

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 73**

**ACR 047/22**

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| UNDER            | THE ACCIDENT COMPENSATION ACT<br>2001              |
| IN THE MATTER OF | AN APPEAL UNDER SECTION 149 OF<br>THE ACT          |
| BETWEEN          | ANTHONY BROWN<br>Appellant                         |
| AND              | ACCIDENT COMPENSATION<br>CORPORATION<br>Respondent |

Judgment on the papers.

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

Date of Judgment: 3 May 2022

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**JUDGMENT OF JUDGE P R SPILLER  
[Late filing of an appeal to the District Court –  
ss 149 and 151, Accident Compensation Act 2001]**

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**Introduction**

[1] This appeal is from the decision of a Reviewer dated 31 August 2021. The Reviewer granted an application for review, and quashed the Corporation's decision of 12 May 2021, which had declined cover and surgery to treat Mr Brown's supraspinatus tear of the right shoulder, as being incorrect. The Reviewer directed the Corporation to consider the matter afresh, as a claim for cover and entitlements to which Mr Brown was entitled under the Act and regulations.

[2] On 22 December 2021, the Corporation issued a new decision, advising that it was unable to cover Mr Brown's condition or approve his application for surgery funding. The decision was on the basis that medical evidence still did not support a causal link between Mr Brown's accident of 20 March 2018 and his supraspinatus tear of the right shoulder.

[3] On 22 March 2022, Mr Brown lodged an appeal against the Reviewer's decision of 31 August 2021. Judge Henare issued an Initial Minute which directed that Mr Brown formally apply for leave to file the appeal out of time and set out the reasons why the appeal was filed late.

[4] On 28 March 2022, Mr Brown submitted that his appeal was filed late because: the Corporation's new decision, identical to its previous (quashed) decision in relation to funding for surgery, was released only on 23 December 2021; his request for full disclosure of his Corporation files, made on 26 December 2021, was met only on 17 February 2022; and his Notice of Appeal was completed on 14 March 2022 when he had sufficient documentation.

[5] On 2 May 2022, Ms Arnold for the Corporation submitted that the Court does not have jurisdiction to hear the appeal, as it was not filed in accordance with the requirements of section 149 of the Accident Compensation Act 2001 (the Act). The Corporation further notes that the delay is material, Mr Brown has not addressed any reasons for the delay, Mr Brown should have filed a review of the Corporation's second decision, and there is prejudice to the Corporation as Mr Brown did not follow the requirements of the Act.

### **Relevant law**

[6] Section 149 of the Act provides:

- (1) A claimant may appeal to the District Court against—
  - (a) a review decision; or
  - (b) a decision as to an award of costs and expenses under section 148.

**Discussion and decision**

[7] In terms of section 149(1)(a) of the Act, Mr Brown may appeal to the District Court against a review decision. This Court notes that the Reviewer's decision of 31 August 2021 was in Mr Brown's favour, while the Corporation's decision of 22 December 2021 was adverse to Mr Brown. Mr Brown's dissatisfaction and wish to appeal is clearly directed against the Corporation's decision, and this has not been subject to a review decision.

[8] In light of the above consideration, this Court has no jurisdiction to consider Mr Brown's appeal against the Reviewer's decision of 31 August 2021. Mr Brown's recourse is to file an application for review of the Corporation's decision of 22 December 2021.

[9] This Court acknowledges that Mr Brown's review application will now be outside of the statutory timeframe for lodging a review application. In fairness to Mr Brown, this Court points out that, as early as 26 December 2021 and again on 18 January 2022, Mr Brown (a self-represented claimant) indicated to the Corporation his dissatisfaction with its decision and asked the Corporation for clarification on the correct procedure to be adopted. The Corporation did not initially provide Mr Brown with the usual factsheet for Mr Brown's guidance, and its further response appears to have been tardy and did not clarify the procedure that Mr Brown needed to adopt. This Court therefore suggests that Mr Brown has good grounds for establishing extenuating circumstances to lodge a review application out of time, particularly in terms of section 135(3)(c) of the Act.

[10] There are no issues as to costs.



P R Spiller  
District Court Judge