

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI OTAUTAHI**

[2021] NZACC 8

ACR 54/20

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

Hearing: 6 October 2020
Heard at: Christchurch/Ōtautahi

Appearances: Mr Stryder in person
Mr I Hunt for the respondent

Judgment: 12 January 2021

**RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Suspension of Entitlement s 117 Accident Compensation Act 2001]**

[1] This is an appeal against a decision of the Corporation of 14 June 2019 suspending the appellant's weekly compensation payments.

Background

[2] The appellant suffered a back injury on 16 April 2014 for which he has cover. There is a separate claim for mental injury. In relation to this injury, following the grant of cover, rehabilitation actions have included psychology services and a quarterly psychiatric review. In respect of the latter mental injury claim, the Corporation decided to obtain a report from Dr Ali Maginness who met with the

appellant on 16 May 2019. However, she did not provide a report to the Corporation because the appellant did not consent to her doing so. Instead, the appellant provided an “altered” report purporting to be from Dr Maginness.

[3] The Corporation wrote to the appellant on 31 May 2019 advising him that he was at risk of cessation of weekly compensation payments:

.....Because we asked that you provide consent for ACC to obtain an original/unedited report directly from Ali Maginness in relation to your appointment of 16 May 2019 and you have not done so (you have instead provided a report of your own making).

You have not provided a reasonable explanation for why you will not provide consent to ACC to obtain an original/unedited report directly from Ali Maginness. We don't accept this as reasonable in the circumstances.

[4] That letter went on to advise that unless consent to obtain an original/unedited report directly from Dr Maginness in respect of the appointment of 16 May 2019 was provided, weekly compensation payment might stop.

[5] The Corporation then, on Friday, 14 June 2019, issued a decision suspending payment of entitlements and advising that the appellant's weekly compensation would stop as of Monday, 17 June 2019.

[6] The circumstances in which payment of those entitlements would be recommenced was explained in that letter.

[7] On 17 June 2019 the appellant gave the requested consent, with the result that the payments of weekly compensation were not stopped at that time.

[8] However, late on Friday 21 June 2019, the appellant sent an email to the Corporation indicating that they no longer had consent to obtain a report from Dr Maginness in relation to the appointment regarding the mental injury claim of 16 May 2019.

[9] As a consequence of that advice, the appellant was advised by email on Monday, 24 June 2019, that the non compliance decision of 14 June 2019 would be actioned as he had revoked the requested consent.

[10] The payment of weekly compensation entitlement did not cease until Thursday, 27 June 2019 because payment for that week had already been processed.

[11] The appellant then provided consent on Saturday, 29 June 2019. He was advised that as a consequence his weekly compensation entitlements would recommence on 29 June 2019, but as a result of the difficulties in obtaining the consent it would not commence being paid until the report requested was actually received from Dr Maginness.

[12] So whilst the appellant refers to the email dated 24 June 2019 in the review application as being the decision reviewed, it was actually the decision of 14 June 2019 that led to the cessation of weekly compensation for the dates of 27 and 28 June.

[13] An email from Dr Maginness to the respondent dated 23 May 2019 stated:

... this is to let you know that I met with Ivan last Wednesday and that since this time we have been communicating about whether or not he consents to a letter I prepared being sent to ACC. Ivan disagrees with the contents of the letter and has stated that he would like to meet again to discuss this further ...

[14] Dr Maginness' comment, made in the context of the mental injury claim, indicated that the appellant had not given her consent to provide the Corporation with an original/unedited report.

[15] An email was sent to the appellant on 31 May 2019 which attached three non compliance warning letters of that date, one of which was the letter referred to in paragraph [3] above, concerning Dr Maginness.

[16] At that point the Corporation had received an altered/redacted/fabricated report from the appellant purporting to be that of Dr Maginness, and he had advised Dr Maginness that she did not have his consent to send anything to the Corporation, as Dr Maginness' email set out above at paragraph [3] makes clear.

[17] On 7 June 2019 the Corporation sent an email to the appellant which included the following:

... I note that your response to the two information request non compliance warning letters of last week did not include the requested consent, or a reasonable explanation for not providing the consent ... please provide the requested consents by Friday 14/06/2019 or as per the warning letters of last week it may affect your weekly compensation entitlement ...

[18] On 14 June 2019 the Corporation sent a further email to the appellant which included the following:

You have stated the following presumably in relation to ACC's request for consent to obtain an original/unaltered report directly from Ali Maginness: ... due to Dr Maginness's refusal to provide her opinions for treatment, refusal to provide treatment and refusal to abide by the Information and Privacy Act, can you please urgently provide me with an honest psychologist who will actually provide treatment and opinions for treatment ...

[19] The email also said:

Following the comments above we need to advise you that because you have not provided the requested consent for ACC to obtain an original/unaltered report directly from Ali Maginness, or a reasonable explanation why you cannot provide the consent, we will be stopping your weekly compensation payments from Monday 17 June 2019.

[20] Eventually, on 29 July 2019 the appellant provided the requested consent and once the report was received, his weekly compensation was recommenced.

The Appellant's Submissions

[21] Mr Stryder read the grounds of appeal set out in his Notice of Appeal dated 13 March 2020 as follows:

Relevant law. Mistakes of law. Mistakes of fact.

ACC's decision date is 24.6.19. Email from ACC at 4.20 pm.

"I have sent a task through to our payments team to cease any further weekly compensation payments to you".

"Your weekly compensation payments will be stopped".

Dale O'Connor – ACC

Section 117(2) ACC must provide written notice with a reasonable timeframe before the proposed start date for the suspension of entitlements.

ACC stopped my weekly compensation without reasonable notice (or by post).

The Respondent's Submissions

[22] Mr Hunt refers first to the decision of the Reviewer dated 11 March 2020 where she says:

I have considered whether ACC was correct to suspend Mr Stryder's weekly compensation payments. My decision in this matter is that the application is dismissed. This is because I find it was reasonable for ACC to ask Mr Stryder to engage in psychological input as part of his rehabilitation and that it was unreasonable for Mr Stryder to refuse to allow ACC to receive feedback directly from the clinical psychologist it had instructed.

[23] Mr Hunt says the Corporation has acted reasonably. He notes that the appellant refused to allow Dr Maginness to communicate directly with the Corporation, then gave consent and then refused it again.

[24] Mr Hunt submits that this is game playing without merit and non compliant behaviour.

[25] In his reply the appellant referred to the review provider namely Fairway Resolutions Limited in the following terms:

"Fraudway cunts who fuckin' lie."

[26] He said he believed that Dale O'Connor (ACC employee) wrote up Dr Maginness' report and signed it on her behalf because it is on an ACC 266 report form. He then said:

"The ACC system is fucked. Where is the justice in this world?"

Decision

[27] Section 117 of the Accident Compensation Act provides that the Corporation may suspend entitlements. Subsection (3) states:

For as long as the claimant unreasonably refuses or unreasonably fails to –

- (a) Comply with any requirement of this Act relating to the claimant's claim.

[28] Mr Hunt refers to *Peck*¹, where, in that case Ms Peck refused to undergo a medical assessment which the Corporation required her to attend. Ms Peck subsequently agreed to undergo the required assessment, but the Corporation refused to make any payment of weekly compensation during the period of non compliance.

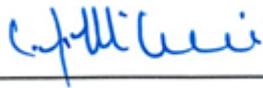
The Court of Appeal held:

[32] The purpose of s 116(3) [s 117(3)] in this context is to provide a mechanism that the Corporation can use in appropriate cases to ensure compliance by persons who have entitlements with their duty to keep the Corporation informed about the condition when required. This enables the Corporation to maintain the integrity of the statutory scheme by ensuring only those eligible receive benefits under it. ...

Thus the power to decline to provide an entitlement which is conditional on a person entitled acting unreasonably in the manner outlined in s 116(3) [s 117(3)] is an enforcement power given in the public interest. It is available where there has been a breach of duty. It is not given for punitive purposes but in order to ensure that the duties of persons entitled are observed, so that the scheme operates effectively.

[29] On any objective basis the appellant's behaviour in declining to allow Dr Maginness to report to the Corporation on his condition was unreasonable. In terms of *Peck*, it was a breach of his duty to keep the Corporation informed about his condition and therefore a breach of s117(3).

[30] Accordingly, the respondent's decision to suspend the appellant's weekly compensation payments was correct. The appeal is therefore dismissed.



Judge C J McGuire
District Court Judge

Solicitors: Young, Hunter, Christchurch for the respondent

¹ *Accident Compensation Corporation v Peck* (2005) 7 NZELC 97, 712.