

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 40

ACR 83/21

UNDER THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPEAL TO
THE HIGH COURT ON A QUESTION OF LAW
UNDER SECTION 162 OF THE ACT
BETWEEN MICHELLE HAGAR
Appellant
AND ACCIDENT COMPENSATION CORPORATION
Respondent

Hearing: On the papers

Appearances: The Appellant self-represented
Ms A Douglass for the Respondent

Judgment: 17 March 2023

**RESERVED JUDGMENT OF JUDGE C J MCGUIRE
(Leave to appeal to the High Court; Section 162 Accident Compensation Act 2001)**

[1] The applicant seeks leave to appeal to the High Court against a judgment of the District Court in this matter, delivered by Judge Spiller on 29 July 2022.¹

[2] Section 161(2) of the Accident Compensation Act 2001 provides:

A party to an appeal who is dissatisfied with the decision of the District Court as being wrong in law may, with the leave of the District Court, appeal to the High Court.

¹ *Hagar v Accident Compensation Corporation* [2022] NZACC 149.

Background

[3] The applicant has an accepted sensitive claim and has cover for mental injury (PTSD) in relation to that claim. She also has cover, since 2017, for two back injuries and associated chronic pain.

[4] The applicant has a German rottweiler named Bree. This dog has completed numerous training programmes and is plainly of great assistance to the applicant. However, the applicant and her dog have limited access to commercial premises as Bree is not certified as a Disability Assist Dog.

[5] Due to the unavailability of suitable New Zealand dog trainers, the applicant enrolled Bree with “Capable K9s” in Australia. The applicant and Bree underwent training via Skype funded by the applicant.

[6] The Corporation did not contribute to the cost of Bree’s training. However, on 2 July 2020, the Corporation’s technical specialist concluded that on balance, considering the nature of the applicant’s injury, her beliefs, individual needs, and circumstances, it seemed reasonable to contribute towards the cost of the dog’s training and certification as a disability assist dog, subject to certification being possible.

[7] In a decision of 29 March 2021, the reviewer dismissed the review on the basis that the restrictions imposed by the Dog Control Act 1996 prevented the Corporation from certifying the dog as a “Disability Assist Dog”. The reviewer noted that she could not make a decision binding the Corporation to change this decision should the law as to Disability Assist Dog certification change in the future, as the reviewer’s jurisdiction was limited to reviews of decisions as they presently stood.

[8] In the decision of Judge Spiller that is the subject of this application for leave to appeal, Judge Spiller said:

[30] First, the provision of social rehabilitation, such as that claimed by Ms Hagar, is one within the discretion of the Corporation (as indicated by the word “may” in s 82(1) of the Act) and the criteria for a successful appeal are stricter than for a general appeal. The grounds are restricted to:

(1) Error of law or principle;

- (2) Taking account of irrelevant considerations;
- (3) Failing to take account of a relevant consideration; or
- (4) The decision is plainly wrong.

[9] Judge Spiller went on to note that the Corporation was under a statutory obligation to consider if the social rehabilitation funding was necessary and appropriate and of the quality required, to assist in restoring the applicant her independence to the maximum degree practicable.

[10] As at the date of the Corporation's decision, the applicant's dog could not obtain certification required under the Dog Control Act 1996, Judge Spiller found that the Corporation correctly concluded that the rehabilitation outcome of using the dog for support in public places could not be achieved, and so the request for funding for training was correctly declined.

[11] Judge Spiller also found that because the inability to obtain certification of the applicant's dog continued up to and beyond the review proceedings, the reviewer correctly found that the Corporation's decision declining funding was correct.

[12] Judge Spiller noted:

[32] ... A reviewer is not empowered to make a decision binding the Corporation to change its decision should the relevant law change in the future.

[13] Judge Spiller accordingly found the Corporation, in its decision of 28 July 2020, properly exercised its discretion in relation to Ms Hagar's social rehabilitation in declining her request for funding for training her dog, Bree. He found that it has not been established that the Corporation made an error of law or principle, took account of irrelevant considerations, failed to take account of a relevant consideration, or made a decision that was plainly wrong.

[14] Judge Spiller therefore upheld the reviewer's decision of 29 March 2021.

Applicant's Submissions

[15] In her submissions, the applicant asks a number of questions, including:

- (a) Where in the law (Dog Control Act 1996) does it state that a disability assist dog must be trained by a New Zealand provider?
- (b) Where in the law does it state that it is illegal to source business overseas when all avenues are exhausted in New Zealand?
- (c) The applicant asks why Mitre 10 and Bunnings and Saint Claire Esplanade and dog friendly businesses (as a few examples) are not considered public places?

[16] The applicant also says:

Bree was trained in New Zealand by Ms Hagar, with an Australian provider, Capable K9s, before being assessed and accepted by K9SMD in January 2022. ACC is now paying for this training with K9SMD.

[17] The applicant also refers to s 82 of the Act and submits that reference in that section to an aid or appliance includes an assistant dog, which is also recommended by an occupational therapist, supported by the applicant's GP, her physiotherapist and several ACC psychology advisors, technical specialists and a supported assessor.

[18] The applicant also notes that Bree has the legal status of a Disability Assist Dog and "will go on to certified as an assistance dog (Disability Assist Dog) with K9SMD listed in Schedule 5 of the Dog Control Act 1996".

[19] The applicant submits that the Corporation incorrectly concluded that the rehabilitation outcome using Bree in public places could not be achieved, so the request for funding training was incorrectly declined. She submits the relevant law amendment has little to no effect here, when the reviewer and ACC are led to believe that the rehabilitation goals, in public places with the assistance of Bree, were not achieved when they clearly were achieved.

[20] The applicant therefore submits that the Corporation, reviewer and the Court failed to properly exercise their discretion in relation to her social rehabilitation in declining the request for funding for the training of Bree. She also submits that it should be evident that the

Corporation made an error of law or principle, took into account irrelevant considerations, failed to take into account relevant considerations and made a decision that is plainly wrong.

Respondent's Submission

[21] On behalf of the respondent, Ms Douglass submits the following:

- (a) None of the factual findings challenged by the applicant are matters that can properly be argued on appeal to the High Court;
- (b) Neither the leave application nor Ms Hagar's submissions disclosed any seriously arguable error of law said to have been made by the District Court; and
- (c) The appeal decision of Judge Spiller was wholly correct, as were the review decision and ACC's decision.

[22] Ms Douglass refers to Judge Spiller's decision, where he said:

[32] ... the inability to obtain certification of Ms Hagar's dog continued up to and beyond the review proceedings and the reviewer's decision. The review thus correctly found that the Corporation's decision declining funding was correct.

[23] She also notes that Judge Spiller then said that the changing of the law governing the certification of dogs did not have retrospective effect. Therefore, as Judge Spiller said, the correctness of the Corporation's decision was unaffected by the change in the law.

[24] Ms Douglass also submits that in both the District Court and on review, Ms Hagar's position was that she was relying on s 82 of the Act. She submits that Ms Hagar's position was in keeping with her original request to ACC for an entitlement, which was a request lodged for "other social rehabilitation" under s 82.

[25] As s 81 was not raised or considered by the District Court, there can be no error of law in that regard.

[26] She notes that the primary justification for the appeal decision was that, at the date of ACC's decision, Bree could not be certified as a Disability Assist Dog.

Decision

[27] It is important in this case to restate what the Accident Compensation Act 2001 provides for on review and appeal.

[28] Section 34 provides, so far as it is relevant to this case, that a claimant may apply to the Corporation for a review of any of its decisions on the claim (s 134(1)(a)). That is what the applicant has done. The decision reviewed was ACC's decision of 28 July 2020 declining Ms Hagar's request for "other social rehabilitation" under s 82 of the Act, to fund disability assist dog training for a Disability Assist Dog that is needed because of the covered injury.

[29] I note that the reviewer, at paragraph 47 of her decision, says:

Ms Hagar has accepted on Mr Hardie's advice that, at this point in time, the restrictions posed by Dog Control Act 1996 are insurmountable and it is going to take a law change by Parliament to allow Bree to be certified as a DAD.

[30] Judge Spiller, in his decision on appeal, said:

[32] ... A reviewer, in making a decision following a review hearing, is required to address the correctness of the Corporation's decision before the reviewer. A reviewer is not empowered to make a decision binding the Corporation to change its decision should the relevant law change in the future.

[31] Judge Spiller noted that the relevant change in the law governing the certification of dogs which took effect after the reviewer's decision and well after the Corporation's decision, did not have retrospective effect.

[32] Should the Corporation have been making a decision on the matter in issue after the entity K9SMD was added to Schedule 5 of the Dog Control Act, then plainly its decision would have been different (assuming the criteria of s 82 were met). However, there appears to be no basis in law to argue that at the time, the Corporation did anything other than to apply the law as it then stood.

[33] Accordingly, I must find that this application for leave to appeal must be dismissed on the basis that the appellant has not identified a question of law that is serious and arguable. Accordingly, therefore I must decline the application for leave to appeal.

[34] I make no order as to costs.



CJ McGuire
District Court Judge

Solicitors: AJ Douglass, Barrister, Wellington for the Respondent