

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**[2021] NZACC 37                      ACR 163/18**

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

Hearing:                      8 June 2020 and further evidence and submissions October 2020 –  
February 2021

Appearances:                S Fisher as advocate for the appellant  
                                      F Becroft for the respondent

Judgment:                    18 February 2021

---

**RESERVED JUDGMENT OF JUDGE AA SINCLAIR  
[Claim for Cover: s 26 of the Accident Compensation Act 2001]**

---

[1] In a decision dated 7 November 2017 the Accident Compensation Corporation (“the Corporation”) declined cover to the appellant Mr Matthew Hood for a complete rupture of the left rotator cuff on the basis that the substantial cause of his left shoulder dysfunction was post-polio denervation. This decision was upheld at review and Mr Hood now brings the present appeal.

**Background**

[2] On 16 February 2017 Mr Hood slipped on a greasy kitchen floor landing on his left side with his left arm hyperextended. Mr Hood’s General Practitioner lodged an

ACC claim and cover was subsequently granted to Mr Hood for a “left shoulder/upper arm sprain”.

[3] An ultrasound of Mr Hood’s left shoulder was carried out on 29 March 2017. The reporting Radiologist noted a full thickness tear of the supraspinatus tendon; subacromial-subdeltoid bursitis with symptomatic impingement and possible tear in the subscapularis tendon. He recommended an orthopaedic review and MRI scan.

[4] Mr Hood was seen by Orthopaedic Surgeon, Mr Thin Hong on 2 June 2017. Mr Hong reported that Mr Hood had had a previous left rotator cuff repair in 2000 and since that operation he found it difficult to lift his left arm above shoulder level. Mr Hong noted that Mr Hood had had polio affecting his right arm and left leg but never his left arm. He opined that Mr Hood had suffered a left rotator cuff tear and arranged for an MRI scan.

[5] This scan was carried out on 15 June 2017. With regard to the supraspinatus tendon, the reporting Radiologist stated:

The supraspinatus tendon shows a repair which maintains the length of the tendon. Bursal aspects appear intact although I suspect an articular border tear with moderate mixed signal across the base. There is no tendon retraction and the muscle volume is near normal. I note a thin overlying deltoid.

He set out his conclusions as follows:

There are signs of denervation with complete fatty change of teres major and teres minor as well as deltoid showing patchy fatty changes. The subscapularis muscle is nearly completely replaced with fatty tissues although the tendon is in place.

Supraspinatus shows mixed signal within the distal tendon where a repair was undertaken, this remains stable.

An interstitial tear of infraspinatus shows cyst formation.

[6] In a further report dated 30 June 2017 Mr Hong noted that the MRI scan showed that the tendons were intact, but Mr Hood had no muscle at all in his subscapularis, infraspinatus, teres minor, teres major and deltoid. He observed that the only muscle which seemed to be working was the supraspinatus which had previously been repaired. Mr Hong went on to comment:

I have explained to him [Mr Hood] that in my opinion I think this is polio. He is probably having post-polio symptoms which is causing progressive weakness of his muscles.

[7] The claim was reviewed by Branch Medical Advisor, Dr Tony Haycock, on 13 July 2017. Dr Haycock noted that while the ultrasound reported a rotator cuff tear, the more specific and sensitive MRI scan investigation did not indicate any rotator cuff tearing. Instead, the scan identified changes which the treating surgeon had deemed to be consistent with the downstream effects of polio. Dr Haycock noted that there may well have been a sprain injury, so cover was available but the effects of such a sprain would have resolved within 4 - 6 weeks following the accident. He observed that there was no new injury-related pathology in the left shoulder. Dr Haycock concluded that the primary and substantial cause of Mr Hood's current shoulder disability was his underlying pre-existing polio condition.

[8] Mr Hood's General Practitioner subsequently wrote to Mr Hong regarding the disparity between Mr Hong's interpretation of the MRI scan and that of the reporting Radiologist noting that the reporting Radiologist had found an articular surface tear of the left supraspinatus. Mr Hong responded on 7 August 2017 stating:

Unfortunately, his [Mr Hood's] MRI scan shows that the tendons are intact, but the muscles have undergone denervation fatty degeneration. The only muscle that has not undergone the degenerative change is, in fact, the supraspinatus, which has been repaired by Margaret Fairhurst in the past. There is a suggestion that there may be an articular surface tear of the supraspinatus.

Unfortunately, the logical conclusion with these MRI findings is that he has had polio involvement of the rotator cuff and his deltoid, and now has undergone post-polio syndrome. The only muscle that is really working is the supraspinatus.

One could argue that the supraspinatus alone has allowed him to function and now even though there is a small partial thickness tear of the supraspinatus this is enough to make his shoulder decompensated, given that this is the only muscle which is working.

[9] The file was referred back to Dr Haycock. With regard to Mr Hong's recent letter, he noted that this contained a "one could argue statement" but no plausible rationale to support a traumatic cause for Mr Hood's current shoulder disability.

[10] On 26 October 2017, Mr Hong's General Practitioner filed a medical certificate which recorded an additional diagnosis of a "complete rotator cuff tear". Following

further comment from Dr Haycock, the Corporation issued a decision on 7 November 2017 declining to approve cover for this claim.

[11] Mr Hood applied for a review of this decision and further information regarding causation was sought from Mr Hong. In a report dated 15 February 2018, he advised:

The MRI scan shows a healed supraspinatus tendon repair, and the supraspinatus muscle is actually in good condition. However, the subscapularis, infraspinatus and teres minor have undergone fatty degeneration, most likely secondary to denervation. With this finding, in my opinion, this was support that he has a post-polio syndrome. Having said that, however, the inconsistency is the preservation of the supraspinatus muscle, with denervation of the infraspinatus muscle, given that both muscles are innervated by about the same spinal segment – i.e. C5/6.

As mentioned above, Mr Hood has persistent impingement pain secondary to his fall, with an inability to brace his shoulder due to an underlying polio muscle weakness.

[12] Dr Haycock commented on 5 March 2018 noting that Mr Hong had not identified an injury diagnosis. Rather, he had once again confirmed that the substantial cause of Mr Hood's left shoulder disability was denervation and wasting of rotator cuff muscles as part of a noninjury post-polio syndrome.

[13] The review hearing was held on 11 April 2018. In a decision dated 26 April 2018, the application was dismissed on the basis that there was no evidence that Mr Hood had suffered from a complete rupture of the left rotator cuff. Mr Hood filed the present appeal on 22 May 2018.

### **Further Evidence for Appeal**

[14] Ms Julie Rope, a senior Neuro Physiotherapist, appeared as advocate for Mr Hood at the review hearing. As a result, evidence which Mr Hood had intended Ms Rope would provide was not taken into consideration. By agreement, Ms Rope's opinion was admitted as evidence in the appeal.

[15] In summary, Ms Rope noted:

- Post-polio syndrome develops in muscles previously affected by the poliomyelitis virus. This may be isolated to the subscapularis, infraspinatus and teres minor. There is no evidence in this case to support a finding that the supraspinatus was affected by polio.
- There has been no confirmation of the diagnosis of post-polio syndrome.
- A gradual decline in a muscle undergoing post-polio syndrome would be expected. It is not something which occurs overnight.
- It is accepted that the supraspinatus was alone enabling Mr Hood to function and that the tear and lack of intervention was enough to make his shoulder decompensated given this was the only muscle which was working. The supraspinatus was providing function and as a result of the injury Mr Hood lost the function which had enabled him to work.
- The supraspinatus was the preserved muscle holding on where surrounding muscles were affected by polio (and is consistent with the patchy nature of polio). The fact that it was holding on and providing function indicates that it was not affected by polio pre-injury and was not subject to a pre-existing condition, but it was damaged as a result of the injury and the impact was increased due to other muscles not being able to replace its function.

[16] Mr Hong provided further comment. With regard to Ms Rope's statement that there was no evidence of post-polio syndrome, Mr Hong said:

The MRI shows that Mr Hood has denervation pattern of the subscapularis, infraspinatus, teres minor and deltoid. The tendons of these muscles were all structurally intact. With a history of polio, the logical conclusion is that the denervation is related to his polio. It is known that neurons affected by poliomyelitis do degenerate prematurely leading to the so-called polio syndrome. It is my opinion that the most likely explanation of Mr Hood's MRI finding is post-polio syndrome.

[17] As to whether Mr Hood suffered a supraspinatus tear in the accident and this is causing his present dysfunction, Mr Hong noted:

As mentioned in my previous letter, Mr Hood may have an articular border tear of his supraspinatus as reported in his MRI. In a normal shoulder this would

not cause any weakness. However, in Mr Hood's situation where the supraspinatus is the only muscle working, this may well be enough to tip the balance leading to the ongoing symptoms.

### **Further Evidence Following Hearing**

[18] Following the hearing on 8 June 2020, I requested that a second opinion be sought from a Radiologist to clarify the status of the "suspected arterial border tear of the supraspinatus" noted by the reporting Radiologist on the MRI scan and by Mr Hong.

[19] A report was provided by Radiologist, Dr Phil Clark. He opined that the ultrasound scan taken on 29 March 2017 showed a small partial thickness articular surface tear of the distal insertion of the left supraspinatus tendon and not a large full thickness tear as stated by the reporting Radiologist. With regard to the MRI scan taken on 15 June 2017, Dr Clark noted that there was evidence of previous repair to the supraspinatus tendon. The supraspinatus tendon fibres were intact. In addition, there was a small partial thickness articular surface tear of the mid fibres of the supraspinatus tendon.

[20] As to whether the imaging indicated a causal link to the fall, Dr Clark stated that, assuming the question related to the partial thickness tear of the left supraspinatus tendon, this may have occurred secondary to a fall.

[21] I also requested an opinion as to whether Mr Hood was suffering from post-polio syndrome in his left shoulder prior to the accident. A report was provided by Neurologist, Professor Gareth Parry. Professor Parry explained that post-polio syndrome describes a condition characterised by "insidiously progressive weakness" of muscles that had been affected at the time of the initial paralytic polio event and appears decades later. He noted that it should not be confused with residual weakness from polio which is characterised by weakness and muscle atrophy but is not progressive. In the present case, Professor Parry considered that while there was no evidence to indicate that Mr Hood had post-polio syndrome, he clearly had the residual effects of polio as evidenced by the MRI scan. He observed that Mr Hong

appeared “to have conflated post-polio syndrome with residual effects of polio which is incorrect”.

[22] In answering a question as to any causal link Professor Parry considered the symptoms suffered by Mr Hood subsequent to the injury were “quite likely to be the direct result of the injury”. The question was not well worded but on reading the report as a whole, it appears that Professor Parry was referring to the partial tear of the supraspinatus. He went on to comment:

The residual effects of polio certainly made it more likely that he [Mr Hood] would suffer these consequences of the injury but if the injury had not occurred it is probable that he would have been able to continue with his former employment.

### **Legal issues**

[23] The Corporation has declined cover to Mr Hood for a complete rupture of the left rotator cuff. Pursuant to s 20(2)(a) of the Accident Compensation Act 2001 (the Act) a person is entitled to cover for personal injury caused by an accident suffered in New Zealand on or after 1 April 2002.

[24] “Accident” is defined in s 25 of the Act and involves a specific event or a series of events other than a gradual process, involving the application of force or the sudden movement of the body to avoid force or a twisting movement of the body.

[25] “Personal injury” is defined in s 26 and includes for example, a strain or sprain. The exclusions for personal injury are set out in s 26 (2) and (4). Personal injury does not include injury caused wholly or substantially by a gradual process, disease or infection nor does it include injury caused wholly or substantially by the ageing process.

[26] The fundamental issue is one of causation. In reaching my decision I am guided by the principles set out by the Court of Appeal in *Accident Compensation Corporation v Ambros*.<sup>1</sup> I am mindful in particular, that there must be sufficient

---

<sup>1</sup> *Accident Compensation Corporation v Ambros* [2007] NZCA 304 at [65]-[70].

material pointing to proof of causation on the balance of probabilities for a court to draw even a robust influence on causation. Risk of causation does not suffice.<sup>2</sup>

### **Analysis**

[27] This is an appeal from the Corporation's decision declining cover for a complete rupture of the left rotator cuff. As a consequence of the further radiological evidence from Dr Clark, the Corporation advises that cover will now be granted to Mr Hood for an articular surface tear of the left supraspinatus tendon. Putting this development to one side, Mr Hood has indicated that he wishes to continue with the present appeal.

[28] The issue for determination is whether the Corporation was correct in declining cover for a complete rupture of the left rotator cuff. The MRI scan, taken three months after the accident, shows there were signs of denervation in Mr Hood's left shoulder with the subscapularis, infraspinatus, teres major, teres minor and deltoid having undergone fatty degeneration. Notably, the only tear identified on the scan was the articular surface tear of the left supraspinatus tendon discussed above.

[29] There is no other evidence (radiological or otherwise) to support the claim that Mr Hood suffered a complete rotator cuff rupture as a consequence of the accident on 16 February 2017. In the absence of such evidence the appeal cannot succeed and accordingly, I find that the review decision is correct.

[30] Finally, Mr Fisher for Mr Hood submits that based on the evidence of Ms Rope and Professor Parry, Mr Hood did not suffer from post-polio syndrome and this was not the substantial cause of Mr Hood's shoulder pathology as found by Mr Hong. In view of my factual finding and the way this appeal has progressed, I do not consider that anything particularly turns on the fact that Mr Hong may have incorrectly diagnosed post-polio syndrome. Professor Parry confirmed Mr Hood clearly suffered from the residual effects of polio characterised by weakness and muscle atrophy as evidenced by the MRI scan. It seems on reading Mr Hong's reports, that it is these residual effects that he was focussed on.

---

<sup>2</sup> *Ambros* at [70]

## Decision

[31] The appeal is dismissed. There is no claim as to costs.

A handwritten signature in cursive script, appearing to read 'A Sinclair'.

AA Sinclair  
District Court Judge

Solicitors: Medico Law, Auckland for the respondent