice require. That necessitates an assessment of the particular circumstances of the case. Factors which are likely to require consideration include:

- (a) *The length of the delay.* Clearly, the time period between the expiry of the appeal date and the filing of the application to extend time is relevant. But in a case where there has been a slip-up and the appeal date has been inadvertently missed, how quickly the applicant sought to rectify the mistake after learning of it will also be relevant. Obviously, the longer the delay, the more the applicant will be seeking an “indulgence” from the court and the stronger the case for an extension will need to be.
- (b) *The reasons for the delay.* It will be particularly relevant to know whether the delay resulted from a deliberate decision not to proceed followed by a change of mind, from indecision, or from error or inadvertence. If from a change of mind or from indecision, there is less justification for an extension than where the delay results from error or inadvertence, particularly if understandable.
- (c) *The conduct of the parties, particularly of the applicant.* For example, a history of non-cooperation and/or delay by an applicant may be relevant.
- (d) *Any prejudice or hardship to the respondent or to others with a legitimate interest in the outcome.* Again, the greater the prejudice, the stronger the case will have to be to justify the grant of an extension of time. Where there is significant delay coupled with significant prejudice, then it may well be appropriate to refuse leave even though the appeal appears to be strongly arguable.
- (e) *The significance of the issues raised by the proposed appeal, both to the parties and more generally.* If there is a public interest in the issues, the case for an extension is likely to be stronger than if there is no such interest.

Discussion

[8] In terms of section 151(3)(a) of the Act, GG was required to file a Notice of Appeal against the Reviewer’s decision within 28 days after the date on which the Reviewer provided a copy of the review decision to her. The Reviewer’s decision was dated 2 October 2019, which left a date of 30 October 2019 for the filing of the

Notice of Appeal. In the event, the Notice of Appeal was filed on 12 November 2019. This Court is now being asked to exercise its discretion to allow a longer time for filing the Notice of Appeal (in terms of section 151(3)(c)). In deciding whether to exercise its discretion, this Court will follow the guidelines provided by the Supreme Court in *Almond v Read*.²

(a) The length of the delay

[9] The Supreme Court noted that the longer the delay, the more the applicant will be seeking an indulgence from the Court and the stronger the case for an extension would need to be; and that, in a case where there had been a slip-up and the appeal date had been inadvertently missed, how quickly the applicant sought to rectify the mistake after learning of it would also be relevant.

[10] This Court notes the delay in this case is 13 days, which is not a significant period of time.

(b) The reasons for the delay

[11] The Supreme Court noted that, if the delay arose from a change of mind or from indecision, there was less justification for an extension than where the delay resulted from error or inadvertence, particularly if understandable.

[12] GG stated that the reasons for the delay were that she had been waiting to hear from the Privacy Commissioner regarding issues that should have been considered prior to the review decision that she was appealing; and that, when she tried to get the correct appeal form, the District Court and the Corporation provided incorrect information.

[13] This Court is satisfied that GG's delay arose at least partly out of factors beyond her control, rather than from a change of mind or from indecision.

² Above, note 1.

(c) The conduct of the parties

[14] The Supreme Court observed that a history of non-cooperation and/or delay by an applicant might be relevant.

[15] This Court notes that GG complied within the time directed for a statement regarding the late filing of her appeal. The Court is not aware of any history of non-cooperation and/or delay by GG.

(d) Prejudice or hardship to the respondent or to others with a legitimate interest in the outcome

[16] The Supreme Court noted that, where there is significant delay coupled with significant prejudice, then it might well be appropriate to refuse leave even though the appeal appeared to be strongly arguable.

[17] This Court notes that the delay in this case is not significant. The Corporation has confirmed that given the delay of 13 days, the Corporation did not oppose the late filing of the appeal. The Court is not aware of any prejudice or hardship to others with a legitimate interest in the outcome of the present appeal.

(e) The significance of the issues raised by the proposed appeal, both to the parties and more generally

[18] The Supreme Court observed that, if there is a public interest in the issues, the case for an extension is likely to be stronger than if there is no such interest.

[19] This Court accepts that the proposed appeal is significant to GG. The Court is not in a position to assess the significance of the issues raised by the proposed appeal more generally.

The Decision

[20] In light of the above considerations, this Court finds that GG has established that the interests of justice require the exercise of the Court's discretion to sustain her application for leave to file her appeal out of time, which is accordingly granted.

[21] There are no issues as to costs.

A handwritten signature in dark ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller
District Court Judge