

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 192          ACR 147/22;  
   148/22; and  
   149/22**

UNDER                                      THE ACCIDENT COMPENSATION ACT  
   2001

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

BETWEEN                                      NC  
   Appellant

AND    ACCIDENT COMPENSATION  
   CORPORATION  
   Respondent

Judgment on the papers.

Submissions:      Appellant is self-represented  
                                 F Becroft and L Hawes-Gandar for the Respondent

Date of Judgment: 11 October 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 (the Act)]**

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**Introduction**

[1] The appeals in the above matter were lodged by the appellant on 18 August 2022. The appeals are from the decisions of a Reviewer as follows:

- (a) ACR 147/22 dated 15 November 2021. The Reviewer dismissed an application for review of the Corporation’s decision of 6 July 2021 declining entitlement to funding of methylphenidate. The Reviewer noted that the application for review was dismissed for a failure by the appellant to provide the information which the Corporation was entitled

to request and for an unreasonable failure to comply with the provisions of the Act.

- (b) ACR 148/22 dated 22 November 2021. The Reviewer dismissed an application for review of the Corporation's decision of 9 June 2021 declining cover for dental injuries consequential to covered mental injuries. The Reviewer noted that the appellant had failed to discharge the burden of proof that the Corporation's decision was incorrect.
- (c) ACR 149/22 dated 14 January 2022. The Reviewer dismissed an application for review of the Corporation's decision of 1 September 2021 declining cover for post-traumatic stress disorder as a treatment injury. The Reviewer noted that the appellant's post-traumatic stress disorder was pre-existing, and she had not proven that any treatment provider had caused her to suffer a physical injury.

[2] On 19 August 2022, Judge Spiller issued an Initial Minute which directed that the appellant, by 9 September 2022, formally apply for leave to file the appeals out of time and set out the reasons why the appeals were filed late. An extension was granted on 12 September 2022 until 19 September 2022.

[3] On 19 September 2022, the appellant submitted that the appeals were filed late because of her significant mental and physical injuries, with resultant negative consequences, and caused understandable error or inadvertence. She attached medical evidence of her condition for the time periods relating to the review decisions. The appellant also referred to alleged delaying conduct on the part of the Corporation.

[4] On 28 September 2022, Ms Becroft and Mr Hawes-Gandar for the Corporation submitted that the Corporation did not oppose the appeals being filed out of time. However, the Corporation strenuously rejected the assertions made by the appellant regarding its conduct. The Corporation recorded that, in the period since the reviews that are the subject of the appeals being determined, and the notices of appeal being

filed, the appellant had lodged a significant number of reviews, with more than 40 active reviews awaiting determination.

### 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 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 r 29A 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.

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

- (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, the appellant was required to file Notices of Appeal against the Reviewer's decisions within 28 days after the date on which the Reviewer provided a copy of the review decisions to her. The time periods for the three appeals are:

- (a) The Reviewer's decision on ACR 147/22 was dated 15 November 2021, which left a date of 13 December 2021 for the filing of the Notice of Appeal.
- (b) The Reviewer's decision on ACR 148/22 was dated 22 November 2021, which left a date of 20 December 2021 for the filing of the Notice of Appeal.
- (c) The Reviewer's decision on ACR 149/22 was dated 14 January 2022, which left a date of 11 February 2022 for the filing of the Notice of Appeal.

[8] In the event, the Notices of Appeal in respect of the above decisions were filed on 18 August 2022.

[9] This Court is now being asked to exercise its discretion to allow a longer time for filing the Notices 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**

[10] 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.

[11] This Court notes that the delays on appeals ACR 147/22 and ACR 148/22 were around eight months, and the delay on appeal ACR 149/22 was over six months. The delays are all significant. There is no evidence as to how quickly the appellant sought to rectify the mistake after learning of it.

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

[12] 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.

[13] The appellant stated that the reasons for the delays were that she had significant mental and physical injuries, with resultant negative consequences, and caused understandable error or inadvertence. She attached medical evidence of her condition for the time periods relating to the review decisions. She also referred to alleged delaying conduct on the part of the Corporation

[14] This Court is prepared to accept that the appellant's delays arose out of error or inadvertence, on account of her mental and physical injuries, rather than a change of mind or from indecision.

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

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

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

[16] This Court notes that the appellant's Notices of Appeal against the three review decisions were significantly delayed. However, the Court is not aware of any other history of non-cooperation and/or delay by the appellant.

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

[17] 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.

[18] This Court notes that the delays in this case are significant. However, the Corporation has confirmed that it did not oppose the appeals being filed out of time. The Court is not aware of any prejudice or hardship to others with a legitimate interest in the outcome of the present appeals.

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

[19] 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.

[20] This Court accepts that the proposed appeals are significant to the appellant. The Court is not in a position to assess the significance of the issues raised by the proposed appeals more generally.

**The Decision**

[21] In light of the above considerations, this Court finds, by a narrow margin and in light of the appellant's injuries, that she has established that the interests of justice require the exercise of the Court's discretion to sustain her applications for leave to file her appeals out of time, which are accordingly granted.

[22] However, the Court does not overlook that the appellant's delays in lodging her Notices of Appeal are significant. The Court therefore draws the appellant's attention to section 161(3) of the Accident Compensation Act 2001 which provides that, if an appeal is not prosecuted with due diligence, the Court may dismiss the appeal on the application of any party. The appellant is therefore required to comply promptly with deadlines and Court directions in the future processing of her appeals, failing which her appeals will be at further risk.

[23] There are no issues as to costs.

A handwritten signature in black ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller  
District Court Judge