IN THE DISTRICT COURT
AT WELLINGTON

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

[2022] NZACC 231 ACR 175/19

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

Hearing: 2 November 2022
Heard at: Christchurch/Ōtautahi

Appearances: The Appellant in person via Video Link
Mr I Hunt for the Respondent

Judgment: 1 December 2022

RESERVED JUDGMENT OF JUDGE C J MCGUIRE
[Personal Injury and Entitlement to surgery s 26, s 67 and Schedule 1 Accident Compensation Act 2001]

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[1] At issue in this appeal is the respondent's decision of 22 March 2019 declining to fund surgery for ulnar nerve compression at the cubital tunnel of the left elbow.

Background

[2] The appellant has cover for a left wrist sprain from an accident occurring on 20 December 2018.

[3] On 21 December 2018, the appellant attended the Temuka Health Care Clinic.

[4] The clinical note for that consultation from Sharon Hansen, Nurse Practitioner, reads:

> Sprained left wrist while using lawnmower. Was pushing his left arm and wrist harder as he was encouraged by the surgeon he saw recently. Wrenched his wrist while pulling a starter.
>
> Pain since originating in the fourth and fifth fingers and wrist. Causing electric shock-like sensations …

[5] Mr Harris was certified unfit for work for 14 days from 20 December 2018 and referred to physiotherapy.

[6] Mr Harris consulted Ms Hansen again on 28 December 2018. The appellant reported that he was "still trying to get his arm moving and working".

[7] On examination, Ms Hansen noted:

> Spasm in the deltoid on anterior and lateral lift. Plan, carry on with physio etch (sic) for another month.

[8] He was seen again by Ms Hansen on 5 January 2019 and a further ACC claim form was completed, with the diagnosis of "sprain tendon wrist or hand left side". In this claim form, the accident date is shown as 28 December 2018.

[9] On 10 January 2019, ACC accepted cover for the left wrist sprain.

[10] In clinical advice from ACC medical advisor, Dr Sharma, dated 14 January 2019, it was said that the injury sustained on 20 December 2018 could probably cause the covered diagnosis, thus the diagnosis appeared appropriate and reasonable. Dr Sharma was of the view that the covered diagnosis should resolve by 19 January 2019, four weeks after the date of injury.

[11] On 29 January 2019, Mr Harris had an x-ray of his left elbow. The findings were:

> Spurring arising from the medial epicondyle which may be associated with chronic epicondylitis.
>
> There is also slight cortical irregularity/minor spurring around the lateral epicondyle.
>
> No bony injury is seen. The joint spaces are well maintained. No signs of an elbow joint effusion.

[12] On 25 February 2019, orthopaedic surgeon, Mr Chandru, diagnosed Mr Harris with an ulnar nerve compression at the cubital tunnel of the left elbow. Mr Chandru recommended surgical decompression to treat this condition.

[13] Mr Chandru said:

> **Causal Link:**
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> The patient suffered a traction injury to his left elbow when attempting to pull a handbrake and felt a sharp pain in line with the ulnar nerve and since that time has had increasing pain and weakness in the left hand. There is a probable causal link with the mechanism of injury, presenting signs and symptoms and the proposed surgical treatment and the initial injury claim.
>
> …
>
> I have gone over the pros and cons of the recommended procedure, as this has all occurred following a specific injury event, I have forwarded my assessment report to ACC for consideration of approval for the proposed surgical treatment.

[14] Mr Chandru submitted an Assessment Report and Treatment Plan to ACC on 28 February 2019.

[15] In response, ACC wrote to Mr Harris on 4 March 2019 noting:

> Before we can make a decision we need to make sure the surgery is treating an injury caused by the accident of 28/12/2018, and not a pre-existing or unrelated health condition.

[16] ACC referred the file to orthopaedic surgeon Patrick Medlicott for comment.

[17] Dr Medlicott reported on 15 March 2019. Dr Medlicott said:

> It would appear that the problem was related to starting a lawn mower or pulling on a hand brake and developing some pain in the elbow.
>
> The mechanisms described would not cause acute ulnar nerve compression at the elbow, although certainly could aggravate previous underlying problems relating to ulnar nerve compression.
>
> I note the x-rays show abnormalities on the medial side of the elbow and some bony change, which would be sufficient to explain a mild elbow change which would be associated, often in this age demographic, on the medial side of the elbow with ulnar nerve symptoms and/or signs.
>
> …

> In this age demographic, unless there is a definite work-related gradual process problem with the elbow, it is most unlikely that this would be causally linked and the changes seen on imaging would be sufficient to explain a gradual process ulnar nerve problem which has been rendered symptomatic. Normally an ulnar nerve problem on the medial side of the elbow in this age demographic could be caused by an elbow fracture or fracture dislocation or dislocation, or a direct blow injury or laceration to the area over the medial side of the elbow. This does not appear to be the case here.

[18] On 22 March 2019, ACC wrote to Mr Harris declining his application for surgery funding to treat the left elbow ulnar nerve compression at cubital tunnel and declining to grant cover for this condition.

[19] On 25 March 2019, an application was lodged to review ACC's decision declining cover and surgery funding.

[20] A report from Jebb Lane, Hand Therapist, dated 17 April 2019, confirmed Mr Harris' clinical presentation was consistent with an ulnar nerve injury at the level of the elbow, with symptoms reported following the method of injury, adjusting the seat of the lawnmower. It is noted, however, that elsewhere in Mr Lane's report, he describes the mechanism of injury as:

> He was adjusting a 48 inch up and down lever of his ride-on lawnmower that raises and lowers the cutting bed. Bob stated that he was pulling the lever with the left hand when he felt a sharp pain up the entire right arm and noticed immediate moderate left wrist and hand swelling.

[21] On 30 April 2019, Mr Chandru provided a further report in support of the appellant's application for review. He reported there was probable ulnar nerve involvement because of a traction injury, causing further inflammation.

[22] In the course of his report, Mr Chandru said:

> The injury the client explained to me was of developing a sudden sharp pain in his left elbow when attempting to pull on a hand brake on the lawnmower.
>
> I feel strongly there is a pre-accident condition of medial epicondylitis with new bone formation in the medial epicondyle which could be the source of further inflammation and exacerbation of his ulnar nerve compression in this region. Taking into account the traction mechanism of the injury, this could have again further exacerbated the inflammation as a result which, in my opinion, has most likely resulted in the worsening compression of the ulnar nerve, leading to a loss of function in his left hand muscles supplied by the nerve.
>
> …

> In my opinion, considering his chronic medial epicondylitis on the medial side of the elbow joint with bony changes and sudden traction force has most probable than not has caused further inflammation and swelling in this region compromising the ulnar nerve function.

[23] In a decision of 28 June 2019, the reviewer dismissed the appellant's application for review.

[24] A medical case review dated 5 February 2020 was completed by Dr Robb, Consultant Occupational Medicine Specialist, who examined the appellant.

[25] On the question of general causation, Dr Robb said:

> The new left hand symptoms have not been adequately diagnosed and therefore it is impossible at this stage to provide a definitive explanatory rationale. The increase and spread of pain to involve the distal aspect of the left arm could be the result of deterioration of his regional pain syndrome, or the result of new injury as discussed in (1) above.

[26] In paragraph numbered 1, Dr Robb said:

> John has also developed further problems in the left arm over the last year, which he relates to an incident in which he pulled hard with the left hand on a tractor lever to raise mower blades. On that occasion he developed acute severe pain radiating from the left wrist into the left elbow, and has had persisting pain in this region …

[27] In a further report of 25 May 2021, Dr Medlicott said:

> There is no support medically for a causal link between the neuropathy of the left median nerve requiring carpel tunnel release and the episode as described. Again, there may be some relationship to his work, and work related things should be considered as this is a separate part of ACC with separate jurisdictions. Certainly, in my opinion, there is no evidence that the median nerve has been sufficiently injured to justify surgery by the episode as described.

[28] The appellant was examined by neurosurgeon Ronald Boet on 9 April 2021.

[29] In his report dated 20 August 2021, Mr Boet said:

> First my specific diagnosis after my consultation in April of this year was that of a post-traumatic ulnar and median nerve neuropathy. The reason for stating that it was post-traumatic was purely ***because of the onset of symptoms related to the date provided in relation to the timing of the injury***. Having developed his symptoms following a mechanical action of pulling up a lever without symptoms prior and with symptoms following this action, the presumption was made in some form or the other that this irritated his ulnar nerve resulting in his presentation and hence my diagnosis

> of post-traumatic neuropathy in regards to how this may have eventuated. I presume that some forceful stretch of the nerve in relation to the status quo of the anatomy around the elbow at this region caused irritation of the nerve resulting in associated clinical symptoms and signs.
>
> It is somewhat harder to quantify why both the ulnar and median nerves may have been affected by the hand action, as original presentation seemed to be more of an ulnar nerve type clinical syndrome, whilst the following nerve conduction study and during my clinical examination, he seems to have developed a regional pain syndrome affecting the whole hand, probably affecting the clinical assessment somewhat but most certainly at least suggesting that the median nerve may also be symptomatic.

[30] Mr Boet concludes his report "*Bob's clinical presentation started after the incident pulling up the lever and has been present since and hence a causative link seems to have been established"*.

[31] ACC has sought clinical comment from the Clinical Advisory Panel. That Panel reported on 10 December 2021. The Panel noted:

- The reviewer has noted the client's testimony as follows: "… on the day of the accident, he pulled up the lever that raises and lowers the mowing bed. It wasn't a rash pull, but a gentle pull. As he did this, he felt immediate pain through his left arm that went from his wrist up to his elbow". An alternative view of the mechanism from the ARTP was that of "forceful release of the lever".

- The Panel noted that it was biologically implausible that this mechanism could cause an injury to the median nerve and that it was much more likely that the client had symptoms of an underlying "gradual onset" median nerve problem.

[32] Under the heading "CAP Panel Comment", was this:

> A traction event to the nerve can occur when the nerve is forcefully stretched by a significant unanticipated force. The median nerve at the wrist and the ulnar nerve at the elbow are both protected and supported by their respective joints and soft tissue. As these joints move, so the nerves also have the capacity to move as part of their normal function. Therefore, even with milder traction forces, symptoms of irritation may occur but actual injury to the nerve is uncommon. The description of the accident as described (whether forceful or not) does not in the Panel's view have the necessary forces to have caused an injury to the nerve itself.

Appellant's Submissions

[33] Mr Harris told the court that he had had a career in heavy engineering programmes and works, involving such companies as NZ Steel and Transpower. He said that safety was the most important thing.

[34] He spoke of an injury he suffered by accident when a large branch snapped, knocking him to the ground, resulting in broken ribs and an injured shoulder.

[35] He said that after a long period of time he got himself moving, but that his shoulder was not fixed. He said two specialists recommended that he put more effort into the shoulder to free it up and that further operations were no use. He said he went to a physiotherapist and purchased a new ride-on tractor.

[36] He said his problem was lifting up the cutting system. He said there was pain right down through his elbow and that his wrists swelled up. This would improve after a period with physiotherapy and later the swelling would go down.

[37] The physiotherapist told him that the problem was with a nerve in his elbow.

[38] He said he never had any problems with his left elbow and wrist prior.

[39] He says that his case is the same as that of *Sparks*[1]. He therefore says that in his case, the need for assistance arises as a consequence of his covered injury.

[40] He confirms that his role in engineering was project management and that he was not physically doing the engineering work involved.

[41] He emphasised that to complete an accurate report, the medical professional needs to examine the person to validate the report.

[42] In his written statement, he said that the accident on 28 December 2018 has been misunderstood. He said that what he was doing was riding his ride-on lawnmower and he needed to pull up the cutting deck. He said "I quickly pulled the lever firmly upwards and at

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1 *Sparks v Accident Compensation Corporation* [2006] NZACC 45 at [32].

that precise moment I felt significant pain in my elbow and numbness in my hand. I had never experienced this before. This was instantaneous and not a gradual onset issue.".

[43] He said that Mr Chandru believed that the appellant sustained a traction injury to the ulner nerve in the accident, which led to the immediate onset of symptoms and the resulting need for surgery. Mr Harris said "I did not need surgery before the accident on 28/12/2018, however now I do".

[44] He said that Dr Medlicott did not consider whether the injury could have happened more easily due to the some pre-existing factors. He says he understands that vulnerability to an injury due to pre-existing changes does not disqualify a claim from cover providing there is an accident and a new injury.

[45] He notes that Mr Lane, Hand Therapist, in his report said "Bob's clinical presentation is consistent with an ulner nerve injury at the level of the elbow, with symptoms reported following the method of injury adjusting the seat of the lawnmower".

[46] He says he believes the reviewer misinterpreted the 13 April 2019 report of Mr Chandru. He says:

> Mr Chandru has clearly stated that the accident caused a traction injury, which caused further inflammation of the elbow area, which has compromised the function of the ulnar nerve. So while there may have been inflammation in the elbow before the accident, the traction injury caused inflammation in its own right, which compromised the ulnar nerve, leading to the pain and loss of function I now have.

[47] The appellant referred to *Sparks*, where the Court said:

> In the absence of evidence that the underlying condition required surgery. I consider that the need for surgery was caused by the covered injury, namely the probable significant tear causing the failure of a rotator cuff that was otherwise functional. I regard this as a claim in which there is a fairly fine balance, but one where the necessary causation is shown.

[48] He says that neurosurgeon, Mr Boet's opinion should carry significant weight and that Mr Boet personally examined him. Mr Boet agreed that the immediate onset of symptoms was a strong indication that an injury had occurred at the moment of the accident.

[49] The appellant says that this is common sense, given the lack of any symptoms prior.

[50] He acknowledges that Mr Boet agrees that most cases of ulnar nerve compression are a gradual onset condition. However, in the appellant's case, Mr Boet believes that a traction injury, on the background of some pre-existing changes, is the likely cause of his ulnar nerve injury and the need for surgery.

[51] He says that as an ACC levy payer for many years, he is appalled at the cost ACC has gone to, to avoid paying for a relatively inexpensive surgery. He says the cost of review and now appeal will far outweigh the cost of the requested surgery and that in his opinion, this is fiscally irresponsible.

[52] He seeks reimbursement of the cost of Mr Boet's report in the sum of $1,495.00.

Respondent's Submissions

[53] In his written submissions, Mr Hunt refers to section 26(2) of the Accident Compensation Act 2001 which says:

> Personal injury does not include personal injury caused wholly or substantially by a gradual process, disease, or infection, unless it is a personal injury of the kind described in section 20(2)(e)2(h), that is to say, a gradual process injury.

[54] Mr Hunt also notes that section 26(4)(a) excludes personal injury caused wholly or substantially by the aging process.

[55] Mr Hunt refers to *McDonald*[2] where the Court cited with approval the comments of the District Court in *Hill*[3]:

> … If medical evidence establishes that there are pre-existing degenerative changes which are brought to light, or which become symptomatic as a consequence of an event that constitutes an accident, it can only be the injury caused by the accident and not the injury that is the continuing effects of the pre-existing degenerative condition that can be covered. The fact that it is the event of the accident which renders symptomatic that which previously asymptomatic does not alter that basic principle. The accident did not cause the degenerative changes, it just caused the effect of those changes to become apparent and of course, in many cases, for them to become the disabling feature.

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2 *McDonald v Accident Rehabilitation and Compensation Insurance Corporation* [2002] NZAR 970 at [26].
3 *Hill v Accident Rehabilitation and Compensation Insurance Corporation* [1998] NZACC 189.

[56] Mr Hunt too refers to *Sparks*[4] where Judge Ongley said:

> … The legal test for entitlements requires sufficient evidence to show that the need for assistance arises as a consequence of the covered injury. Where there is an accompanying degenerative or gradual process condition, entitlements will not be available if the personal injury is caused wholly or substantially by that condition.

[57] Mr Hunt also refers to what the Court of Appeal said relating to causation in the case of *Ambros.*[5]

[58] Mr Hunt comments on Mr Boet's report of 21 August 2021. He acknowledges that while in this case there is a temporal connection between what occurred on the ride-on mower and the appellant's presentation to Temuka Health Care Limited, this is equally consistent with what is evident when an underlying condition becomes symptomatic and that this does not mean that the event itself is the cause of the injury.

Appellant's Reply

[59] Mr Harris said that he went to highly experienced medical professionals and they told him he needed surgery. He says he does not know whether his tree damaged shoulder had a part to play in his injury on this occasion.

[60] Mr Harris said that he had never had any experience like this before. He said "you go to doctors to try and sort it out, but people can write reports without examining you". He submits there is not a great deal of substance unless you are properly examined.

[61] He says that he tried to take the proper path by seeing doctors personally and that no proper weight can be given to a report unless there has been a proper personal examination.

Decision

[62] In cases of this kind, it is usually very important to look carefully at the medical and other records that survive from the time closest to the accident event.

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4 supra n1 at [29].
5 *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

[63] In this case, the documented record appears to include some discrepancies. However, viewing the documentary record overall, I do not consider that they are of any substantial significance.

[64] The record shows that the appellant attended the Temuka Health Care Centre on 21 December 2018, where he was seen by Practice Nurse Sharon Hansen. The ACC injury claim form that she completed recorded the time of the accident as being at 3.00 pm on 20 December 2018 with the description of the accident "wrenched his left wrist while working on his lawn mower". A left hand wrist tendon sprain was diagnosed. The appellant was referred to a physiotherapist and ruled unfit for work for 14 days.

[65] The clinical notes say that he "wrenched his wrist while pulling a starter" and that he was pushing his left arm and wrist harder as he had been encouraged to by the surgeon he saw recently.

[66] There then appears to be a receptionist note on 27 December which says:

> Bob asked me to advise Sharon he is still having problems with his left wrist/shoulder but will review.

[67] The following day he saw Practice Nurse Hansen again and the note says:

> Wrenched his arm while trying to mow the lawn, is still trying to get his arm moving and working.

[68] OE (on examination):

> Spasm in the deltoid on anterior and lateral lift. Plan, carry on with physio etch for another month.

[69] Ms Hansen has another note on 5 January 2019:

> Bob injured his left wrist after pulling an adjuster on the lawnmower. Was told by his ChCh specialist to use his shoulder and arm more, so tried to while doing the lawn.

[70] Although in some of the records the accident date is shown as 28 December 2018, I am satisfied on the basis of the foregoing that it occurred on 20 December 2018. Furthermore, it is plain that the wrench of his left wrist happened by pulling up the lever that raises and lowers the mowing bed of his mower.

[71] At the review hearing, the reviewer asked:

> Reviewer: Now when you pulled the lever, was it a forceful pull? Was it a sudden pull? What sort …
>
> Mr Harris: I, well, through my engineering skills, you'd normally operate things gently up, you know, and down. So it wasn't a rash pull. It was – is – just a gentle pull up. And that is where I felt everything go in my hand.

[72] A month later, on 21 January 2019, Practice Nurse Hansen notes:

> Bob continues to have issues with his left forearm, which swells, wrist and hand. Pain radiation to his neck, some days so much so that he can't lie on it. Loss of strength left hand.

[73] Following this, and the failure of physiotherapy to remediate the issue, an x-ray was taken and on 25 February 2019, the appellant saw Mr Chandru, Orthopaedic Hand/Wrist and Upper Limb Surgeon. Mr Chandru said in his report of 25 February 2019:

> **Causal Link:**
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> The patient sustained a traction injury to his left elbow when attempting to pull a handbrake and felt a sharp pain in line with the ulnar nerve and since that time has had increasing pain and weakness in the left hand. There is a probable causal link with the mechanism of injury.

[74] Dr Chandru also refers to the fact that the appellant suffered a shoulder injury earlier the previous year and that the shoulder was manipulated, followed by conservative treatment.

[75] Dr Chandru goes on:

> Clinically he has all the classical signs of ulnar nerve compression at the cubital tunnel for which I have recommended a surgical decompression plus or minus anterior transposition. I have gone over the pros and cons of the recommended procedure and as this has all occurred following a specific injury event, I have forwarded my assessment report to ACC for consideration of approval of the proposed surgical treatment.

[76] ACC's Principal Clinical Advisor – Orthopaedic Surgery provided clinical comment on 15 March 2019. Dr Medlicott said:

> In this age demographic, unless there is a definite work related gradual process problem with the elbow, it is most unlikely that this would be causally linked and the changes seen on imaging would be sufficient to explain a gradual process ulnar nerve problem, which has been rendered symptomatic. Normally an ulnar nerve problem on the medial side of the elbow in this age demographic could be caused by an elbow

> fracture or fracture dislocation or dislocation, or a direct blow injury or laceration to the area over the medial side of the elbow. This does not appear to be the case here.

[77] The next report is that of Jebb Lane, Hand Therapist, who concludes:

> Bob's clinical presentation is consistent with an ulner nerve injury at the level of the elbow, with symptoms reported following the method of injury adjusting the seat of the lawnmower.

[78] Mr Chandru reported again on 30 April 2019.

[79] Mr Chandru says that he agrees with Dr Medlicott's analysis and comments:

> However the x-ray findings on the medial side are in the epicondyle rather than the medial joint line, which is not an osteophyte and there is no direct pressure on the nerve due to the bony ossification over the medial epicondyle, but is rather due to his chronic epicondylitis. I am otherwise in agreement with his comment on ulnar nerve problems which is more common in Mr Harris' age demographic and usually is a result of a direct blow to the medial aspects or lacerated injury in this area.
>
> As mentioned earlier, in my opinion considering his chronic medial epicondylitis on the medial side of the elbow joint with bony changes and sudden traction force hass most probable than not has caused further inflammation and swelling in this region compromising this ulnar nerve function.

[80] On 2 May 2019, Mr Chandru clarified a point with the appellant's advocate saying:

> To clarify further your question concerning the mechanism of injury (traction injury) there is probably, a new injury to the medial common flexor origin which could have resulted in flare up of inflammation and swelling in the medial side of his elbow and compromising the function of the ulnar nerve.

[81] Following the review hearing, Dr Martin Robb, specialist in occupational and aerospace medicine, completed a medical case review on 5 February 2020.

[82] Dr Robb noted that:

> The appellant had ongoing problems in the left shoulder dating from injuries to the shoulder on 4 December 2015 and 16 January 2017 – the first causing a moderate sub-deltoid bursitis and intra articular synovitis complicated by development of a frozen shoulder, and the second injury resulting in a new sub-acromial bursitis with secondary impingement requiring sub-acromial decompression surgery. He has had persisting left shoulder problems since then requiring regular pain clinic OPD treatments and it is Mr Mohammed's opinion that his ongoing left shoulder problems are caused by a post-traumatic regional pain problem.
>
> John has also developed further problems in the left arm over the last year, which he relates to an accident in which he pulled hard with the left arm on a tractor lever to

> raise mower blades. On that occasion, he developed acute severe pain radiating from the left wrist into the left elbow, and has had persisting pain in this region ranging between 3/10 and 10/10 on a visual analogue scale.

[83] As to causation, Dr Robb says:

> The new left hand symptoms have not been adequately diagnosed and therefore it is impossible at this stage to provide a definitive explanatory rationale. The increase and spread of pain to involve the distal aspect of the left arm could be the result of deterioration of his regional pain syndrome or the result of new injury as discussed.

[84] Ronald Boet, Neurosurgeon on his report dated 20 August 2021, said:

> Firstly, my specific diagnosis after my consultation in April of this year was that of a post-traumatic ulnar and median nerve neuropathy. The reason for stating that it was post-traumatic was purely because of the onset of symptoms related to the date provided in relation to the timing of the injury. Having developed his symptoms following a mechanical action of pulling up a lever without symptoms prior and with symptoms following the action, the presumption was made in some form or the other than this irritated his ulnar nerve, resulting in his presentation and hence my diagnosis of post traumatic neuropathy. In regards to how this may have eventuated, I presume that some forceful stretch of the nerve in relation to the status quo of the anatomy around the elbow at that region caused irritation of the nerve resulting in associated clinical symptoms and signs.
>
> …
>
> Whilst there may be an underlying chronic asymptomatic ulnar and/or median neuropathy that played a role in making the nerve more vulnerable to injury, the fact that his symptoms started after the index event suggests that the event at least substantially contributed to Bob's presentation and hence my diagnosis of post-traumatic neuropathy and request for funding under the ACC process.
>
> …
>
> The main issue at hand really as far as I am concerned is that whatever the underlying cause, Bob's clinical presentation started after the incident pulling up the lever and has been present since and hence a causative link seems to have been established.

[85] Finally, there is the contrary opinion of the Clinical Advisory Panel in its report of 10 December 2021. The Panel noted the appellant's evidence before the reviewer and said "the Panel noted that it was biologically implausible that this mechanism could cause an injury to the median nerve and that it was much more likely that the client had symptoms of an underlying "gradual onset" median nerve problem.

[86] The Panel did say, however:

> Therefore, even with milder traction forces, symptoms of irritation may occur, but actual injury to the nerve is uncommon. The description of the accident is associated (whether forceful or not) does not in the panel's view have the necessary forces to have caused an injury to the nerve itself.

[87] From this review of the evidence from the medical experts, there is general acceptance that the forces involved in this "accident" were not great. That leads the panel to the view that the description of the accident did not have the forces necessary to cause an injury. However, I do not regard what the Panel says as completely excluding the possibility that an injury did occur.

[88] I find that otherwise the medical opinions obtained, and in particular those of Dr Martin and Dr Boet, obtained following the review decision tipped the balance in favour of a conclusion that the appellant's presentation was caused by injury that occurred on 20 December 2018 when he pulled up the lever on his tractor using his left arm.

[89] This was against the background of the appellant being advised by his Christchurch specialist to use his shoulder and arm more. The words used in the initial consultation notes are that he "wrenched his wrists while pulling a starter". The effect was traumatic enough for him to attend the Temuka Health Care Centre the following day. On that day, he reported pain originating in the fourth and fifth fingers and wrist, causing electric shock-like sensations.

[90] Accordingly, I find that for the purposes of the Act, the appellant did suffer injury by accident and therefore the appeal is allowed.

[91] Should there be any issue as to costs, the parties have leave to file memorandum in respect thereof.

CJ McGuire
District Court Judge

Solicitors: Young Hunter, Christchurch