

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 135 ACR 13/21

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 162(1) OF THE ACT
BETWEEN	TERENCE EASTHOPE Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: On the papers

Submissions: The Appellant is self-represented
L Hawes-Gandar for the respondent

Judgment: 14 July 2022

JUDGMENT OF JUDGE P R SPILLER
[Late filing of Leave to appeal, s 162, Accident Compensation Act 2001]

Introduction

[1] This is an application for leave to appeal against a judgment of His Honour Judge McGuire, delivered on 2 June 2022.¹ At issue in the appeal was the Corporation's decision of 20 August 2020 declining funding for a neck brace for Mr Easthope. The Court dismissed the appeal, noting that the Corporation's decision had been revoked on 19 May 2021, and therefore there remained no grounds for anything further to occur.

¹ *Easthope v Accident Compensation Corporation* [2022] NZACC 106.

[2] On 7 July 2022, Mr Easthope lodged an application for leave to appeal against Judge McGuire’s decision.

[3] On 13 July 2022, Mr Hawes-Gandar for the Corporation filed a memorandum noting that the Corporation did not agree to any waiver of the time limit for lodging an appeal in this case and submitted that the application for leave ought to be declined.

Relevant law

[4] Section 162(1) of the Accident Compensation Act 2001 provides:

- (1) A party to an appeal who is dissatisfied with the decision of a District Court as being wrong in law may, with leave of the District Court, appeal to the High Court.
- (2) The leave of the District Court must be sought within 21 days after the District Court’s decision.

[5] In *Siola’a*,² O’Regan J for the Court of Appeal stated:

[17] ... Section 162(2) requires not only that leave be sought under Part 5 of the District Courts Act but also that this be done within 21 days of the relevant decision. If leave is sought after that 21 day period has elapsed, the inescapable conclusion is that the second requirement of s 162(2) has not been complied with. ...

[19] Nor do we consider that NZBORA [New Zealand Bill of Rights Act] is engaged in this case. We reject the notion that s 27(2) of NZBORA mandates a second appeal (or at least an opportunity to seek leave for one) notwithstanding non-compliance with the time limit for seeking leave, given that the original (ACC) decision has already been subject to a full merits appeal to the District Court. Equally, we do not accept that the requirement to file applications for leave within 21 days of the decision of the District Court is more “punitive” than the regime under s 71A(4) for other District Court appeals as Mr Beck described it. There is nothing onerous in a 21 day time limit: indeed it is a reasonably standard requirement. ...

[33] ...If, in a case such as the present, ACC is prepared to waive the non-compliance with the time limit and does so, then the District Court would have jurisdiction to consider and decide the application. So, until a Judge decides that the leave application should be struck out, there is an application before the Court which requires a judicial decision to determine it. In cases where no question of acquiescence or waiver arrives, that decision will be obvious. The decision to strike out the leave application could simply state that, in the

² *Siola’a v Wellington District Court* [2008] NZCA 483, [2009] NZAR 23.

absence of acquiescence or waiver, the lateness of filing deprives the Court of jurisdiction to hear the application.

Discussion

[6] This Court notes that Mr Easthope's application for leave to appeal was lodged 35 days after Judge McGuire's decision. The law as outlined above is clear:

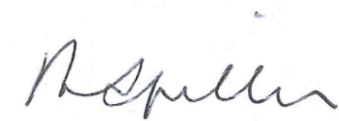
- (a) the leave of the District Court to apply for leave to appeal must be sought within 21 days after the District Court's decision in question, and
- (b) lateness of filing deprives the Court of jurisdiction to hear the application, unless
- (c) the Corporation waives non-compliance with the time limit.

[7] In this case, the Corporation has not waived Mr Easthope's non-compliance with the time limit.

The Decision

[8] In light of the above considerations, the Court finds that it does not have jurisdiction to entertain Mr Easthope's application for leave to appeal, which is therefore declined.

[9] I make no order as to costs.



Judge P R Spiller,
District Court Judge

Solicitors: Medico Law, Auckland for the respondent.