

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 95**

**ACR 214/21  
and 236/21**

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

Judgment on the papers.

Submissions: K Koloni for the Appellant  
B Marten for the Respondent

Date of Judgment: 19 May 2022

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**JUDGMENT OF JUDGE P R SPILLER  
[Late filing of an appeal to the District Court –  
s 151, Accident Compensation Act 2001]**

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**Introduction**

[1] The appeals in this matter were lodged by Ms Watson as follows:

- (a) Appeal ACR 214/21 was lodged on 16 September 2021. The appeal was filed in respect of a decision of a Reviewer dated 17 August 2021, declining jurisdiction to consider Ms Watson's claim for deemed cover for a chronic regional pain syndrome.

- (b) Appeal ACR 236/21 was lodged on 19 October 2021. The appeal was filed in respect of a decision of a Reviewer dated 20 September 2021, granting Ms Watson's request to withdraw her appeal and awarding her costs.

[2] On 27 April 2022, Judge Spiller issued a Minute which directed that Ms Watson formally apply for leave to file the appeal out of time and set out the reasons why the appeal was filed late. Judge Spiller directed that Ms Watson file a memorandum formally applying for leave to appeal out of time, with supporting reasons, by 11 May 2022; the Corporation file a memorandum in response by 25 May 2022; and Ms Watson will file a brief memorandum in reply by 1 June 2022.

[3] On 12 May 2022, Ms Koloni submitted that the appeal was filed late because of a misunderstanding on when the 28-day period started, not understanding that the period is calculated it from the day after the review decision was received.

[4] On 18 May 2022, Mr Marten for the Corporation noted that there was a very short delay in each appeal, apparently as a result of an inadvertent error on the part of Ms Watson's advocate, and that there had been no prejudice to the Corporation.

[5] In view of the outcome of this application, it is not necessary for this Court to receive a reply from Ms Watson to the Corporation's submission.

### **Relevant law**

[6] Section 151 of the Accident Compensation Act 2001 (the Act) provides:

- (1) An appellant brings an appeal by sending a notice of appeal to, or filing a notice of appeal in, a specified registry.

...

(3) The notice must be received by the specified registry—

- (a) within 28 days after the date on which the reviewer gives a copy of the review decision to the appellant; or

...

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

[7] In *Almond v Read*,<sup>1</sup> Arnold J (for the Supreme Court) outlined the following principles to guide the exercise of the discretion to grant or deny an extension of time to lodge an appeal:

[38] The ultimate question when considering the exercise of the discretion to extend time under r29A is what the interests of justice require. That necessitates an assessment of the particular circumstances of the case. Factors which are likely to require consideration include:

- (a) *The length of the delay.* Clearly, the time period between the expiry of the appeal date and the filing of the application to extend time is relevant. But in a case where there has been a slip-up and the appeal date has been inadvertently missed, how quickly the applicant sought to rectify the mistake after learning of it will also be relevant. Obviously, the longer the delay, the more the applicant will be seeking an “indulgence” from the court and the stronger the case for an extension will need to be.
- (b) *The reasons for the delay.* It will be particularly relevant to know whether the delay resulted from a deliberate decision not to proceed followed by a change of mind, from indecision, or from error or inadvertence. If from a change of mind or from indecision, there is less justification for an extension than where the delay results from error or inadvertence, particularly if understandable.
- (c) *The conduct of the parties, particularly of the applicant.* For example, a history of non-cooperation and/or delay by an applicant may be relevant.
- (d) *Any prejudice or hardship to the respondent or to others with a legitimate interest in the outcome.* Again, the greater the prejudice, the stronger the case will have to be to justify the grant of an extension of time. Where there is significant delay coupled with significant prejudice, then it may well be appropriate to refuse leave even though the appeal appears to be strongly arguable.
- (e) *The significance of the issues raised by the proposed appeal, both to the parties and more generally.* If there is a public interest in the issues, the case for an extension is likely to be stronger than if there is no such interest.

## Discussion

[8] In terms of section 151(3)(a) of the Act, was required to file a Notice of Appeal against the Reviewer’s decision within 28 days after the date on which the Reviewer provided a copy of the review decision to him. The Reviewer’s decision was dated, which left a date of around for the filing of the Notice of Appeal. In the

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

event, the Notice of Appeal was filed on. This Court is now being asked to exercise its discretion to allow a longer time for filing the Notice of Appeal (in terms of section 151(3)(c)). In deciding whether to exercise its discretion, this Court will follow the guidelines provided by the Supreme Court in *Almond v Read*.<sup>2</sup>

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

[9] The Supreme Court noted that the longer the delay, the more the applicant will be seeking an indulgence from the Court and the stronger the case for an extension would need to be; and that, in a case where there had been a slip-up and the appeal date had been inadvertently missed, how quickly the applicant sought to rectify the mistake after learning of it would also be relevant.

[10] This Court notes that the delay in Appeal ACR 214/21 is two days, and the delay in Appeal ACR 236/21 is one day. Both are very short periods, the result of inadvertence on the part of Ms Watson's advocate.

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

[11] The Supreme Court noted that, if the delay arose from a change of mind or from indecision, there was less justification for an extension than where the delay resulted from error or inadvertence, particularly if understandable.

[12] Ms Koloni submitted that the appeals were filed late because of a misunderstanding on her part as to when the 28-day period started, not understanding that the period is calculated from the day after the review decision was received.

[13] This Court is satisfied that Ms Watson's delay arose out of error on the part of her advocate, for which Ms Watson is not responsible.

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

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

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<sup>2</sup> Above, note 7.

[15] This Court is not aware of any history of non-cooperation and/or delay by Ms Watson herself.

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

[16] The Supreme Court noted that, where there is significant delay coupled with significant prejudice, then it might well be appropriate to refuse leave even though the appeal appeared to be strongly arguable.

[17] This Court notes that the delays in this case are not significant. The Corporation notes that there had been no prejudice to the Corporation. The Court considers it unlikely that there is prejudice or hardship caused by the delays to others with a legitimate interest in the outcome.

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

[18] The Supreme Court observed that, if there is a public interest in the issues, the case for an extension is likely to be stronger than if there is no such interest.

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

**The Decision**

[20] In light of the above considerations, this Court finds that Ms Watson has established that the interests of justice require the exercise of the Court's discretion to sustain her application for leave to file her appeals out of time, which is accordingly granted. The Court now expects the parties to the appeal to file joint memoranda outlining how the appeals will be expeditiously processed.

[21] There are no issues as to costs.



P R Spiller  
District Court Judge