IN THE DISTRICT COURT
AT WELLINGTON

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

[2022] NZACC 226 **ACR 225/19; ACR 21/21**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	EVAN REECE Appellant
AND	ACCIDENT COMPENSATION CORPORATION First Respondent
AND	POWELL GROUP Second Respondent

Hearing: 18 November 2022
Held at: Hamilton/Kirikirioa

Appearances: M Darke for the Appellant and Mr Reece by audio link
K Anderson for the first respondent
A Sharp for the second respondent

Judgment: 30 November 2022

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Weekly compensation – s 103, and Personal injury caused by physical injury - s 26(1)(c), Accident Compensation Act 2001]

Introduction

[1] The following appeals have been filed:

(a) ACR 225/19: an appeal from the decision of a Reviewer dated 24 June 2019. The Reviewer dismissed an application for review of the decision

of WellNZ dated 12 September 2018, advising that it was unable to continue with Mr Reece's weekly compensation payments.[1]

(b) ACR 21/21: an appeal from the decision of a Reviewer dated 21 December 2020. The Reviewer dismissed an application for review of the decision of WellNZ 24 September 2020, declining cover for Complex Regional Pain Syndrome Type 1 ("CRPS").

Background

[2] Mr Reece was born in 1978. He worked as a storeman and a truck driver.

[3] On 27 October 2017, Mr Reece suffered a crush injury to his thumb following an accident at work. He received cover for that injury.

[4] On 29 October 2017, Mr Reece had thumb surgery and was discharged. In the ensuing months, Mr Reece was seen regularly at a plastic surgery unit by Dr Mike Foster, Hand Specialist, or one of his team.

[5] On 30 October 2017, 2017 a claim was lodged for Mr Reece as the result of the work accident on 27 October 2017. The accident description stated: "jammed R) thumb between plate and pin" and diagnoses were "fracture phalanges of hand (right)" and "Open wound fingers or thumb (Right)".

[6] On 7 November 2017, a decision letter was issued accepting cover for "Contusion - finger - unspecified Right, Closed fracture thumb distal phalanx - tuft Right and Open wound of finger(s) or thumb Right". As Mr Reece had been incapacitated from 27 October 2017, weekly compensation was commenced.

[7] On 14 December 2017, Mr Reece had a stay at work plan assessment.

[8] On 19 December 2017, a Consultant Radiologist reported: "no bony union is identified. There appears to have been slight volar displacement of the fracture fragment".

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[1] Powell Group employs WellNZ to manage its work injury claims.

[9] On 17 April 2018, Mr Reece was discharged from the hand team clinic. A note recorded that there had been delayed union, however, "on today's X rays that appears to be stable union and does not need to be followed in the future". The note further recorded that: "There is mild discomfort on attempted manipulation of the fracture, but the fracture is quite stable". A hand therapist was assigned, and Mr Reece was encouraged to do strengthening exercises.

[10] On 10 May 2018, Mr Reece's stay at work plan was updated, and noted that he was doing light duties/a driving role, and still working on reducing discomfort and increasing grip strength.

[11] On 29 May 2018, an Initial Occupational Assessment report was completed by Mr Paul Fennessy, who identified a number of roles Mr Reece could do.

[12] On 1 June 2018, Ms Bonnie Chuang, Hand Therapist, noted that Mr Reece was compliant with exercises and his strength was developing well.

[13] On 17 June 2018, Dr John Monigatti provided an Initial Medical Assessment report, and recorded:

> Mr Reece states that his symptoms are improving slowly. He has no pain in the right thumb at rest, although it feels tighter when he bends it.
>
> He complains of pressure-related pain in the tip of the thumb and nail that is throbbing in nature and can reach intensity of 6/10. He cannot use the thumb when lifting something heavy with that hand. Cold weather does not bother him and there is no disturbance of sleep. Although the thumb is partially numb he reports no swelling or changes of colour or temperature ...
>
> Mr Reece sustained a comminuted fracture of the distal phalanx of the right thumb and avulsion of the nail bed eight months ago in a work accident. Surgical treatment was required. He has regained nearly full function but has residual tenderness to pressure on the tip of the thumb with reduced pinch grip strength in what he considers he dominant hand.

[14] Dr Monigatti noted that Mr Reece was going to do a trial of normal duties on 18 June 2018, and that he had a good grip and pinch grip strength in hand. Dr Monigatti identified 10 suitable roles for Mr Reece.

[15] On 11 July 2018, Mr Reece's stay at work plan was reviewed. It was agreed that his physical recuperation was fully complete, and the issue now was his ongoing discomfort, which made him reluctant to try his old job.

[16] On 19 July 2018, Ms Chuang noted that Mr Reece was still indicating some sensitivity and weakness, and he was encouraged to continue with his prescribed exercises. Ms Chuang discharged Mr Reece as he had all the information needed to be able to continue with his therapy and was comfortable in the practice of the exercises.

[17] On 7 August 2018, Mr Reece's GP certified that Mr Reece had the capacity to work in his pre-injury occupation.

[18] On 10 August 2018, Ms Marsha Manning, Occupational Assessor, provided a Vocational Independence Occupational Assessment report, which identified appropriate jobs for Mr Reece.

[19] On 29 August 2018, Dr Courtenay Kenny completed a Vocational Independence Medical Assessment report. He noted that Mr Reece was working as storeman and driver, with his role comprising 65% driving, 30% slinging loads, and 5% cleaning. Dr Kenny identified eight jobs, including store-person, as medically sustainable. Dr Kenny noted that Mr Reece was capable of returning to his pre-injury role, and stated that this was the preferred option:

> While Mr Reece undoubtedly has some continuing mild structural and functional impairment in the right thumb, this should not preclude him from safely and effectively performing all aspects of his pre-employment role, particularly if he employs the strategies and any orthotic devices which have been recommended.
>
> If Mr Reece used an appropriate thumb splint/tube, there were no aspects of Mr Reece's work role that could not be undertaken because of any significant implications for safety. He reiterated that with the use of a simple orthotic device together with industrial gloves he would be medically fit and safe to perform all aspects of his previous work role.

[20] On 30 August 2018, WellNZ asked Dr Kenny to advise on Mr Reece's pre-injury role of a storeperson, considering both his specific role, and the generic job description of a storeperson. assessment. Dr Kenny reported:

> In my opinion, and particularly if using an appropriate thumb splint/tube, there are no aspects of Mr Reece's work role which he could not undertake because of any significant implications for safety.
>
> In my opinion, and particularly with use of a simple orthotic device (thumb splint/tube), together with industrial gloves as would be appropriate in that setting, Mr Reece is considered medically fit and safe to perform all aspects of his previous work role.

[21] On 10 September 2018, Dr Kenny provided a report under section 103 of the Act in regard to Mr Reece's pre-injury role as a storeperson. Dr Kenny confirmed that Mr Reece was medically fit and safe to perform all aspects of his pre-injury work role, particularly with the use of a simple orthotic device (thumb splint/tube).

[22] On 12 September 2018, WellNZ advised Mr Reece that he was fit to return to work in his pre-injury role, and that his weekly compensation (paid to 10 September 2018) was stopped. Powell Group offered Mr Reece a return to work based on lighter duties than his pre-injury role, but this was not taken up by Mr Reece.

[23] On 19 October 2018, an x-ray was done on Mr Reece's right thumb. Dr Bruce Allen, Radiologist, reported that the x-ray showed a fracture that was approximately 50% united, but that all looked well and no particular cause for ongoing pain was identified.

[24] On 6 December 2018, a review application was lodged in respect of WellNZ's decision of 12 September 2018.

[25] On 15 January 2019, Dr Kenny reviewed the x-rays from 19 October 2018, and reported:

> I have now reviewed all of the available X-ray images of Mr Reece's right thumb injury, including those performed 28.10.17 (the day following the injury), 19.12.17, 20.2.18 and 17.4.18 (all performed at CMDHB) and the imaging performed 19.10.18 (Horizon Radiology).
>
> The imaging 17.4.18 shows stable union of the distal phalangeal fracture right thumb as advised by the orthopaedic surgeon at the time, and that no further orthopaedic follow-up was required. The imaging 19.10.18 shows almost identical appearances, with stable bony union in a near anatomical position and with no complications.

> That is, there has been no change in the radiological appearance of this united distal phalangeal fracture over the 6-month period between April and October 2018.
>
> The most recent (19.10.18) X-rays provide no reason to change the opinion provided in my reports of 29.8.18, 10.9.18, or 2.10.18.

[26] On 29 April 2019, Mr Michael Foster, Orthopaedic and Hand Surgeon, first raised the possible diagnosis of CRPS. Dr Foster stated the Mr Reece's issues with his thumb were likely to be twofold: CRPS resulting from damage to the nerves in his thumb, and ongoing pain and discomfort relating to the fracture not having united. Both options appeared to indicate that a physical injury was causing the pain.

[27] On 10 May 2019, an MRI was conducted on Mr Reece's right thumb. Dr Andrew Clarke, Radiologist, reported marrow continuity in the radial side suggesting at least partial union, but there was mild oedema with the distal fragment.

[28] On 20 May 2019, Mr Foster revised his assessment, saying that, as the fracture had at least partially reunited, it was unlikely to be the cause of Mr Reece's pain.

[29] On 6 June 2019, review proceedings were held in respect of the decision of WellNZ dated 12 September 2018, that it would discontinue Mr Reece's weekly compensation payments. On 24 June 2019, the Reviewer dismissed the review on the basis that the evidence established that Mr Reece could undertake his pre-injury employment.

[30] On 9 September 2019, a Notice of Appeal (ACR 225/19) was lodged against the Reviewer's decision dated 24 June 2019.

[31] On 15 January 2020, Dr Keith Laubscher, Pain Specialist, reported as follows:

> … Focusing on his right hand, there is loss of soft tissue pulp in the distal phalanx. The right thenar eminence is a little reduced compared to the left. The thumb looks a little pale on the right compared to left. There is increased sweating in the distal thumb. There is deformity of his nail. There is sensory loss to touch and punctate over the distal phalanx. Sensation in the rest of the hand and forearm was normal. There is no widespread muscle in the arm or other body quadrants. …
>
> The clinical picture is of persistent right thumb pain following a crush injury. His pain has localized somatic, neural, sudomotor, vascular and trophic

> features. The features are consistent with a complex regional pain syndrome type 1 following his injury. It is difficult to determine to what extent underlying pathology might contribute noting that the fracture is not fully united. There are notable psychosocial stressors which would be expected to exacerbate his condition.

[32] In January 2020, Mr Reece sought cover for CRPS type 1, in relation to the ongoing discomfort he had in his thumb.

[33] On 11 September 2020, Dr Mark Floyd, Occupational Medicine Specialist, conducted a desktop review, and reported as follows:

> By way of background, CRPS (complex regional pain syndrome) type 1 is a localised pain disorder. It has been known as reflex sympathetic dystrophy (RSD). The key features are, pain, swelling, and what is called vasomotor dysfunction. It can occur after local trauma or surgery, but can also develop in the absence of any identifiable precipitating event.
>
> I cannot confirm the diagnosis of complex regional pain syndrome and am reliant on the reports of Dr Laubscher. If one were to look at recognised diagnostic criteria such as the American Medical Association Guides to the Evaluation of Permanent Impairment, they require local clinical signs of vasomotor changes with skin colour (mottled or cyanotic), skin temperature (cool), and edema, with pseudomotor changes of; skin (dry or overly moist), along with trophic changes including skin texture, skin tissue atrophy, joint stiffness, nail bed changes, and hair growth changes. I note the trophic changes of his nail would be related to the direct trauma and there was local trauma to account for change in pulp of the digit. I note that the vasomotor and pseudomotor changes were not reported previously. There is no radiographic report to suggest bone findings consistent with CRPS.
>
> I note there is no indication of CRPS from Dr Kenny and Dr Monigatti in their detailed reports or review of the information provided. This would appear to have developed sometime after the initial injury
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> I note that Dr Laubscher has diagnosed CRPS type I. The current taxonomy categorizes CRPS I "as occurring in the absence of definable nerve injury" and type II CRPS is causalgia that develops after nerve injury1. To that end, considering the period of time elapsed I would concur with Dr Laubscher that if this is a CRPS it would fit with a type I occurring in the absence of definable nerve injury. …
>
> … I can see no indication in the notes provided of development of a complex regional pain syndrome from the detailed reports of Dr Monigatti or Dr Kenny. As discussed above this would appear to have developed subsequently and the period of time elapsed would not be in keeping with time frame from development which is usually within months. By the time he saw Dr Monigatti it was nearly eight months and Dr Kenny at 10 months, with no indication of CRPS. To that end this has developed outside the time frame to suggest a causalgia. A review of the literature suggests up to 7 months.

[34] On 24 September 2020, WellNZ issued a decision declining Mr Reece cover for CRPS Type 1, on the basis that a clear link between Mr Reece's accident and the injury claimed could not be established.

[35] On 9 December 2020, review proceedings were held in respect of the decision of WellNZ dated 24 September 2020 declining cover for CRPS. On 21 December 2020, the Reviewer dismissed the appeal on the basis that there was insufficient evidence to conclude the presence of CRPS.

[36] On 15 February 2021, a Notice of Appeal (ACR 21/21) was lodged against the Reviewer' decision dated 21 December 2020.

[37] In an email of 1 May 2022, Dr Laubscher reaffirmed that Mr Reece's symptoms were consistent with a CRPS diagnosis. However, he also stated that Mr Reece's underlying fracture:

> … could also be a potential source for pain, local inflammation and sensitivity, and aggravate the features of CRPS 1. It is difficult for me to determine to what extent the underlying fracture itself, rather than CRPS 1, is responsible for his ongoing symptoms. That said, the diagnoses of fracture and CRPS 1 are not necessarily mutually exclusive. The presence of the fracture supports a post-traumatic cause for the neurovascular and autonomic features of CRPS 1, rather than some other spontaneous or imaginary unspecified cause.

Weekly compensation payments

Relevant law

[38] Section 103 of the Act provides:

> 103 Corporation to determine incapacity of claimant who, at time of personal injury, was earner, on unpaid parental leave, or recuperating organ donor
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> (1) The Corporation must determine under this section the incapacity of—
>
> (a) a claimant who was an earner at the time he or she suffered the personal injury:
>
> (b) a claimant who was on unpaid parental leave at the time he or she suffered the personal injury:
>
> (c) a claimant who was within a payment period under the Compensation for Live Organ Donors Act 2016 at the time he or she suffered the personal injury.

> (2) The question that the Corporation must determine is whether the claimant is unable, because of his or her personal injury, to engage in employment in which he or she was employed when he or she suffered the personal injury.

[39] Section 104 of the Act provides that, if the Corporation determines that the claimant is not incapacitated for employment, he or she is not entitled to weekly compensation.

[40] In *Millane*,[2] Beattie DCJ stated:

> [18] The determination of the claimant having a capacity for work has the most serious consequences for a person who would otherwise be still considered as being incapacitated and thereby being entitled to weekly compensation. Such a determination has the effect of depriving a claimant of an entitlement which is one of the central purposes of the Act, namely to compensate for an employee's loss of the ability to earn. "Capacity for work" is defined, in Section 15 of the Act, as meaning the insured's capacity, having regard to the consequences of his or her personal injury, to engage in employment. That definition must include a requirement to have regard to the consequences of all injuries for which a person has cover under the Act and which may affect his ability to engage in any particular form of employment.

[41] In *Irving*,[3] Laurenson J approved an earlier District Court decision in *Lamb*,[4] and outlined his approach as follows:

> [26] … The principle which I discern in [*Lamb*] is that when considering 37A [the predecessor to s 103 in 1992 Act] and in particular the words "in employment in which the person was engaged when the personal injury occurred", that consideration is not to be restricted to an assessment of the specific task being undertaken at the time of the injury. Rather, the question to be determined is whether the basic elements of, or skills required to perform the task, are peculiar to that specific task, or are they such that they can be applied in a wider sphere of work engaged in or carried out for pecuniary gain or profit. If the answer is the latter, then it is possible to define a field of employment within which it can reasonably be said a particular claimant can work, engage in or carry out for the purposes of pecuniary gain or profit.

[42] In *Delaney*,[5] Ongley DCJ noted:

> [40] There is a line of authority that incapacity is not brought about by inability to do exactly the same work as the claimant's former employment. For example a nurse may be able to engage in the generic work of nursing in a different field of nursing, *Lamb* [1998] NZACC 74; a truck driver may still have capacity to

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2 *Millane v Accident Compensation Corporation* [2004] NZACC 87.
3 *Irving v Accident Compensation Corporation* HC Whangarei AP53/01, 11 April 2003.
4 *Lamb v Accident Rehabilitation & Compensation Insurance Corporation* [1998] NZACC 74.
5 *Delaney v Accident Compensation Corporation* [2012] NZACC 331.

> drive light trucks, *Irving v ACC* (High Court, Whangarei, AP 53/01, April 2003, Laurenson J); an engineer may have capacity to do light engineering, *James* [2005] NZACC 86 …

[43] In *Crothers*,[6] Williams J stated:

> [44] The principle then is that if the claimant's basic employment skills have application to a wider field for which the claimant has capacity then incapacity is not established. In *Lamb*, the claimant could no longer work as a geriatric nurse (as had been the position at the time of injury) but was working as a psychiatric nurse. Incapacity was not established. In *Irving*, the claimant had been a truck driver but was now working as a courtesy coach driver. Once again substitutability meant that incapacity was not established.

Discussion

[44] The issue here is whether WellNZ correctly suspended Mr Reece's weekly compensation payments on the basis that he was able to engage in the employment he was in when he suffered his injury. Section 103(2) of the Act provides that the Corporation must determine whether the claimant is unable, because of his or her personal injury, to engage in employment in which he or she was employed when he or she suffered the personal injury. Section 104 provides that, if the Corporation determines that the claimant is not incapacitated for employment, he or she is not entitled to weekly compensation.

[45] Mr Darke, for Mr Reece, submits as follows. The assessment of Dr Kenney, under section 103, relied upon by the Corporation, is flawed. Dr Kenny did not consider relevant information and offered no analysis of the work tasks in his pre-injury employment, or insight into how Mr Reece would manage his pain. Had Dr Kenny had the later assessments of Mr Foster and Mr Laubscher, Dr Kenny may have reached a different conclusion on section 103.

[46] This Court notes the above submissions. However, the Court notes the following considerations.

[47] First, on 7 August 2018, Mr Reece's GP certified that Mr Reece had the capacity to work in his pre-injury occupation.

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6 *Crothers v Accident Compensation Corporation* [2017] NZHC 259.

[48] Second, Dr Kenney, Specialist Occupational Physician, reported that Mr Reece was fit to return to work in his pre-injury role. On 30 August 2018, WellNZ asked Dr Kenney to advise on whether Mr Reece could perform his pre-injury role of a storeperson, considering both his specific role, and the generic job description of a storeperson. Shortly beforehand, on 29 August 2018, Dr Kenny had provided a vocational assessment of Mr Reece, and his report showed that he (Dr Kenney) was well aware of the discomfort and limitations of Mr Reece's thumb. Dr Kenny, in his report of 10 September 2018, noted that he had reviewed the ANZSCO task description for storeperson and the details of Mr Reece's specific pre-injury employment role. In this report, Dr Kenney took into account the structural issues of Mr Reece's thumb. Dr Kenny advised that, particularly if Mr Reece used an appropriate thumb splint/tube, there were no aspects of his work role which he could not undertake because of any significant implications for safety. Dr Kenny found that, with appropriate equipment, Mr Reece was considered medically fit and safe to perform all aspects of his previous work role. It was on the basis of this report that WellNZ advised Mr Reece that he was fit to return to work in his pre-injury role, and that his weekly compensation was stopped.

[49] Third, Mr Reece has produced no countervailing medical reports to indicate that the GP's certification and Dr Kenny's assessment were incorrect on the evidence before them.

[50] Fourth, it is speculative to suggest that, had Dr Kenny had the later assessments of Mr Foster and Mr Laubscher, Dr Kenny may have reached a different conclusion. In January 2019, Dr Kenny, having reviewed x-rays of Mr Reece's thumb taken in October 2018, saw no reason to change his opinion expressed in August 2018. Mr Foster, in his report of April 2019, did not provide an opinion on Mr Reece's fitness for his pre-injury employment or on Dr Kenny's assessment, but addressed Mr Reece's current thumb condition and the ongoing pain that was caused. Dr Laubscher's report of January 2020, which focussed on the condition of Mr Reece's thumb at that time, did not address the merits of Dr Kenney's report.

[51] In light of the above considerations, this Court concludes that, on 12 September 2018, the Corporation correctly determined that Mr Reece was not incapacitated for employment, and so was not entitled to weekly compensation.

Complex Regional Pain Syndrome (CRPS)

Relevant law

[52] Section 26(1)(c) of the Act provides that personal injury means mental injury suffered by a person in the circumstances described in section 21. Section 27 of the Act provides that mental injury means a clinically significant behavioural, cognitive, or psychological dysfunction.

[53] In *Marino*,[7] Barber DCJ stated that the onus of proof rests on the appellant to establish cover on a balance of probabilities and that, generally, medical evidence will need to be relied on.

[54] In *Sinclair*,[8] Beattie DCJ stated:

> [14] It is clearly the case as a matter of law that for cover for a mental injury to be granted there must be established a clear causative link between the covered physical injury and the mental injury identified. It is the case that the causal link must be direct with an indirect link not being sufficient to establish an entitlement.

[55] In *Ambros*,[9] the Court of Appeal made the following comments on evidence as to causation:

> [65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense …
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> …

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7 *Marino v Accident Compensation Corporation* [1999] NZACC 65.
8 *Sinclair v Accident Compensation Corporation* [2013] NZACC 263.
9 *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

> [67] The different methodology used under the legal method means that a court's assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty -- see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture … Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence …

Discussion

[56] The second issue is whether, on 21 December 2020, WellNZ correctly declined Mr Reece cover for the mental injury CRPS, on the basis that it was not caused by his thumb crash injury on 27 October 2017. In terms of section 25(1)(c) of the Act, to receive cover for CRPS, Mr Reece must establish that he has suffered this mental injury, and that this injury was because of his physical injury.

[57] Mr Darke, for Mr Reece, submits that Mr Reece had continuing problems with pain and sensitivity, and in due course a CRPS developed. Dr Monigatti and Dr Kenny both recorded that Mr Reece had ongoing problems with pain. Dr Foster, Hand, Wrist and Elbow Surgeon, and Mr Laubscher, Pain Care Specialist, considered that Mr Reece had CRPS and that this arose from his physical injury, and no Orthopaedic Surgeon has given a contrary opinion.

[58] This Court acknowledges the above submissions. However, the Court refers to the following considerations.

[59] First, in the detailed assessment of Mr Reece by Dr Monigatti, in June 2018, and by Dr Kenny, in August-September 2018, there were no indications recorded that Mr Reece had CRPS. This Court observes that the assessment by Dr Monigatti took place nearly eight months after Mr Reece's injury and the assessment by Dr Kenny took place 10 months after the injury.

[60] Second, the letter of Dr Foster of 20 May 2019, some 19 months after Mr Reece's injury, provided only a tentative diagnosis of CRPS caused by the injury. In the letter, Dr Foster referred Mr Reece to Mr Laubscher for consideration of medical management of his nerve injury to his right thumb. The referral asked

Mr Laubscher to see whether he agreed with the diagnosis framed as: "I think his symptoms all stem from direct injury to his nerves following the crush and he has developed a CRPS type picture to this digit". (This diagnosis was substantially repeated in a letter of the same date to Mr Reece's advocate.)

[61] Third, the assessment of Dr Laubscher of 15 January 2020, two years and three months after the injury, did not provide a conclusive diagnosis of CRPS caused by the injury. Dr Laubscher assessed that the clinical picture was of persistent right thumb pain following a crush injury, with pain features consistent with a CRPS type 1 following his injury. However, Dr Laubscher acknowledged that it was difficult to determine to what extent underlying pathology might contribute, noting that the fracture was not fully united, and there were notable psychosocial stressors which would be expected to exacerbate his condition. In a later email of 1 May 2022, Dr Laubscher again acknowledged that it was difficult for him to determine to what extent the underlying fracture itself, rather than CRPS 1, was responsible for Mr Reece's ongoing symptoms.

[62] Fourth, Dr Floyd, Occupational Medicine Specialist, after reviewing Mr Reece's medical records, including the assessments of Dr Monigatti, Dr Kenny and Dr Laubscher, advised that Mr Reece's CRPS developed outside the timeframe to suggest a causal link with the injury. Dr Floyd noted that the literature on CRPS type 1 suggested that it developed within a timeframe of up to seven months. Dr Floyd observed that there was no indication of development of a CRPS from the detailed reports of Dr Monigatti or Dr Kenny, and, if there was an evolving CRPS, there would be some supportive findings by the time he was seen. Dr Kenny therefore assessed that Mr Reece's CRPS would appear to have developed subsequent to these reports, and the period of time elapsed would not be in keeping with the time-frame of development of CRPS after the injury.

[63] In light of the above evidence, this Court concludes that Mr Reece has not established that he suffered CRPS because of his physical injury.

Conclusion

[64] In light of the above considerations, the Court finds as follows:

(a) ACR 225/19: the decision of a Reviewer dated 24 June 2019 is upheld on the basis that WellNZ correctly decided that it was unable to continue with Mr Reece's weekly compensation payments.

(b) ACR 21/21: the decision of a Reviewer dated 21 December 2020 is upheld on the basis that WellNZ correctly declined cover for CRPS Type 1.

[65] The appeals are dismissed.

[66] I make no order as to costs.

P R Spiller
District Court Judge