

**PURSUANT TO S 160(1)(b) ACCIDENT COMPENSATION ACT 2001
THERE IS A SUPPRESSION ORDER FORBIDDING PUBLICATION OF
THE APPELLANT'S NAME AND ANY DETAILS THAT MIGHT IDENTIFY
THE APPELLANT**

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 199

**ACR 108/21;
and 109/21**

UNDER THE ACCIDENT COMPENSATION ACT
2001

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

BETWEEN LD
Appellant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: 4 October 2022
Held at: Hamilton/Kirikiria

Appearances: Ms Koloni for the Appellant
Mr Gee for the Respondent

Judgment: 12 October 2022

RESERVED JUDGMENT OF JUDGE P R SPILLER
**[Claim for cover for work-related mental injury – ss 21B and 28(1), and late
lodgement of review application, s 135, Accident Compensation Act 2001]**

Introduction

[1] Appeal ACR 108/21 is from the decision of a Reviewer dated 19 April 2021. The Reviewer dismissed an application for review of the Corporation's decision dated 1 November 2019 declining the appellant cover for post-traumatic stress disorder (PTSD) as a work-related mental injury, due to an event on 19 December 2018.

[2] Appeal ACR 109/21 is from the decision of a Reviewer dated 22 April 2021. The Reviewer dismissed an application for review of the Corporation's decisions dated 5 and 16 November 2020 declining to accept the late lodgement of review applications of the Corporation's decision of 27 August 2019 declining cover for post-traumatic stress disorder as a sensitive claim.

Procedural Issue

[3] There is a procedural matter that needs to be addressed before considering the substantive matters in this appeal. The Court draws attention to the following applications made by Ms Koloni for the appellant prior to the hearing:

- (a) On 17 June 2022, Ms Koloni filed an application to produce new evidence after the due date and after the submissions for the appellant were filed. On 23 June 2022, Judge Henare declined the application, noting that "the Practice guidelines in the Accident Compensation Appeals jurisdiction provide for an orderly process in which the issues and evidence on appeal are filed prior to the submissions". Judge Henare added that "the filing of evidence before submissions is a process that occurs for good reason", as "submissions refer to the evidence relied on in the appeal".
- (b) On 15 August 2022, Ms Koloni advised that she required a witness to give evidence at the upcoming hearing. On 22 August 2022, Judge Henare declined leave to allow the proposed witness to give evidence at the hearing, noting that the matter had been set down for hearing with no notice of the witness or a brief of evidence from her, and the request for new evidence was made three months after the submissions for the appellant were filed.
- (c) On 24 August 2022, Ms Koloni requested leave to adduce a digital footprint report provided by the Corporation. On 30 August 2022, Judge Henare declined leave to allow the new evidence at the hearing, repeating its discussion in the earlier Minute regarding new evidence adduced after submissions were filed.

[4] Notwithstanding the clear directions given by Judge Henare to Ms Koloni as to the inappropriateness of evidence being filed without leave and after submissions had been filed, on 27 September 2022, Ms Koloni filed an affidavit (dated 23 September 2022) from the appellant. Then, on the day of the hearing on 4 October 2022, Ms Koloni stated, without prior leave having been sought, that the appellant needed to give evidence at the hearing.

[5] Ms Koloni's non-observance of Judge's Henare's clear directions in Court Minutes is viewed with deep concern, is seen to be disrespectful of the Court, and undermines the proper administration of justice. The hearing of the appellant's evidence meant that the allocation of time to the hearing proved to be inadequate, resulting in inconvenience to all concerned, including the Registry staff. However, on the day of the hearing, this Court kept in mind that Ms Koloni's non-compliance with the directions issued by the Court was not attributable to the appellant himself, and that justice needed to be done to and seen to be done by the appellant. For this reason alone, the Court admitted the affidavit and allowed him to give evidence.

Background

[6] The appellant was born in November 1985. He ran a family business.

[7] On 6 June 2017, Dr Gareth Dawe, GP, noted that the appellant had problems with his memory and would discuss things with people and, two to three days later, completely forget that he had spoken to them. Dr Dawe also recorded that the appellant had taken Ritalin for 12 years as a child and was last prescribed "statera" four years earlier by his previous GP. Dr Dawe noted that the appellant must have seen a psychiatrist. The plan was to refer to him to adult mental health.

[8] On 4 July 2017, Dr Dawe recorded that the appellant had, for years, had financial strain and ongoing stress, his business had been under stress, and there was discussion of antidepressants.

[9] On 8 March 2018, after the appellant finished work for the day, a fire occurred at his factory. When he arrived, the fire brigade was in attendance. After the fire, the appellant made an insurance claim in relation to the damage to his business

premises. There was a dispute with the insurers. Contemporaneous medical records indicate that the financial consequences of the fire and insurance dispute on the business caused the appellant substantial stress.

[10] On 7 May 2018, Dr Dawe recorded:

Heart flutters x 3 years Tiredness x 6 years ... Stressed – he is not sure if depressed – to come at 2 pm today afternoon to discuss mood.

[11] On 29 May 2018, Dr Dawe noted that the appellant sent the following message (*verbatim*):

Ive had a cery rough 3 weeks with work, its so hard finding time to have this second blood test done, can you please send me a blood test form to have a test done ...?Regards.'

[12] Dr Dawe noted that he telephoned the appellant, who advised (*verbatim*) that “mood low, crying a lot No thoughts of self harm/ suicide To book appointment to discuss mood”.

[13] On 3 July 2018, Dr Dawe recorded that the appellant said he had food poisoning the previous week, with vomiting and diarrhoea for 24 hours, which left him feeling washed out through the week. He stated that he had been drift car racing for two days in a sporting event over the weekend and felt exhausted afterwards. He did not drink well through the weekend. He had bilateral flank discomfort. He complained of long-standing lethargy.

[14] On 17 July 2018, Dr Dawe recorded that the appellant reported:

Struggling.

5 m[onths] ago his factory burnt down – own business – not insured sufficiently to cover it

...

Had been building for 10y – feels like lost 10 y of life overnight

All money was ploughed into business

Back to rental accommodation, borrowing money to fund business

Trying to rebuild business but struggling to do so

Lots of uncertainty

Married 2 children (2 and 1)

Lost his drive – no motivation to do anything Concentration poor, easily di[s]tracted – focus is poor Stopped looking forward to most things

Takes pleasure in motorsports, children – loves children

Feels low – has felt low for years – long before factory bunt down

Had insomnia few months ago but sleep better at the moment Thoughts of not wanting to be here at times – never any planning, never any intent – would / could never do anything about it – loves his kids – would never do it to them

Tried tertaline (did not help but only took for a few weeks), tried amitriptyline (side effects ++), tried quetiapine for sleep'

[15] Dr Dawe referred the appellant for counselling.

[16] On 14 August 2018, Dr Dawe recorded:

Mental health got worse.

Has not started escitaloparm – worried about side effects Counselling been declined as no funding

Now has to move his business again as been given notice on his warehouse

Frequently in a dark place with thoughts of self harm intruding frequently

Has planned out how he might do it – write letters to loved ones, not tell anyone he would do it – does not want to tell me what his plans would be to actually commit suicide as upsets him However is clear that they are thoughts and he would not /could not act on them due to his family

Not sleeping Struggling now ++

Long discussion today re worsening mental health – I feel he needs meds counselling and support – he agrees'

[17] Later, on 14 August 2018, Dr Dawe recorded that the appellant had experienced episodes of heart palpitations. for two years and more.

[18] On 20 February 2019, Dr Mark Lombard, Clinical Psychologist, reported that the appellant's presenting problem was depressed mood:

I have seen him twice now. The major problems for [the appellant] is his depressed mood and labile affect. He is currently taking Escitalopram, which has some benefit. His ... business ... burned down last year. He has had to restart the business ... He is finding it very difficult to manage the business because of unmedicated ADHD. He was on Ritalin from the ages of 6 to 19. This was a combination of slow release and quick acting. He noted that since he has not been taking it his life has been chaotic.

This is also affecting his marriage and there are significant marital difficulties. He has two children, aged 3 and one and a half.

He has a history of experiencing emotional invalidation from his parents which he is still coming to terms with. We will continue to engage in psychotherapy as there are emotional issues that need addressing.

[19] On 21 February 2019, Dr Dawe recorded that the appellant was “not doing as well”, and that things had been getting better but had then deteriorated:

Feeling really anxious

Had panic attack the other day – could hear daughter screaming but could not find her – was terr[i]fied she was on fire

Has finally started seeing psychologist – has had 2 sessions – privately funded
Saw psychologist on Tuesday ...

Feels work is killing him and needs a break – has booked trip to Samoa in March

Wife having health issues too currently.

[20] On 28 February 2019, Dr Dawe recorded that the appellant had stopped medication, had bought an electric-assisted mountain bike, and felt much better going out on it. He was going to take a few weeks off work. He had started joint counselling with his wife and was now much more positive about their relationship. Dr Dawe had a long discussion with him about the risks of stopping his medication. The appellant was adamant that he wanted to try a non-pharmaceutical approach. He was aware of signs of deterioration to look out for.

[21] On 12 March 2019, Dr Dawe recorded that the day after the previous session the appellant had “crashed - tearful, numb, emotionless”, and had restarted escitalopram. He had been to Samoa and enjoyed himself for the first time. He was continuing with couple counselling with his wife. He was not sure if he would continue with individual counselling. Dr Dawe recorded: “Feels pretty good today – mood in a better place – more focused – Returning to work in a stepwise fashion/Parents helping”. Dr Dawe’s impression was “Depression, ADHD, Stable currently”.

[22] On 20 March 2019, the appellant saw Dr Davin Tan, Consultant Psychiatrist, who recorded:

I met with him on 20/3/2019 for about an hour in clinic. He had a history of fairly typical sounding ADHD of inattentive type ... He wasn’t happy with himself from 13-15 years of age and recalls telling his father that he wished he

was dead. There was no history of suicidal attempts or self injurious behaviour however...

[The appellant] eventually became quite successful starting up his business over a period of about 10 years but last year tragedy struck when the factory went up in flames. He's now scrambling to recover but is doing quite well given the circumstances. There are other stressors too – in that there had been some minor discord in his marriage that he and his wife are working through in couples counselling. [The appellant] is also worried about his health – when he was 21 years old he had surgical removal of a stage 4 melanoma.

Currently [the appellant] has pervasive levels of anxiety punctuated by more acute episodes of panic that stops him from functioning. There's also social anxiety. ... Sleep can be poor. He informed me that he had been prescribed different antidepressants in recent years. ...

Comment: Co-mor[bid] anxiety, periods of depression and ADHD.

[23] On 24 June 2019, the appellant saw a new GP, Dr Geena Chiu, who recorded:

Here to discuss sleep issues

- Currently on escitalopram for low mood

Stressors / trigger

- 8th March 2018
- factory burned down 1930 pm
- ... business that he had for 10 years, was not insured adequately hence everything lost
- since then PTSD symptoms / low mood – nil issues prior
- seen first July 2018 by another GP with low motivation, poor concentration, feeling low, sleep issues and suicidal thoughts
- referred counselling and started on escitalopram but officially stated himself on escitalopram august 2018
- initial improvement, intermittent suicidal thoughts'

Background

Depression and anxiety and ADHD.

Had recently been started on Ritalin.

Had moved ... in early 2018. He had had to move in with his parents. He was trying to self start his business again. Financial pressures.

Currently low mood, low motivation, poor concentration

- nightmares ++
- flashbacks ++
- sees himself on fire and daughter on fire and unable to help
- anxiety symptoms +, getting panic attacks also

- gets very frustrated repeating his history to many people and would hope for just one person he can talk to

Imp[ression]: Depression?component PTSD'

[24] On 26 June 2019, Dr Chiu made a Community Mental Health referral, setting out broadly the same information, and adding, in relation to symptoms since the fire, “since then PTSD symptoms/low mood (but had background of low mood symptoms at that point already)”.

[25] On 28 June 2019, Ms Denise Signal completed a Community Mental Health and addiction intake form and recorded:

[The appellant] is requesting a Psychiatric review for his reported PTSD like symptoms, of nightmares, flashbacks as well as anxiety and panic attacks, with intermittent thoughts of suicide. He advised this is on the background of his business burning down in March 2018, and having lost everything due to inadequate insurance cover. ... he believes his PTSD symptoms are due to the burning down of his business and he believes he is due some financial compensation.

The family have had to move in with his parents due to their financial situation, and he states that while his parents, [in] particular his dad is helping a lot, he states that he wishes at times that he could disappear. He feels that he is stuck in a house with people who make him feel worse. According to [the appellant] he is very vulnerable and sensitive to any criticism aimed at him due to his current situation. He states that he owes a lot of money, as he has been borrowing to support the family, and this is be[com]ing untenable. ...

... for his symptoms of PTSD, it is thought that this is unlikely to be accepted. [the appellant] voiced his frustration that his GP had indicated in the application, that [he] is having anxiety and depression symptoms only. [The appellant] states that without the PTSD there is little likelihood that he will receive any financial or practical supports.

[26] Also, on 28 June 2019, Dr Chiu submitted a claim for mental injury. The injury described was noted as “sensitive claim”, with an accident date of 8 March 2017 (presumably a misprint for 2018). The diagnosis was: “Post-traumatic stress dis”. The work capacity restrictions were noted as “patient experiencing PTSD symptoms since incident”, and the appellant was certified as unfit for work for 14 days. The Corporation then processed the claim as a sensitive claim, that is, a claim for a mental injury caused by a criminal act as listed in Schedule 3 of the Act.

[27] On 2 July 2019, Laura Searancke of the Corporation contacted the appellant to offer funded counselling, information about the Corporation website and a contact

number if he needed assistance. The appellant said that he had been struggling since May 2018, and noted his struggles with debt, social anxiety and dealing with agencies such as the Corporation and WINZ. Ms Searancke agreed to send a form so that he could appoint someone to act on his behalf if he wished to do so.

[28] On 2 August 2019, Dr Dale Harrison, Consultant Psychiatrist, provided a report after the appellant was seen by community mental health services. Dr Harrison stated:

[The appellant] continues to experience triggers for flashbacks of the traumatic experience witnessing the fire that burnt down his business. He, however, has less avoidant behaviour. He describes exacerbated periods of anxiety or panic attacks most days, with some physical symptoms.

[29] On 21 August 2019, Ms Jolean Teer of the Corporation telephoned the appellant's GP and asked if the claim was in relation to sexual abuse. The GP advised that there was no sexual abuse and the appellant was suffering from PTSD from his business burning down. Ms Teer advised that the Corporation was unable to accept the claim, and that the GP should advise the appellant and ensure he had support.

[30] On 27 August 2019, the Corporation issued a decision declining the sensitive claim for mental injury on the basis that there was no criminal conduct falling within Schedule 3 of the Act as required for a sensitive claim to arise. The decision contained the following statements:

Resolving any concerns – Many issues can be solved quickly and efficiently by speaking to us, so please get in touch if you have any questions about our decision. If we are unable to resolve things, you can have your decision independently reviewed by applying in writing within three months of the date of this letter.

I've also enclosed an information sheet that explains how we can work together to resolve any concerns you may have about our decision.

[31] On 28 August 2019, Ms Teer spoke to the appellant and it was identified that the claim was not a sensitive claim.

[32] Later, on 28 August 2019, Ms Stephanie Steele of the Corporation advised the appellant that, for the Corporation to look at a work-related mental injury claim, he

needed to send through a new claim form with more detail. The appellant advised the Corporation that “[his mother] is going to be the point of contact” as he could not deal with the matter anymore. The appellant then emailed Ms Teer stating:

Honestly this is crazy do i really have to start from The beginning you guys have no idea how much grief you have caused me We have been flat broke and my boys birthday was on Monday Had to borrow money to pay for presents but not only that i have had to sit dealing with feeling like a failure because i cant support my family. ...

[33] Later, on 28 August 2019, Ms Teer advised the appellant’s mother that her son’s claim would be transferred to the cover assessment team to look into work-related mental injury claim. Ms Teer then emailed her a copy of the 27 August 2019 and the document “Working Together”, which she acknowledged. In the ensuing period, there was ongoing communication between the Corporation and the appellant’s mother about her son’s claim.

[34] On 19 September 2019, Dr Davin Tan, Psychiatrist, provided a report. He diagnosed the appellant with “co-morbid anxiety, periods of depression and ADHD”. Dr Tan recommended medication and requested that the appellant’s GP provide updates regarding his progress.

[35] On 27 September 2019, Dr Lombard provided a psychological report on the appellant and the circumstances of the fire:

On the 08th March 2018, he was at home when he was called out by the fire department to say the building premises were ablaze. He went to the property where it was engulfed in flames. ...

As part of my therapeutic intervention I had [the appellant] complete the Trauma Symptom Inventory 2 (TSI-2). This consists of 136 items and assess a wide range of potentially complex symptomatology, ranging from posttraumatic stress, dissociation, and somatization to insecure attachment styles, impaired self-capacities, and dysfunctional behaviours. It must be noted that these results must be used with caution as the norms have not been standardized to a New Zealand population.

[The appellant] over endorsed the items on the TSI-2. The resultant profile indicates that [the appellant is] experiencing intrusive post-traumatic reactions. He is also experiencing suicidal ideation. He is also engaging in tension reducing behaviours which suggest that external activities are engaged in to help modulate, interrupt, avoid, or soothe negative internal states and thus may reflect underdeveloped affect regulation and tolerance skills

[36] On 4 October 2019, Dr Harrison reported that the appellant was having family-related issues and felt that his anxiety had worsened. He described physical symptoms of anxiety, tachycardia, losing his breath and blurry vision, and was left with no energy.

[37] On 11 October 2019, Dr John Vickers, Psychiatrist, having seen the appellant, provided a mental injury assessment:

[On 8 March 2018, the appellant] had left work at midday as his wife's birthday was the day after, and they had planned to go away for the weekend. The last of [the appellant's] employees left the plant at 6:45pm and soon after this, [the appellant] received a call from a neighbour to say that his premises were on fire. He arrived there at 7.20pm to find the Fire Service in attendance and the buildings 70% burned down. ...

[The appellant] lost his ... manufacturing business in a fire in March 2018 and suffered financially as his business insurance was inadequate. The event and its consequences have made a significant impact on him and he has since complained of anxiety, panic, low mood, intermittent suicidality and insomnia amongst other symptoms as highlighted above. The most appropriate diagnosis in my view is that of adjustment disorder with mixed anxiety and depressed mood. He has had a lot of input to help with the resulting problems including GP prescribed medication, clinical psychological input with two therapists and he is currently an outpatient of ... Mental Health where he has monthly medical appointments and is on the waiting list for further psychological input.

[38] On 18 October 2019, Ms Caryn Trent Urquhart, the Corporation's psychology advisor, provided a clinical comment:

[The appellant] is a 33-year-old man who has a claim for mental injury of Post Traumatic Stress Disorder, dated 28/06/2019. In an assessment of mental injury report, Dr Vickers provides a clear account of the impact of the workplace fire March 2018. The assessor opines that witnessing the fire at his business premises, and experience of the subsequent events associated with this, including financial loss, has had significant impact on [the appellant]; that he has presented with symptoms which meet criteria for diagnosis of Adjustment Disorder.

[39] On 1 November 2019, the Corporation issued a further decision, declining the claim for cover for post-traumatic stress disorder due to the event on 19 December 2018. The Corporation noted that it could only provide cover when the mental injury is caused by a single traumatic workplace event that was directly witnessed by the appellant. The Corporation stated that the event that he experienced did not qualify because it was the psychiatrist's opinion that he did not have a diagnosis of

post-traumatic stress disorder from the workplace event that he experienced or witnessed.

[40] On 5 November 2019, Dr Adriaan Engelbrecht, Clinical Psychologist, recorded the circumstances of the appellant and the fire as follows:

He was called on the Friday evening and when he arrived the fire trucks were already there, black smoke was coming out of the building and it burnt down in the next three hours. ... His wife was with him and they went back home afterwards.

[41] On 22 November 2019, Dr Harrison reported ongoing symptoms as primarily panic attacks and being very upset, and anxiety in the workplace.

[42] On 28 November 2019, Dr Engelbrecht reported:

I then proceeded to explain that he does not meet the DSM-V criteria for a diagnosis of PTSD. He did not want me to clarify it. "You must be f... joking!" He immediately responded with anger and swearing. I then again attempted to explain to him that I am of the opinion that he has been traumatized by the fire and the loss of ten years hard work as a major setback in life. ... He became angry, was swearing, disagreed and stormed out indicating that I we are incompetent.

... he is mainly presenting with an anxiety condition with intermittent panic attacks or Panic disorder. He technically does not meet the criteria for Post Traumatic Stress Disorder – criterion A, there was no threat to himself during the fire. I do not doubt that the loss of his business was a traumatic and major setback in life.

[43] In December 2019, the appellant (through his advocate Ms Koloni) lodged two review applications against the decision of 1 November 2019.

[44] On 9 March 2020, Dr Vickers responded to questions put by the Corporation, and noted that the appellant's records and history indicated that he was a man who had been prone to stress and mood problems pre-incident and the fire had made matters much worse.

[45] On 1 July 2020, Dr Vickers responded to further questions put by the Corporation, and noted that he did not consider that seeing the fire in isolation would have caused the mental injury; and that the mental injury was more attributable to the losses experienced from the fire as opposed to the fire/witnessing the fire itself.

[46] On 23 July 2020, Dr Gil Newburn, Neuropsychiatrist, reported, after seeing the appellant:

On the day of the fire, he had left work at midday as he and his wife had planned to go away for the weekend as it was her birthday the following day. He had received a call at approximately 7 pm that evening that the premises was ablaze, and arrived there approximately twenty minutes later to see the property in flames. The Fire Service had already arrived. He was only able to sit and watch and do nothing. ...

[The appellant] was the victim of witnessing a fire in his business on 8 March 2018. This has been associated with the development of a significant set of symptoms. These involve re-experiencing events, experiencing dreams and other events that are symbolically associated with the fire, ruminating about fires and their consequences, avoidance of a range of issues associated with fire or smells associated with the fire, an altered sense of future, autonomic over-arousal, hypervigilance, impulsive irritability, and a disturbance in attention and memory. There is a sense that things are negative until proven otherwise, associated with poor initiation and additional avoidance of social function.

There is no evidence that the re-experiencing events or intrusive thoughts are associated with financial issues. While he was possibly slightly under-insured, the insurance company has paid out and provided him with adequate payment to maintain the business. This was re-sited ... The business remains active, and while he is not readily able to engage in running this, his father who has considerable experience in the ... manufacturing business is able to do so. His concerns and avoidance relate to symptoms around the fire and not to the financial issues as suggested by others.

It has been considered that because he observed the fire, and was not directly at risk of death or serious injury that he does not meet criterion A for post-traumatic stress disorder, and therefore post traumatic stress disorder cannot be diagnosed. However, this reflects the arbitrariness of DSM diagnostic systems, whereby they reflect a statistical model of general population responses to a particular situation, and often do not accurately match an individual. This leaves one clinically in a situation where people are trying to fit a square peg into a round hole. Seeing his factory burning, and his sense of self altered by this event was so significant as to be analogous to such a process. In many ways this reflected a symbolic death of who he was, and, as a result of his symptoms and therefore a reduced capacity to return to his business this has been perpetuated. This is analogous to situations where post traumatic stress disorder has been accepted as a diagnosis previously, for example when someone has died as a result of suicide by throwing themselves in front of a moving truck.

There are also a range of depressive symptoms. However, these are much better seen within the context of post-traumatic stress disorder, and what is now well understood about the neuroscience of this condition. This is well set out for example in modern military literature, and in particular with American GIs who have undergone several tours of duty in Iraq and Afghanistan and have developed post traumatic stress disorder in that setting. This arises from epigenetic changes impacting on brain derived neurotrophic factor (BDNF) activity in particular. The gene for this protein is very strongly represented in the salience network, the brain system that determines stimulus salience and emotional valence. With reduced synaptic plasticity in this area and reduced

hippocampal neuronal function as a result of reduced BDNF activity, there is a reduced capacity to reflect before response, associated with increased ruminations and impulsiveness, a defaulting to an assumption that things are negative until proven otherwise (this is the safest species survival response), a much lower threshold for fight/flight reactivity associated with both irritable and angry outbursts, appearing threatening to others, as well as significant avoidance and social withdrawal, and a reduction in the sense of reward arising out of other stimuli. [The appellant] presents with all these features, and this further confirms the presence of post-traumatic stress disorder.

[47] On 17 September 2020, the appellant provided a description of witnessing the fire as follows:

I was stunned and shocked by the sudden event of the fire that I directly witnessed, on the evening of 8th March 2018.

[48] On 9 October 2020, Dr Vickers responded to further questions put by the Corporation:

... Dr Newburn was given symptoms not reported to me (or others that had seen him previously) including autonomic arousal triggered by the phone, microwave, paperwork relating to the fire, smoke, alarms, the smell of gas, intrusive Images, poor attentional function, planning everything including escape routes, fatigue and poor energy.

Dr Newburn linked these symptoms to the fire but if this were the case one would have expected them to have been present from soon after the fire and therefore reported to the GPs, psychiatrists and psychologists he had seen earlier. It appears therefore that his symptom profile has grown and the number of symptoms attributed to the fire has increased since the Initial GP consults and psychiatric/psychological assessments. This is not the natural history of PTSD which is that trauma related symptoms appear soon after the trauma. This inconsistent symptom reporting suggests to me that his history cannot be entirely relied upon.

Additionally [the appellant's] 17 September 2020 statement Item 6 denied that it was the consequences of the fire that had led to his symptoms but when I saw him he told me that he had been devastated by the loss and the early post-fire GP records confirm this. Hence the history has changed from blaming the losses from the fire to blaming the fire itself. ...

I do not agree with Dr Newburn that criteria A for PTSD has been met. Witnessing a fire with the Fire Service in attendance does not suggest that actual or threatened death or serious injury is likely. The loss of assets built up over 12 years is not a threat to the person's physical integrity as he argues. It is absurd to suggest that a mother witnessing her daughter being raped or a person driving into a suicidal person is a comparable experience and anyhow both of those examples involve actual or threatened death or serious injury.

[49] On 28 October 2020, the appellant lodged two further review applications for review of the decision of 27 August 2019. They were lodged some 11 months outside the three-month time limit for lodging a review application.

[50] On 5 and 16 November 2020, the Corporation rejected these review applications on the basis that there were no extenuating circumstances for the lateness of lodging those review applications. The appellant sought a review of this decision.

[51] On 20 January 2021, Dr Newburn responded to the views of Dr Vickers by reiterating the finding of post-traumatic stress disorder.

[52] On 29 July 2020, review proceedings were held, and they were concluded on 26 March 2021 on the papers. On 19 April 2021, the Reviewer dismissed the review of the decision of 1 November 2019.

[53] On 30 March 2021, review proceedings were held to consider the Corporation's decisions of 5 and 16 November 2020, declining to accept the late lodgement of review applications of the Corporation's decisions. On 22 April 2022, the Reviewer upheld the Corporation's late lodgement decisions of 5 and 16 November 2020, on the basis that there was not sufficient evidence to show that extenuating circumstances prevented the appellant from lodging the review applications within the required time.

[54] On 20 May 2021, a Notice of Appeal was lodged.

Relevant law

The Corporation's decision of 1 November 2019

[55] Section 21B of the Accident Compensation Act 2001 ("the Act") provides for cover for work-related mental injury:

- (1) A person has cover for a personal injury that is a work-related mental injury if—
 - (a) he or she suffers the mental injury inside or outside New Zealand on or after 1 October 2008; and

- (b) the mental injury is caused by a single event of a kind described in subsection (2).
- (2) Subsection (1)(b) applies to an event that—
- (a) the person experiences, sees, or hears directly in the circumstances described in section 28(1); and
 - (b) is an event that could reasonably be expected to cause mental injury to people generally; and
 - (c) occurs—
 - (i) in New Zealand; or
 - (ii) outside New Zealand to a person who is ordinarily resident in New Zealand when the event occurs. ...
- (5) In subsection (2)(a), a person experiences, sees, or hears an event directly if that person—
- (a) is involved in or witnesses the event himself or herself; and
 - (b) is in close physical proximity to the event at the time it occurs.
- (6) To avoid doubt, a person does not experience, see, or hear an event directly if that person experiences, sees, or hears it through a secondary source, for example, by—
- (a) seeing it on television (including closed circuit television);
 - (b) seeing pictures of, or reading about, it in news media;
 - (c) hearing it on radio or by telephone;
 - (d) hearing about it from radio, telephone, or another person.
- (7) In this section, event—
- (a) means—
 - (i) an event that is sudden; or
 - (ii) a direct outcome of a sudden event; and
 - (b) includes a series of events that—
 - (i) arise from the same cause or circumstance; and
 - (ii) together comprise a single incident or occasion; but
 - (c) does not include a gradual process.

[56] Section 28(1) of the Act provides that:

- (1) A work-related personal injury is a personal injury that a person suffers—
 - (a) while he or she is at any place for the purposes of his or her employment, including, for example, a place that itself moves or a place to or through which the claimant moves.

[57] In *KB*,¹ the claimant was a funeral embalmer, who was diagnosed with PTSD nearly two years after a traumatic event. During that period, KB had also been subjected to other distressing circumstances and events in her work. Judge Beattie said:

[25] I consider that the statutory requirements of Section 21B make it clear that the single event of a nature which might cause mental injury to people generally must be one that is in effect a one-off event, and which results in the more or less immediate onset of the factors involved in the medical condition of Post Traumatic Stress Disorder, which was the mental injury in this appellant's case.

[58] In *KB*,² dismissing the application for leave to appeal to the High Court, Judge Powell stated:

[10] ... The ACC guidelines identified serve to flesh out the question of what "could reasonably be expected to cause mental injury in people generally" set out in s 21B(2)(b) because it:

- Is outside the range of normal experience.
- Is capable of provoking extreme distress in most people.
- Involves a real threat of significant harm to self or others.
- Would induce feelings of horror, alarm and shock in most people.

[59] In *Jeffrey*,³ the claimant suffered a major depressive episode (initially diagnosed as PTSD) after a three-week period of stress at work during the rebranding and converting of the Greymouth store into a Countdown store. During that period, Ms Jeffrey worked three weeks without a day off. The 'event' that caused her PTSD and which was alleged to be an 'event' for the purposes of subsection 21B(7) was the three-week rebranding and converting of the store. Judge Mathers found:

[65] In any event I agree there is no basis, in this case, for an event that could reasonably be expected to cause mental injury to people generally. I reject Dr Dean's evidence. It is for me as a matter of law, although I can consider a medical opinion. In my view there is no proper evidential basis for Dr Dean to express his opinion. I consider his opinion to be far too wide in terms of the Act and, in any event, I am not satisfied there is an event, and of course it was contended that Ms Jeffrey does not come within s 21B(2)(a).

¹ *KB v Accident Compensation Corporation* [2013] NZACC 41.

² *KB v Accident Compensation Corporation* [2014] NZACC 336.

³ *Jeffrey v Progressive Enterprises & Accident Compensation Corporation* [2015] NZACC 4.

The Corporation's decision of 27 August 2019

[60] Section 135 of the Accident Compensation Act 2001 (“the Act”) sets out the time required for the lodging of a review application:

- (1) A review application is made by giving an application that complies with subsection (2) to the Corporation.
- (2) The application must –
 - ...
 - (f) be made within 3 months of -
 - (i) the date on which the claimant has a decision under section 58; ...
- (3) Despite subsection (2)(f) and (g) and any time frame prescribed regulations made under section 328A for the lodgement of a review application, the Corporation must accept a late application if satisfied that there are extenuating circumstances that affected the ability of the claimant to meet the time limits, such as -
 - (a) where the claimant was so affected or traumatised by the personal injury giving rise to the review that he or she was unable to consider his or her review rights; or
 - (b) where the claimant made reasonable arrangements to have the application made on his or her behalf by an agent of the claimant, and the agent unreasonably failed to ensure that the application was made within the required time; or
 - (c) where the Corporation failed to notify the claimant of the obligations of persons making an application.

[61] In *Smith*,⁴ Judge Ongley accepted that there were extenuating circumstances in light of the serious side effects of the appellant’s course of medication, and the period of his mother’s illness and death during the time that the advocate was supposed to be preparing the review application. His Honour stated:

[10] The legislative language does not suggest a high threshold of circumstances causing difficulty in filing an application in due time. “Extenuating” does not suggest a need to show unusual or extraordinary circumstances. It is more akin to mitigating or explaining. The extenuating circumstance must be something of reasonable substance. Oversight or forgetfulness, for example, could not suffice on its own: *Gordon v ACC* (165/05). Secondly, the claimant needs to provide the Corporation or the Court

⁴ *Smith v Accident Compensation Corporation* [2010] NZACC 66. In *Clark v Accident Compensation Corporation* [2013] NZACC 191, extenuating circumstances were found where there was a delay of four days preceded by a variety of personal pressures; and in *Percival v Accident Compensation Corporation* [2014] NZACC 307, where the appellant had a number of psychological conditions.

with enough information to decide whether there are extenuating circumstances in a given case. The information needs to match periods of delay with reasons for delay. Vague assertions are unlikely to be enough ...

[62] In *Adams-Richardson*,⁵ Judge Beattie found no extenuating circumstances, and stated:

[9] Thus it is clear, as a matter of law, that the extenuating circumstances which will allow for a late application for review to be accepted are those which relate to factors which affect a claimant's ability to meet the statutory time limit. In that regard therefore, it is the case that it is only circumstances that pertain within that 3-month period that can be considered and not circumstances which may have arisen outside the 3-month time frame.

...

[21] The statutory provision regarding Application for Review makes it clear that the application must be lodged within a 3-month period and it is the case that prior to the commencement of the Accident Compensation Act 2001 there was no provision whatsoever for any relaxation from that statutory time limit and it must be seen, even with the introduction of s 135(3), that the statutory time limit must be strictly observed. It is stated so as an imperative.

[63] In *Nelson*,⁶ Judge McGuire stated:

[114] Although it is accepted that in terms of assessing whether for the purposes of s 135 extenuating circumstances existed the circumstances needed to have arisen within the three month period, it may often be the case that such extenuating circumstances are informed by things done and steps taken outside that three month period but which refer back to what occurred during the three month period.

[115] In this case, on the information provided to the Court there is nothing that I have seen that would retrospectively suggest that during the critical three month period, extenuating circumstances had arisen.

[64] In *Philpott*,⁷ Judge Joyce stated:

[41] ... I conclude that Mr Philpott chose to see his ways and approaches as all that should matter; this to the extent that he deliberately put at risk his hope of any remedy by ignoring the review application limit and delaying seeking leave until, according to his lights, the time was ripe.

⁵ *Adams-Richardson v Accident Compensation Corporation* [2010] NZACC 172. See also *Thompson v Accident Compensation Corporation* [2014] NZACC 238 (the appellant chose to explore other avenues for resolution and was active in pursuit of these other pathways; and those investigations could not have reasonably prevented her from filing an application for review); and *Guthrie v Accident Compensation Corporation* [2015] NZACC 400 (there was no evidence that Mrs Guthrie had any more difficulty than any other claimant in understanding that an application for review needed to be filed within three months).

⁶ *Nelson v Accident Compensation Corporation* [2020] NZACC 76.

⁷ *Philpott v Accident Compensation Corporation* [2013] NZACC 74.

...

[43] ... the mandatory terms of s 135(3), once extenuating circumstances are established, could surely not be intended by Parliament to apply in a case where it was without doubt the position that the case was devoid of any ultimate merit.

Discussion

The Corporation's decision of 1 November 2019

[65] On 28 August 2019, the appellant's GP lodged a claim for work-related mental injury arising out of a fire at his business premises in March 2018, and the injury was pursued as arising from post-traumatic stress disorder. This Court provides the following summary of the fire and its consequences, drawn from the report of Dr Vickers, a Psychiatrist who interviewed the appellant in October 2019:

On 8 March 2018, a fire took place at [the appellant's] business premises, a ... manufacturing plant with seven employees. Soon after 6.45 pm, he received a call from a neighbour to say that his premises were on fire. When [the appellant] arrived at his business premises, he found that 70% of the buildings were burnt down and the Fire Service was in attendance. [The appellant] said that he had run his business for 12 years and had put everything he had into it and then saw it destroyed over four hours, and he was devastated by the loss. [The appellant's] insurance on his building premises turned out to be inadequate and he suffered financial loss, ... [The appellant] reported to his GP that he was having panic attacks and that he felt as if he did not want to live, he could not deal with the effects of the trauma, he started having dreams about the fire and being stuck in a fire, and on one occasion he became convinced that his daughter was in a fire. He now associated the sound of babies crying (evoked by his baby son) with the fire. The panic attacks have continued unabated several times a day, and with these he has a pounding heart and trouble breathing, he has had bouts of rage which are hard to control, he has gone through periods of suicidality on a frequent basis, his appetite has been affected, and his weight has increased. He recently went through a marital separation.

[66] A work-related mental injury claim gives rise to cover for personal injury only if the following relevant criteria are met:

- (a) the mental injury is caused by a single event while he or she is at a place for the purposes of his or her employment;
- (b) the event must be sudden or a direct outcome of a sudden event, and could reasonably be expected to cause mental injury to people generally: this has been interpreted to mean an event that is outside the range of

normal experience, is capable of provoking extreme distress in most people, involves a real threat of significant harm to self or others, and would induce feelings of horror, alarm and shock in most people;⁸

- (c) the person must experience, see, or hear the event directly in that the person is involved in or witnesses the event himself or herself, and is in close physical proximity to the event at the time it occurs; and
- (d) the event may be a series of events that arise from the same cause or circumstance, and together comprise a single incident or occasion, but is not a gradual process.

[67] The appellant's claim was declined by the Corporation on 1 November 2019. The Corporation noted that it could provide cover only when the mental injury was caused by a single traumatic workplace event that was directly witnessed by the appellant. The Corporation stated that the event that he experienced did not qualify because it was the psychiatrist's (Dr Vickers') opinion that he did not have a diagnosis of post-traumatic stress disorder from the workplace event that he experienced or witnessed.

[68] Mr Gee, for the Corporation, submits as follows. The contemporaneous documents give strong support for Dr Vickers' conclusions that, on the balance of probabilities, the appellant's mental injury was not caused by a single event, namely, witnessing the fire, and was caused by a gradual process following the fire, namely the financial, business and insurance-related effects of the fire. The fire also did not involve a risk to the appellant or others, as the building was unoccupied at the time of the fire, and the appellant did not attend until after the fire brigade had arrived. Further, the appellant did not witness the fire from a position of close physical proximity. Finally, the argument for the appellant that the Corporation's decision of 1 November 2019 is a deemed decision has no merit, because the statutory requirements for a deemed decision were not met.

[69] Mr Gee's submissions, for the Corporation, were thoughtful, well-focussed, responsible and ethical, and this Court is grateful for them. The Court acknowledges

⁸ *KB*, see above note 2.

that the question whether the appellant meets the requirements for a work-related mental injury is one at the margins of success or failure. Further, the Court agrees that the argument that the Corporation's decision of 1 November 2019 is a deemed decision has no merit. In this regard, the Court notes that the appellant's claim was recorded as lodged on 1 July 2019, and the Corporation issued its first decision on the claim on 27 August 2019, thus within the two-month time period required by section 57(2) of the Act. After the nature of the appellant's claim was then clarified, the Corporation went on to issue its further decision on 1 November 2019.

[70] However, in relation to whether the appellant meets the requirements for a work-related mental injury, the Court notes the following considerations in relation to each of the criteria noted above. The Court relies on the reports of Dr Vickers, Psychiatrist, and Dr Newburn, Neuropsychiatrist, arising out of their interviews with the appellant, for an assessment of whether he meets the statutory criteria for a work-related mental injury. This Court finds that the reports of these two medical experts are of the most relevance and weight in assessing the central issue of this appeal.

Was the appellant at a place for the purposes of his employment?

[71] The undisputed facts in the reports of Dr Vickers and Dr Newburn were that the appellant was called to his business premises on the evening of the fire. The reports therefore support the finding that he was at a place for the purposes of his employment.

Was the event sudden or a direct outcome of a sudden event, and could reasonably be expected to cause mental injury to people generally?

[72] The undisputed facts in the reports of Dr Vickers and Dr Newburn were that the fire event was sudden. The significant nature and consequences of the fire indicate that was an event outside the range of normal experience, was capable of provoking extreme distress in most people, involved a real threat of significant harm to other people (such as members of the Fire Service), and would induce feelings of horror, alarm and shock in most people. Dr Vickers advised that seeing a building burning down is not likely to cause mental injury in the general population unless one has a vested interest in that building. This Court notes that it is clear that the appellant had a strong vested interest in the burning down of the building housing his

business. Dr Newburn found that the effect of the fire on the appellant's mental state met the standard criteria for post-traumatic stress disorder. This Court finds that the reports provide support for the conclusion that the fire event was sudden, and that the fire event could reasonably be expected to cause mental injury to people generally.

Did the appellant experience, see, or hear the event directly in that he witnessed the event and was in close physical proximity to the event at the time it occurred?

[73] Dr Vickers advised that the appelland arrived at his factory and witnessed the fire, and so Dr Vickers presumes that this was from as close a position as would have been permitted by the fire brigade. Dr Newburn notes that the appellant arrived to see his property in flames and was only able to sit and watch and do nothing, feeling significantly helpless and in tears. This Court finds that the reports support the conclusion that he experienced, saw and heard the fire event directly in that he witnessed and was in close physical proximity to the event at the time it occurred.

Was there a series of events that arose from the same cause or circumstance, and together comprised a single incident or occasion, but was not a gradual process?

[74] Dr Vickers acknowledged that the fire event and its consequences had made a significant impact on the appellant, and that the appropriate diagnosis was that of adjustment disorder with mixed anxiety and depressed mood. Dr Vickers advised that it seemed clear from the history that the event and its consequences had precipitated the appellant's mental condition. Dr Vickers added that secondary events of the incident such as the loss of his business, the financial implications of this and the impact on his marriage were relevant. Dr Vickers advised that the appellant was a man who had been prone to stress and mood problems before the fire and this made matters much worse; and that his mental injury was non-physical or psychological stress. Dr Vickers did not consider that seeing the fire in isolation would have caused the mental injury and thought that the mental injury was more attributable to the losses experienced from the fire as opposed to the fire itself.

[75] Dr Newburn advised that witnessing the fire in the close proximity allowed by the New Zealand Fire Service had such symbolic significance that this was of sufficient severity to meet the standard for a diagnosis of post-traumatic stress disorder. Dr Newman assessed that there was a clear association between the

appellant's witnessing of the fire and loss of a sense of self and his current condition of post-traumatic stress disorder. Dr Newman thought that seeing his factory burning, and his sense of self altered, reflected a symbolic death of who he was, and, as a result of his symptoms and therefore a reduced capacity to return to his business, this had been perpetuated.

[76] This Court notes the difference in emphasis of the reports of Dr Vickers and Dr Newburn, although the Court also notes that both reports found that the appellant has a mental injury and neither report provides support for the conclusion that his mental injury arose from a gradual process. Further, this Court notes that Dr Vickers' conclusion was that seeing the fire *in isolation* would not have caused the mental injury, and that the mental injury was *more attributable* to the losses experienced from the fire as opposed to the fire itself. Had the statutory test been simply a single event rather than a series of events, Dr Vickers' view would have lent support to the appellant not meeting the statutory test. However, in view of the fact that the statutory test encompasses a series of events, this Court finds that Dr Vickers' assessment lends support to the statutory test being met. Confirmation of the appellant meeting the statutory test is readily to be found in Dr Newburn's report that the fire event gave rise to post-traumatic stress disorder. Overall, this Court finds that the fire and its related consequences constituted a series of events that arose from the same cause or circumstance, and together comprised a single incident or occasion, but was not a gradual process.

[77] In light of the above assessment, this Court finds that the appellant meets the statutory criteria for cover for a personal injury that is a work-related mental injury.

The Corporation's decision of 27 August 2019

[78] In view of the Court's decision regarding the Corporation's decision of 1 November 2019, the appeal regarding the Corporation's decision of 27 August 2019 is moot. However, for completeness, the Court provides the following response.

[79] On 27 June 2019, the appellant's GP lodged a sensitive claim for mental injury. On 27 August 2019, the Corporation issued a decision declining the sensitive

claim for mental injury on the basis that there was no criminal conduct falling within Schedule 3 of the Act as required for a sensitive claim to arise. On 28 October 2020, the appellant lodged two review applications for review of the Corporation's decision of 27 August 2019: one was in relation to the decline of work-related mental injury and the other was in relation to entitlement to weekly compensation. On 5 and 16 November 2020, the Corporation declined to accept the review applications, on the basis that there were no extenuating circumstances for the lateness of lodging of those review applications.

[80] In terms of section 135(2)(f) of the Act, the appellant was required to lodge an application for review of the Corporation's decision within three months of the decision. The deadline for this review was therefore 27 November 2019. The appellant lodged the applications for review on 28 October 2020, that is, 11 months late. In terms of section 135(3), the Corporation was required to accept the late applications if satisfied that there were extenuating circumstances that affected the ability of the appellant to meet the time limits. In terms of examples provided in section 135(3), the appellant could have extenuating circumstances if he was so affected or traumatised by the personal injury giving rise to the review that he was unable to consider his review rights; or where he made reasonable arrangements to have the application made on his behalf by his agent, and the agent unreasonably failed to ensure that the application was made within the required time; or where the Corporation failed to notify him of the obligations of persons making an application.

[81] Case-law has established that an extenuating circumstance must be something of reasonable substance, and oversight or forgetfulness could not suffice on its own;⁹ the primary focus is whether the extenuating circumstances arose within the three-month period after the Corporation's decision;¹⁰ and extenuating circumstances would not apply where a case was devoid of any ultimate merit.¹¹ In the event, the Corporation declined to accept the late applications for review on the basis that it had not been established that there were the requisite extenuating circumstances.

⁹ See above note 5.

¹⁰ See above notes 6-7.

¹¹ See above note 2.

[82] The Notice of Appeal against the Corporation's decisions declining to accept the late filing of the applications for review stated:

(1) Review application as to cover:

As per above – complete confusion between ACC, Claimant, GP and subsequent errors upon errors and poorest standard of service from Corporation in dealing with this claim for cover of PTSD – S21b Work-Related Mental Injury.

(2) Review application as to entitlements:

As per previous review detailing the serious service failures of the Corporation and the confusion regarding the claim for cover and entitlements, lodged by [the appellant's] GP on the 28.08.2019.

[83] Ms Koloni, further submitted as follows. The Corporation's decision as to work-related mental injury did not meet the requirements of section 64(4)(c) of the Act (did not give the appellant information about his rights to apply for review, including details of the time available to do so and an explanation of when applications can be made outside that time). Therefore, the out of time lodgement had not started. The appellant has a mental injury and the errors in handling his case had added further stress and anxiety to his life and he could not handle the matter any further.

[84] This Court acknowledges the above submissions. However, the Court points to the following considerations.

[85] First, the Corporation's decision of 27 August 2019, declining the appellant's claim for cover for mental injury, invited him get in touch if he had any questions about the decision; and further advised that, if they were unable to resolve things, he could have the decision independently reviewed by applying in writing within three months of the date of this letter. The Corporation did not fail to notify the appellant of his obligations should he wish to make an application for review, and the Corporation's decision complied with the requirements of section 64(4)(c) of the Act.

[86] Second, the appellant, on being advised that his claim for cover was declined, immediately notified the Corporation that his mother was going to be the point of

contact, as he could not deal with the matter anymore. The Corporation then, forthwith, sent his mother copies of the Corporation's decision and advice about the lodging of a review within three months of the decision. In the ensuing three months and beyond, the Corporation complied with the appellant's direction and had ongoing email and telephone contact with his mother, who thus had ample opportunity to lodge a review on the appellant's behalf. It has not been established that the appellant made reasonable arrangements to have a review application made on his behalf by his agent (his mother), and that she unreasonably failed to ensure that the application was made within the required time.

[87] Third, in the three months after the Corporation's decision, the appellant repeatedly conveyed that he understood what was occurring. His immediate reaction to the Corporation's decision ("Honestly this is crazy do i really have to start from the beginning") conveyed that he knew that his claim had been declined. In October 2019, he attended an interview with Dr Vickers, who recorded that the appellant was cooperative, gave a clear and coherent history, and appeared fully orientated and cognitively intact. The appellant also attended sessions with Dr Davin Tan, on 19 September 2019; Dr Mark Lombard, Psychologist, on 27 September 2019; Dr Harrison, on 4 October 2019 and 22 November 2019; and Dr Adriaan Engelbrecht, on 5 November 2019 and 28 November 2019. The appellant thus had the awareness and ample opportunity to request his mother to lodge a review within the required three months. It has not been established that the appellant was so affected or traumatised by the personal injury giving rise to the review that he was unable to consider his review rights, and so advise his mother to lodge a review application.

[88] Fourth, the Corporation's decision of 27 August 2019 declined cover for a sensitive work-related mental injury, which (under Schedule 3 of the Act) required that there be a claim of sexual abuse. It was confirmed by the GP who lodged the claim that the claim did not involve sexual abuse. At the hearing of the present appeal, both Ms Koloni and the appellant clearly indicated that his claim was not for a sensitive work-related mental injury, which (under Schedule 3 of the Act) required that there be a claim of sexual abuse. It is evident, therefore, that the initial claim

(described as a sensitive claim), and hence the resultant application for review and appeal, are devoid of any ultimate merit.

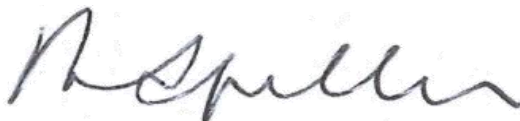
[89] Fifth, the Corporation's decision of 27 August 2019 declined the appellant's claim for cover for a work-related mental injury, and did not cover the subject of entitlements, which were not claimed by the appellant. It is therefore difficult to understand why a second review of this decision was lodged in respect of entitlements. In any event, the Corporation's decline to accept the late filing of review of the Corporation's decision on cover necessarily meant that any late review of entitlements would also not be accepted.

Conclusion

[90] In light of the above considerations, the Court finds:

- (a) The decision of the Reviewer dated 19 April 2021 is set aside, on the basis that the appellant meets the statutory criteria for cover for a personal injury that is a work-related mental injury.
- (b) The decision of the Reviewer dated 22 April 2022 is upheld, on the basis that the Corporation correctly decided that there was not sufficient evidence to show that extenuating circumstances prevented the appellant from lodging review applications within the required time.

[91] Because the appellant has succeeded on the primary appeal, he is entitled to costs. If these cannot be agreed within one month, the Court will determine the issue following the filing of memoranda.



P R Spiller
District Court Judge

Solicitors for the Respondent: Legal Services, ACC Justice Centre.