IN THE DISTRICT COURT
AT WELLINGTON

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

[2022] NZACC 127 **ACR 119/20**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	CHRISTOPHER O'NEILL Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 23 May 2022

Heard at: Auckland/Tāmaki Makaurau

Appearances: The Appellant in person.
Ms B Johns and Ms A Lane for the Respondent

Judgment: 4 July 2022

RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Review of old decision s 134 Accident Compensation Act 2001]

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[1] The primary issue in this appeal is whether the reviewers were wrong to find that there were no reviewable decisions in respect of review numbers 6540240, 6599693, 6596703. A related issue is whether the appellant has a valid claim for cover for his right eye injury, and if so whether ACC has failed to make a decision on that claim within the statutory time frame.

Background

[2] Mr O'Neill has corresponded with ACC in relation to the matters leading to this appeal, beginning with a letter from Mr O'Neill on 7 March 2019 enclosing a letter from Optometrist, Sarah Hunt, to his GP, Dr Sood dated 30 January 2019.

[3] It appears Mr O'Neill believed that he had an historic claim for cover for an eye injury to his left eye, and following his appointment with Ms Hunt, expected treatment for cataracts to be covered that claim.

[4] ACC considered the 7 March 2019 letter and added a note to Mr O'Neill's file which said:

> Client is to contact his GP to lodge a late claim for the right eye old injury to get assessed for cover.

[5] Unfortunately, Mr O'Neill's GP never lodged a late claim and it appears that ACC did not directly advise Mr O'Neill at the time that his GP could/should do so.

[6] On 20 May 2019, Mr O'Neill spoke to an ACC case manager about his right eye injury. That same day, ACC wrote to Mr O'Neill and advised him it had no record of an injury to his right eye. ACC advised that it had requested his medical records from North Shore Hospital to try to confirm the injury to his right eye.

[7] On 22 May 2019, Mr O'Neill wrote to ACC and said he had already made a claim. ACC however has no record of any claim for an injury to Mr O'Neill's right eye.

[8] On 18 June 2019, ACC wrote to Mr O'Neill and told him North Shore Hospital had advised it held no records for him. ACC advised Mr O'Neill that if he wish to lodge to a claim for a right eye injury, he could so through his treatment provider.

[9] On 17 July 2019, Mr O'Neill wrote to ACC in response to the 18 June 2019 letter. Mr O'Neill said he considered ACC had "ignored" his claim and it could not be declined because it had "lost" his records. Mr O'Neill attached documents he said were evidence of an injury to his right eye. This included a past history from

Auckland Hospital Board dated 23 October 1983 noting "scraped R cornea 1976 with stick" and a letter dated 11 July 2019 from Waitematā District Health Board advising Mr O'Neill it could not find any historical records for him.

[10] On 10 August 2019, Mr O'Neill wrote to ACC again saying that it had "ignored" the "claim" he made in his 7 March 2019 letter.

[11] On 13 August 2019, ACC wrote to Mr O'Neill acknowledging the information he had provided and advised him to get a treating provider, for example his GP, to lodge a claim.

[12] On 16 August 2019, Mr O'Neill wrote to ACC to dispute the suggestion that he have a treatment provider lodge a claim saying:

> There is no "treating" provider. There was a treatment provider who lodged a claim you destroyed. The treatment provider cannot relodge to cover up your criminal act of destruction as he is dead.

[13] On 23 August 2019, ACC wrote to Mr O'Neill, noting it had previously advised him what he needed to do to lodge a claim and that position was unchanged.

[14] On 13 September 2019, Mr O'Neill wrote to the ACC Chief Executive Officer and said ACC had "ignored" his claim; that ACC told him it had no record of an injury to his right eye and now said he must make "a second claim (to replace the one they destroyed)".

[15] To date, Mr O'Neill has not, via a treatment provider, lodged a claim for a personal injury.

[16] Mr O'Neill has made four applications for review of ACC's "decisions" in relation to cover for his right eye injury:

- An application dated 28 August 2019 seeking review of ACC letter of 23 August 2019 which advised Mr O'Neill ACC had previously told him what to do to lodge a claim and that the position had not changed. ACC

responded on 3 September 2019 and explained that the application did not relate to a reviewable decision.

- An application dated 13 September 2019 seeking review of ACC's letter of 3 September 2019 (refer to above). This application also sought a further review of the same "decision" purportedly already applied for in the previous application but did not provide any further details about the "decision". (The above applications, dated 28 August 2019 and 13 September 2019 relate to review 6540240.)

- Application dated 11 March 2020, for review of an ACC decision dated 14 December 2019 (review 6599693) seeking "a ruling re the validity of the actions of ACC, J Gratkowski and Fairway re bogus review 6540240".

- Application for review of ACC's decision dated 11 March 2020 (review 6596703) regarding "numerous complaints and requests".

[17] The four applications resulted in two review hearing,s both of which were dismissed:

- Review 6540240 was dismissed on 3 April 2020 for lack of jurisdiction because as the reviewer noted "without a decision to review, there can be no review application".

- Reviews 6599693 and 6596703 were dismissed on 28 May 2020, also for want of jurisdiction, because the reviewer was "satisfied that Mr O'Neill's two review applications of 20 March 2020 do not relate to reviewable decisions."

[18] Mr O'Neill has lodged two notices of appeal:

- An appeal against decisions dated 23 November 2019 and 3 September 2019. ACC has been unable to identify any decision dated 23 November 2019, either by a reviewer or ACC. The "decision" on 3 September 2019 most likely relates to ACC's letter of that date

advising Mr O'Neill his review application did not relate to a reviewable decision. This correspondence resulted in review 6540240.

- An appeal against the 28 May 2020 review decision (reviews 65999693 and 6596703).

[19] Both notices of appeal were accepted by the Court, with the cover letter to the Judge's minute noting:

> … This appeal file is for two notices of appeal, the first one you filed on 13 January 2020 (about what seems to be a deemed decision), and the notice of appeal filed on 16 June 2020 against review 6599693 and 6596703.

Appellant's submissions

[20] At the appeal hearing, the appellant read out this submission:

> ACC is a medical insurance scheme, no different from any other medical insurance scheme, or any sort of insurance for that matter. That it is poorly run and interfered with by government does not change this basic fact. It is governed by legislation that must be adhered to. It is a contract with the people of New Zealand who are forced to be party and ACC and any deviation from the legislation and natural justice is a criminal fraud against the levy and premium payers of which I am one.
>
> I paid for cover, and now by fraud are being denied.
>
> The Court has a duty to protect.
>
> Given this and my appeal, the issues the Court must address i.e. the grounds of my appeal are:
>
> [1] The destruction of my medical records by ACC. The submission of counsel for ACC at page 17 shows the form ACC treating clinicians are obliged to fill out and file with ACC. This is standard procedure and would have occurred in 1976. ACC received this, accept the claim and paid me weekly compensation for some weeks until I was able to return to work. Their claim now is that they have no record of such is a confession that they destroyed in medical notes they are obliged by legislation to keep for 75 years.
>
> They received, they destroyed. No other scenario exists.
>
> Should the court not addressed this issue, the door will be open for the destruction of all historical records and denial of justice to all NZers who cannot take on this large Corporation.

I have supplied ACC with evidence of this historic injury along with a current medical report at the hands of my service provider, my optometrist, plus the scar in my right eye.

[2] The fact is that my claim is not a new claim but is additional to an historic injury (accepted and paid out on). That ACC destroyed the original claim illegally, does not require that I make a new claim, there is no new claim, there is no legal requirement to make two claims in any case. ACC's submissions at page 125 optometrist report last paragraph supports, medically, this fact i.e. previous "injury caused the cataract", not a new or separate injury.

The legislation requires "natural justice". A new claim adjudged sans the previous medical records, destroyed by ACC, cannot provide natural justice.

[3] The status of my optometrist as a service provider, ACC legislation accepts her as such, ergo: a service provider did make a claim on my behalf. My doctor was surplus to requirements and the requirements of the legislation.

[4] I am already in possession of a "deemed decision" as no legal review occurred, and that it did not was not done to me.

[5] The long term effects on me and all New Zealanders who in old age suffer due to historic injuries which ACC deny occurred due to "their" destruction of patients' medical records.

[6] The way ACC's hirelings fairway conducted themselves throughout this deliberately drawn out process. Their abuse of me and my rights, their use of a global pandemic and lockdown to screw me out of a hearing and justice.

[7] The claim by Seimi Talakai of fairway (ACC counsel's submissions page 52) that "the parties could not agree on a hearing date" his of 30-1-2020. This is a lie. No attempt was made, the matter was never raised with me. On this lie, he predicated action under s 141(2)(b) – this is a fraud.

[8] The failure of fairway to denote which of the two review numbers, they have given the two reviews, pertained to which review.

[9] The constant ignoring by ACC of my complaints, which had they been addressed would have prevented need for this case. ACC has a code of claimants' rights which obliges, as my evidence shows, they ignored this. This is criminal bullying of the injured and in my case elderly sans the financial where with all to contest.

[10] The claim by the reviewer Wilson that he/she was "satisfied I have been notified of the (illegal) review".

Could he/she be "satisfied" given the disruptions of COVID to postal and courier services? My non-receipt of the notification in time to attend the illegal review says he/she could not have been satisfied, and knew this so.

> [11] The issue of the illegal nature of the review that fairway claims occurred. I, of course, have absolutely no evidence it ever did. Reviews via Zoom can only be conducted with the agreement of all parties. No such agreement exists, or ever did. Ergo: The review was bogus and a criminal fraud, orchestrated to exclude me and such, cover up ACC's illegal destruction of my medical records.
>
> [12] The decision of "no jurisdiction" which the three Courts superior to this one have ruled is no ground not to provide a decision. See my submissions P 11 point 31, and evidence in support provided. Counsel for ACC, not fairway who contest nothing, have produced numerous authorities re the issue of judication, or from this Court. The three superior Courts do not concur. In unison all rule jurisdiction is not a ground to not produce a review decision, despite what the legislation claims.
>
> [13] Then there is that I filed denoted at page 14 of my submissions, i.e. Bundle K, the silence in regard to which, by both counsel and the judiciary does not speak of natural justice or in fact justice at all, and is a ground in itself for appeal.

[21] The appellant has filed numerous other documents, including letters from Members of Parliament and the Judicial Conduct Commissioner going back to 2004. There is also a document entitled "submissions of the appellant C J O'Neill re two review applications".

[22] The submission document includes reference to an "additional claim re my right eye injury". In it he says: "ACC attempted to cause me to make a new claim refusing to accept a new injury on an historic injury."

[23] In the document, the appellant also complains about the special powers that Parliament adopted relating to COVID.

[24] He refers to the Code of ACC Claimants' Rights and that no such investigation of his complaint occurred. He refers to a "case history" going back to 2004; to a Court of Appeal decision in 2011; and to counsel 'lying' to the Court. He refers to serious corruption in our judiciary and Parliament and that he has a right to attempt to achieve an unbiased Judge. He concludes with the following:

> I raise these issues because I have need to and right to, and duty to. I cannot be made to suffer for such, to be denied to maintain the vile silence that to date exists.

> Epstein, Weinstein, and no less than the Queen's son, have discovered the "hard" way that all things come out in the end. What side do you wish to be seen on when the public find out by other than the correct manner, and a placid trusting people become an angry mob?
>
> The world has changed, the Raj is over, people aren't going to take the shit anymore.
>
> Time to think hard and long.

Respondent's submissions

[25] Ms Lane said that ACC is open to a pragmatic response. She said that following the Court minute of 23 August 2021, Optometrist Sarah Hunt was contacted, and she was happy to lodge a claim.

[26] She points to advice to Mr O'Neill on 30 January 2020 about how Mr O'Neill could join the review hearing by telephone. Mr Hunt did not attend. Likewise, Mr O'Neill did not join the review hearings of 11 May 2020 and 27 May 2020.

[27] She submits that none of what Mr O'Neill alleges amounts to a decision that is reviewable under s 134.

Decision

[28] In my minute dated 23 August 2021, I said this:

> [2] There has for quite some time been a "stand off" between Mr O'Neill and ACC relating to his claim for cover for his right eye sustained in 1976.
>
> [3] I note that on page 19 and 20 of the common bundle, there is an Auckland Hospital Board record dated 23 October 1983. At page 20 of the bundle is the hospital's "prior history" record. What is noted alongside the heading "accidents" is "scraped R cornea 1976 – stick".
>
> [4] If one considers this circumstances in which the entry was made, - that of a patient providing historical eye injury information to hospital clinicians in the context of treatment of a fresh eye injury to the other eye – then, in the absence of any information to the contrary, this very brief note is indeed evidence of the appellant having suffered an eye injury in 1976. There is nothing to suggest that that report by the appellant to the hospital clinicians then was anything other than accurate.
>
> [5] It follows therefore that an accident causing injury to his right eye in 1976 is prima facie established. The question then is: what occurred in relation to the 1976 injury so far as ACC is concerned, as a result? There presently is no record. That is most unusual and the reasons could range from

ACC's records being accidently destroyed, to the clinician who treated Mr O'Neill in 1976 inadvertently failing to lodge an ACC claim.

[6] The bottom line is that being at a point on the papers where I accept prima facie there is evidence of an eye injury in 1976, the next step is for a claim for cover to be made so that it can be properly considered.

[7] Regrettably, as mentioned, there is a stand off between Mr O'Neill and the respondent in this regard. That is unfortunate. Mr O'Neill's position is that his letter of 7 March 2019 was his claim for cover. The response from ACC is that the letter does not meet the minimum requirements of a claim for cover and in her submissions on behalf of ACC Ms John understandably refers to s 52 requiring persons to lodge a claim in a manner specified by the Corporation. That is what Parliament has mandated. I have no power to change that.

[8] Mr O'Neil's position as I understand it is that he remains firm that his letter of 7 March 2019 is his claim for cover. Without hearing argument, it is unclear to me at this point how Mr O'Neill's letter of 7 March satisfies the requirements of s 52.

[9] Surely therefore, the way forward in this case is as suggested by Justice Baragwanath in *Naysmith v Accident Compensation Corporation* and that a Corporation officer initiates a claim on behalf of the appellant, if Mr O'Neill remains resolute that his letter of 7 March 2019 suffices as an application for cover.

[29] In order to bring an application for review, there must be a reviewable decision of ACC. "Decision" is defined in s 6(1) of the Accident Compensation Act 2001 as:

> … all or any of the following decisions by the Corporation:
>
> (a) a decision whether or not a claimant has cover:
>
> (b) a decision about the classification of the personal injury a claimant has suffered (for example, a work-related personal injury or a motor vehicle injury):
>
> (c) a decision whether or not the Corporation will provide any entitlements to a claimant:
>
> (d) a decision about which entitlements the Corporation will provide to a claimant:
>
> (e) a decision about the level of any entitlements to be provided:
>
> (f) a decision relating to the levy payable by a particular levy payer:
>
> (g) a decision made under the Code about a claimant's complaint.

[30] Section 134 of the Act sets out which decisions of ACC are reviewable:

> (1) A claimant may apply to the Corporation for a review of—
>
> (a) any of its decisions on the claim:

(b) any delay in processing the claim for entitlement that the claimant believes is an unreasonable delay:

(c) any of its decisions under the Code on a complaint by the claimant.

[31] In this case, the correspondence reveals that ACC has made no decisions which attract review rights under s 134 of the Act. ACC's correspondence with Mr O'Neill advisory in nature.

[32] I accept the respondent's submission that at no time has ACC formed a view on, or made a decision about, the merits of any claim Mr O'Neill may have made.

[33] ACC's 23 August 2019 letter advise Mr O'Neill that ACC had previously advised him what he needed to do to lodge a claim and that the position was unchanged.

[34] ACC's letter of 3 September 2019 advised Mr O'Neill that it had received his review application but that it did not correspond to a reviewable decision and asked Mr O'Neill to provide further details. I agree with the respondent's submission that a request for information is clearly not a reviewable decision within the contemplation of ss 6 and 134.

[35] Mr O'Neill's reference to 11 March 2020 appears to relate to ACC's submissions in respect of review 6540250. Submissions relating to a review are plainly not decisions for the purposes of s 6 and 134. Likewise, the letter from ACC dated 14 January 2020 confirming a case conference date plainly is not a reviewable decision. Given these findings therefore, the appeal must be dismissed.

[36] Mr O'Neill is plainly an intelligent man. Sadly, however, on the basis of all that I have seen on his file, his present mindset appears to be focused on a labyrynth of things other than having an updated evidence-based claim for cover lodged by Optometrist Sarah Hunt.

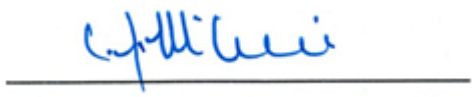
[37] *Naysmith's* opens the way for a Corporation officer to initiate a claim for cover on behalf of an injured person. Such has not so far occurred in this case, with

counsel referring to the complete lack of evidence "contemporaneous or otherwise about when, where and how the accident occurred".

[38] It does seem that the evidence is sparse, but I would have thought that there was sufficient for that process to be initiated. If Mr O'Neill were to cooperate with such an initiative, it has the potential to bring closure to a stand-off with ACC that appears to have been ongoing now for 18 years and which appears to continue to dominate his life

[39] Were Mr O'Neill prepared to cooperate with such an endeavour, it would unquestionably aid an investigation as to cover and a final resolution.

[40] There is no issue as to costs.



Judge C J McGuire
District Court Judge

Solicitors: Claro, Wellington, for the respondent.