

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2021] NZACC 142 ACR 175/20

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

Judgment: on the papers

Submissions: D Wood for the Appellant
 T Gee for the Respondent

Date: 20 July 2022

JUDGMENT OF JUDGE P R SPILLER
[Decisions on appeal - s 161(3) and Costs - Accident Compensation Act 2001]

Introduction

[1] In this matter, Mr Meisner’s counsel, Mr Wood, lodged a memorandum dated 28 June 2022, withdrawing the appeal and seeking costs.

Background

[2] This appeal was lodged by Mr Meisner on 28 August 2020. The appeal was from the decision of a Reviewer dated 31 July 2020, which declined jurisdiction as to the Corporation’s advice document of 26 August 2019.

[3] From 25 February 2021, ongoing attempts were made by the Court and the Registry to progress this appeal.

[4] On 24 March 2022, the Court issued a Minute outlining these attempts and noting the elongated nature of the proceedings to date. The Court then directed that:

- (a) Mr Gee and Mr Wood engage in discussions with a view to reaching agreement as to costs in this appeal, failing which they will inform the court and request the court to make a decision on costs.
- (b) The deadline for Mr Gee and Mr Wood to advise the Court either of an agreement as to costs and discontinuance of the appeal, or the need for the Court to make a decision as to costs, is 4 April 2022.

[5] On 5 April 2022, the Registry asked Mr Wood (cc Mr Gee) for an update on the notice of discontinuance. No response was received.

[6] On 27 April 2022, the Registry asked Mr Wood (cc Mr Gee) for an update on the appeal. No response was received.

[7] On 9 May 2022, the Registry asked Mr Wood (cc Mr Gee) for an update on the appeal. No response was received.

[8] On 31 May 2022, the Registry asked Mr Wood and Mr Gee for an update on the appeal. No response was received from either party.

[9] On 14 July 2022, Judge Spiller issued a Minute noting:

- (a) The unsuccessful attempts to progress the appeal to completion in the nearly 22 months since Mr Meisner had lodged his appeal.
- (b) That section 161(3) of the Accident Compensation Act 2001 provides that an appellant must prosecute his appeal with due diligence; and, in terms of the Guidelines to Practice and Procedure for Accident Compensation Appeals in the District Court, 5.3(j), a Judge may direct

that an appeal be dismissed if, by a certain date, a Court direction is not complied with by the appellant.

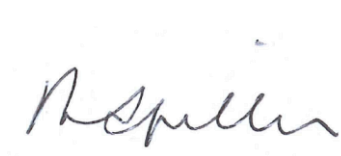
- (c) The Court directed that, in the event that Mr Meisner (through Mr Wood), did not provide a response to this Minute by 5.00 pm on 14 June 2022, this appeal will, without any further notice to Mr Meisner or mention in Court, stand dismissed.

[10] No response was provided to the Minute by the due date and time, and so the appeal stood dismissed. As noted above, Mr Wood's memorandum on behalf of Mr Meisner, withdrawing the appeal and seeking costs, was dated 28 June 2022.

Decision

[11] In light of the fact that, as from the close of 14 June 2022, this appeal has been dismissed, there is no extent proceeding within which this Court can award costs.

[12] The claim for costs is therefore dismissed.

A handwritten signature in dark ink, appearing to read 'P R Spiller', is written over a faint, circular official stamp.

P R Spiller
District Court Judge