

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 236      ACR 188/22**

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

Judgment on the papers.

Submissions:      The Appellant is self represented  
                                 S Arnold for the Respondent

Date of Judgment: 6 December 2022

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

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**Introduction**

[1] The appeal in the above matter was lodged by Mr Giles on 17 October 2022. The appeal is from the decision of a Reviewer dated 26 July 2010. The Reviewer dismissed an application for review of the Corporation’s decision of 19 April 2010 suspending Mr Giles’ weekly compensation payments.

[2] On 18 October 2022, Judge Spiller issued an Initial Minute which directed that Mr Giles formally apply for leave to file the appeal out of time and set out the reasons why the appeal was filed late.

[3] On 19 October 2022, Mr Giles submitted that the appeal was filed late was because:

... things over the past couple of years have been a struggle and not been able to appeal ACCs decision as well as could be is because of the amount of Health problems I have been through manly along with the Neuropathy nerve damage I have and the amount of different ACC Review Specialist and Case Managers whom I believe hoped I would just drop my claim but no.

[4] On 30 November 2022, Ms Arnold for the Corporation submitted that it did not oppose the application.

### **Relevant law**

[5] 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

...

(c) within any longer time allowed by the District Court.

[6] In *Avery v No 2 Public Service Appeal Board*,<sup>1</sup> Richmond J (for the Court of Appeal) stated:

When once an appellant allows the time for appealing to go by then his position suffers a radical change. Whereas previously he was in a position to appeal as of right, he now becomes an applicant for a grant of an indulgence by the Court. The onus rests on him to satisfy that in all the circumstances the justice of the case requires that he be given the opportunity to attack the judgment from which he wishes to appeal.

[7] In *Almond v Read*,<sup>2</sup> 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

<sup>1</sup> *Avery v No 2 Public Service Appeal Board* [1973] 2 NZLR 86, 91.

<sup>2</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801, (2017) 23 PRNZ 533.

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 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, Mr Giles 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 him. The Reviewer’s decision

was dated 26 July 2010, which left a date of 23 August 2010 for the filing of the Notice of Appeal. In the event, the Notice of Appeal was filed on 17 October 2022. 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*.<sup>3</sup>

**(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 that the delay in this case is 12 years and eight weeks, which is a very significant delay. There is no evidence of how quickly Mr Giles sought to rectify the mistake in not filing an appeal after learning of the mistake.

**(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] Mr Giles stated that the reasons for the delay were that, over the past couple of years, things had been a struggle and he had not been able to appeal the Corporation's decision because of his health problems, including neuropathy nerve damage, and the number of different and unresponsive review specialists and case managers.

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<sup>3</sup> Above, note 2.

[13] This Court notes the following points:

- (a) Mr Giles attended the review hearing in July 2010, and he received the Reviewer's decision along with a letter outlining his appeal right which needed to be exercised with 28 days.
- (b) Mr Giles has not provided any reasons why he was unable to lodge an appeal within a reasonable period after receiving the Reviewer's decision, his reasons provided referring to the past couple of years.
- (c) Mr Giles has provided no supporting documentation for the medical and administrative reasons he advanced for the more recent delay in lodging his appeal.

[14] This Court is not satisfied that Mr Giles's delay arose out of understandable error or inadvertence.

**(c) The conduct of the parties**

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

[16] This Court notes that Mr Giles' delay in lodging his appeal is very significant. Otherwise, the Court is not aware of any history of non-cooperation and/or delay by Mr Giles.

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

[17] 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.

[18] This Court notes that the delay in this case is over 12 years, which is very significant. The Corporation has noted that it does not oppose the appeal, although the Court notes that allowing the late lodging of the appeal will involve the Corporation checking the payment of compensation dating back to periods between

2007 to 2012. The Court is not aware of the legitimate interest of others in the outcome of the present appeal, other than the legitimate interest of the justice system in not supporting unreasonably long delays in the pursuit of claimed rights.

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

[19] 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.

[20] This Court accepts that the proposed appeal may be significant to Mr Giles, although the delay of over 12 years in him pursuing his claim raises doubts as to how significant the appeal is to him.

[21] The Court notes that the appeal is for the payment of compensation dating back to periods between 2007 to 2012. At the review hearing in July 2010, the Corporation's case was that Mr Giles' claim for weekly compensation should be denied because of the plain and ordinary meaning of the relevant statute, leaving no discretion to the Corporation to come to a different conclusion. The Reviewer accepted this and denied Mr Giles' review. The Court is not satisfied that the proposed appeal is of significance more generally.

**The Decision**

[22] In light of the above considerations, this Court finds that Mr Giles has not established that the interests of justice require the exercise of the Court's discretion to sustain his application for leave to file his appeal out of time, which is accordingly dismissed.

[23] There are no issues as to costs.



P R Spiller  
District Court Judge