

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 108      ACR 006/22**

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

Judgment on the papers.

Submissions:    H Farquhar for the Appellant  
                      S Arnold for the Respondent

Date of Judgment: 7 June 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 Scott on 10 January 2022. The appeal is from the decision of a Reviewer dated 1 July 2021. The Reviewer dismissed an application for review of the Corporation’s decision of 23 December 2020 to suspend or cancel Mr Scott’s weekly compensation.

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

[3] On 2 February 2022, Ms Farquhar for Mr Scott submitted that the appeal was filed late because Mr Scott, unrepresented at the review hearing, formed the view that it was incumbent on him to obtain supportive medical evidence before seeking an appeal. Without the benefit of representation/advice, Mr Scott did not properly understand the importance of filing for appeal within 28 days, or his ability to withdraw any appeal application should he not be able to obtain any further supportive evidence. Mr Scott obtained further neurological and orthopaedic evidence which supported his case. After receiving these reports, Mr Scott lodged his notice of appeal with the Court in short order.

[4] On 11 February 2022, Ms Arnold for the Corporation, submitted that it did not have any objection to the late appeal.

### **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
  - (b) ...
  - (c) within any longer time allowed by the District Court.

[6] In *Almond v Read*,<sup>1</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 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

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

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 r29A 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**

[7] In terms of section 151(3)(a) of the Act, Mr Scott 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 1 July 2022, which left a date of 29 July 2022 for the filing of the Notice of Appeal. In the event, the Notice of Appeal was filed on 10 January 2023. 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>2</sup>

**(a) The length of the delay**

[8] 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.

[9] This Court notes that the delay in this case is five months and 12 days, which is a significant period of time. It is not clear whether Mr Scott realised his mistake before filing his appeal.

**(b) The reasons for the delay**

[10] 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.

[11] Ms Farquar, for Mr Scott, stated that the reasons for the delay were that Mr Scott, unrepresented at the review hearing, formed the view that it was incumbent on him to obtain supportive medical evidence before seeking an appeal. Without the benefit of representation/advice, Mr Scott did not properly understand the importance of filing for appeal within 28 days, or his ability to withdraw any appeal application, should he not be able to obtain any further supportive evidence. the appellant obtained further neurological and orthopaedic evidence which support his case. After receiving these reports, Mr Scott lodged his notice of appeal with the Court in short order.

[12] This Court notes that Mr Scott attended a neurologist on 29 October 2021 in relation to his injury and current condition, and that he received a report from an Orthopaedic and Spinal Surgeon on 10 December 2021 in relation to his injury and

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<sup>2</sup> Above, note 1.

its cause. Mr Scott prepared a Notice of Appeal on 9 December 2021. This evidence supports the submission of Mr Scott's counsel.

[13] The Court is satisfied that the delay in this case resulted from error on the part of Mr Scott rather than a change of mind or indecision.

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

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

[15] This Court notes that Mr Scott's counsel provided a formal application with reasons in support of the late filing of the appeal reasonably promptly after the Initial Court Minute directed the application. The Court is not aware of any history of non-cooperation and/or delay by Mr Scott.

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

[16] 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.

[17] This Court notes that the Corporation submitted that it did not have any objection to the late appeal. The Court is not aware of any prejudice or hardship to others with a legitimate interest in the outcome of this appeal.

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

[18] 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.

[19] This Court accepts that the proposed appeal is significant to Mr Scott, as evidenced by his collection of medical evidence. The Court is not in a position to assess the significance of the issues raised by the proposed appeal more generally.

**The Decision**

[20] In light of the above considerations, this Court finds that Mr Scott has 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 granted.

[21] There are no issues as to costs.

A handwritten signature in black ink, appearing to read "P R Spiller". The signature is written in a cursive, flowing style.

P R Spiller  
District Court Judge