

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2021] NZACC 24

ACR 268/17

ACR 269/17

UNDER THE ACCIDENT COMPENSATION ACT
2001

IN THE MATTER OF AN APPEAL UNDER SECTION 149 OF
THE ACT

BETWEEN GREGORY WAITE
Appellant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: 29 January 2021 via telephone conference

Heard at: Wellington/Te Whanganui-A-Tara

Appearances: Mr T Yates advocate for the appellant
Mr C Light for the respondent

Judgment: 29 January 2021

**PROCEDURAL JUDGMENT OF JUDGE C J McGUIRE
[Leave to File Cross Appeal out of Time]**

[1] By notice of application dated 15 October the respondent has sought leave to file a cross appeal out of time.

[2] The appeals currently before the Court relate to decisions of the respondent in 2014 and 2015 including an appeal against a decision of the respondent of 10 March 2015 advising the appellant that he had achieved vocational independence in two work types. The work types concerned were sales assistant – general hardware and despatching and receiving clerk.

[3] In his decision of 13 June 2017 the Reviewer modified ACC's decision of 10 March 2015 by deleting the work type of despatching and receiving clerk.

[4] It is in respect of this part of the Reviewer's decision that the respondent wishes to file a late appeal.

[5] At the teleconference hearing Mr Yates on behalf of the appellant, fairly conceded that he could not oppose the respondent's late application given delays in progressing these matters that the appellant acknowledges responsibility for.

[6] Mr Light refers to the decision in *Almond v Read*¹ where the Supreme Court set out the factors that were likely to be relevant including:

[a] The length of the delay;

[b] The reasons for the delay;

[c] The conduct of the parties, particularly of the applicant;

[d] Any prejudice or hardship to the respondent or other with a legitimate interest in the outcome;

[e] The significance of the issues raised by the proposed appeal, both to the parties and more generally.

[7] The fair concession made by Mr Yates accepted, the issues raised by the proposed appeal are not minor. Mr Light will be submitting that the Reviewer erred by assuming that the appellant was left hand dominant and/or that he would need his left arm to perform repetitive tasks, when instead his right arm and hand would be used for these tasks.

[8] The appeal will also focus the assessment of Dr Strack, specialist occupational physician that the particular work type was medically sustainable on a full time basis.

¹ [2017] NZSC 80.

[9] In this case the failure to file the cross appeal within time was due to inadvertence.

[10] In all of the circumstances, because there are issues of significance raised and it is agreed no prejudice accrues to the appellant, I find that it is in the interests of justice that leave be given in this case. Costs are reserved.



Judge C J McGuire
District Court Judge

Solicitors: Young Hunter, Christchurch for the respondent