

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 60

ACR 89/21

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

Hearing: 29 March 2023
Held at: Wellington/Te Whanganui-a-Tara by AVL

Appearances: The Appellant is self-represented
H Ifwersen for the Respondent

Judgment: 6 April 2023

RESERVED JUDGMENT OF JUDGE P R SPILLER
**[Claim for personal injury - s 26, deemed decision – s 58, Accident
Compensation Act 2001 (“the Act”)]**

Introduction

[1] This is an appeal from the decision of a Reviewer dated 22 March 2021. The Reviewer dismissed an application for review of the Corporation’s decision dated 4 November 2020 declining cover for Ms Rapatini’s back sprain, lumbar sprain and postural scoliosis.

Background

[2] Ms Rapatini was born in 1972. She worked as a “poleman” in forestry until 2018.

[3] On 19 May 2017, Ms Rapatini had an accident at work described as “lifting, carrying/loading” resulting in injury to her back. She presented to Dr AUFAR BAHRI, who diagnosed back sprain. There is a suggestion that an ACC claim form was lodged for Ms Rapatini, but the Corporation states that it has no record of this claim being lodged.

[4] On 21 December 2018, Ms Rapatini had an x-ray on her lumbar spine. Dr Bruce O’Brien, Radiologist, advised:

Mild scoliosis of the lower thoracic and upper lumbar spine is seen. Degenerative changes of lower thoracic spine with anterior and lateral osteophytes are identified. This is more prominent at T11-T12. Essentially unchanged when compared to the previous study.

Impression: Mild degenerative changes including minimal sigmoid scoliosis.

[5] On 8 July 2019, Ms Rapatini had an MRI lumbar spine scan. This showed loss of disc dehydration and mild narrowing of the lower 3 discs associated with posterior annular tears and a small central disc bulge at L5/S1.

[6] On 15 June 2020, an ACC claim form was provided on behalf of Ms Rapatini for lumbar sprain (claim MR47207 10050062592).

[7] On 19 June 2020, Ms Rapatini’s claim was declined for cover due to insufficient information to establish cover and Ms Rapatini’s advice that she had not incurred a lumbar sprain.

[8] On 22 June 2020, Ms Rapatini presented to Dr Bahri asking for a referral to an Orthopaedic Specialist, as to the best treatment to ease her back problems.

[9] On 25 June 2020, the Corporation advised Ms Rapatini that it was looking at scoliosis cover for her and was in the process of investigating this and needed more time. The diagnoses under investigation were “Postural scoliosis (N3736) – Scoliosis associated with other condition – Lumbar sprain and Back sprain”. The Corporation was required to make a decision by 22 October 2020.

[10] On 7 July 2020, Ms Rapatini contacted the Corporation regarding the claim that she claimed to have lodged with the Corporation on 19 May 2017. She was advised that the claim was not in the Corporation's system and that her GP should resubmit the claim.

[11] On 8 July 2020, Ms Rapatini was seen by Dr David Lyon, Orthopaedic Specialist, who reported as follows:

I have explained the disc changes of the lower 3 discs which can cause mechanical low back pain. ... There is no surgical treatment required for her back and I have discussed the role of general exercise, core muscle strengthening and the use of medication if necessary to control her symptoms. I have also explained that the back problem should not necessarily deteriorate but she could have fluctuating ongoing symptoms requiring some treatment at various times.

[12] On 9 July 2020, a further ACC injury claim form was lodged by Dr Bahri for Ms Rapatini's back sprain, lumbar sprain and postural scoliosis for her back injury on 19 May 2017 (claim AJ35006 10050242441). The accompanying Patient Copy of Injury Claim form included the line:

Employment related gradual process? No

[13] On 13 July 2020, the Corporation advised Ms Rapatini that the new claim (AJ35006) would be declined in the system and the Corporation would continue to work off the previously lodged claim (MR47207) to determine the diagnosis that Dr Bahri had provided.

[14] Also on 13 July 2020, the Corporation advised Ms Rapatini that it needed more time to consider her claim as the Corporation was still working on getting information from her providers. The Corporation noted that it was required to make a decision by 22 October 2020.

[15] On 13-14 July 2020, Ms Rapatini insisted in a series of email communications with the Corporation that it reinstate her claim AJ35006, and not work off the claim MR47207. Ms Rapatini also communicated her understanding that her claim AJ35006 involved a work-related gradual process injury claim.

[16] On 16 July 2020, Ms Rapatini saw Dr John Molloy, Musculoskeletal Specialist, in relation to her back injury. Dr Molloy noted that Ms Rapatini's pain had been present for five years and was first noticed after she was bending down to dress and experienced an acute onset of pain which she rated 94/100. Dr Molloy further reported:

Problem to be addressed: Pain in the lumbosacral junction and lower lumbar areas bilaterally, to the iliac crests and the inguino-femora I area on the right, passing into the right buttock and posterolateral thigh to tire posterior leg. 5 years

... The pain had been present for the previous 5 years, after she was bending down to dress, and had acute onset of pain, rated at 94/100 on the visual analog scale. She was seen at Rawene Hospital, and treated with pain relieving medication. She did not have treatment, and reported that the pain settled over time. She returned to work. However, the pain was recurrent, and she had an episode of low back pain in 2017, which occurred while she was working in Forestry. ...

Investigations

MRI of the lumbar spine done at TRG on 08/07/2019 revealed a tiny area of bone marrow oedema at L5/S1 level on right, but not significant Modic1 changes. There was soft tissue oedema and bone marrow oedema associated with the zygapophyseal joint at L4/5 on the left, and an effusion in the joint as well as a synovial cyst on the anterior joint margin.

Diagnosis and management

MR imaging did not reveal a disc cause of pain. This leaves the zygapophyseal joints as the very likely cause of pain. as these are not reliably diagnosed with MR imaging. The bone marrow oedema and effusion in the zygapophyseal joint at L4/5 on the right are clues but do not confirm the diagnosis of pain arising from the joint. The normal looking joints at L5/S1 level are just as likely to be causing pain. ...

[17] On 20 July 2020, Mr Gabe McGregor, Technical Specialist, advised as follows:

1. This claim (MR47207) should be removed from the client's party record as per the advice above.
2. Cover should be investigated under AJ35006 as outlined above.
3. There is no deemed cover as the claim was not received by ACC until 09/07/2020. Cover timeframes commence as per Sect 57 of the Accident Compensation Act 2001 from that date. It would be appropriate to issue a fresh cover timeframe extension letter in relation to this. Please see above for further.

4. It may be appropriate to confirm the basis of the claim as it appears that the client considers it to be a work related gradual process injury claim. Conciliation may assist with this and agreed next steps.

[18] On 21 July 2020, the Corporation notified Ms Rapatini that it had revoked its letter of 13 July 2020, which had advised that her claim AJ35006 would be declined and her previous claim MR47207 would be processed. The Corporation noted:

As per my e-mail dated 20 July 2020, I can confirm that ACC have removed claim MR47207 from your ACC records following the information you provided including your statutory declaration and on the basis that you did not consent to your GP lodging this claim on your behalf.

With regards to claim AJ35006, I can confirm that this claim is no longer declined. The status of this claim is held for the following reason; ACC are investigating the diagnoses included in the original ACC45 injury claim form and ACC18 medical certificate. ACC cannot accept this claim until this investigation has occurred.

- Back sprain NOS

- Lumbar sprain

- Postural Scoliosis

ACC have initially 2 months to make a cover decision as per section 57 of the Accident Compensation Act 2001 as this claim was not received by ACC until more than 12 months after the date of injury. If we can't make a decision within that timeframe, ACC will notify you if we intend on extending the timeframe which could be up to 4 months.

[19] On 24 July 2020, the Corporation advised Ms Rapatini that it needed more time to consider her claim and was still reviewing the information provided, and that it would make a decision by 5 November 2020.

[20] The Corporation completed a technical review, but it did not complete a medical case review or receive clinical comment on the claim. The Corporation believed that it had requested further information from Ms Rapatini, however, in error, it had not.

[21] On 4 November 2020, the Corporation issued a decision declining cover for Ms Rapatini's back injury (back sprain, lumbar sprain and postural scoliosis due to her injury on 19 May 2017) on the basis that the Corporation had not received the relevant information that it required to make a decision. The Corporation explained

to Ms Rapatini that it was in the process of arranging a medical case review and, once that report was to hand, the Corporation would reassess the claim. Ms Rapatini applied to review this decision.

[22] On 26 February 2021, review proceedings were held in relation to the Corporation's decision of 4 November 2020. At the review, Ms Rapatini stated that Dr Bahri lodged a claim on her behalf in 2017 without her permission and his diagnosis was clearly incorrect; and that she spent a great deal of time trying to get the Corporation to remove this claim from its system.

[23] On 22 March 2021, the Reviewer dismissed the review. The Reviewer noted that there was no Corporation decision on cover for a work-related gradual process injury as yet, and so any such claim was outside the scope of the review. The Reviewer concluded that the Corporation did not have sufficient evidence to be able to confirm that Ms Rapatini's injuries were caused by her 2017 accident. The Reviewer therefore found that there was no compelling evidence that the Corporation had made an incorrect decision with the information that was available. However, the Reviewer recorded that the Corporation had made a commitment to investigate Ms Rapatini's injuries as a work-related gradual process claim, and that, once a decision was issued on that claim, review rights would attach. The Reviewer added that it was also possible that such investigations might raise new evidence of a causal link to the accident, in which case the Corporation might consider revising the present review decision in favour of Ms Rapatini.

[24] On 27 April 2021, a Notice of Appeal was lodged against the Reviewer's decision of 22 March 2021.

[25] On 2 May 2022, the Corporation wrote to Ms Rapatini confirming that her claim related to a work-related gradual process injury that was currently declined as investigations were not able to be completed in a timely manner.

[26] On 4 June 2021, the Corporation wrote to Ms Rapatini and stated:

As recorded in the reviewer's decision dated 22 March 2021, ACC confirms that intends to arrange a medical review of your case, and will continue to

investigate your claim as a work-related gradual process injury. Once it has completed its investigation, ACC will decide whether it needs to issue a new decision.

At the review hearing, you committed to cooperating with the medical review required in order to assess the question of whether you should have cover. We would like to encourage you to continue to assist ACC in its assessment so that ACC can properly consider your claim with all necessary information.

Can you please advise whether you are agreeable to attending a medical review appointment, and then ACC will make the necessary arrangements.

[27] No response was received from Ms Rapatini to this letter.

[28] On 16 November 2021, the Corporation's Clinical Advisory Panel (CAP) reported that the cause of Ms Rapatini's injuries were most consistent with a degenerative condition. The CAP stated:

Ms Rapatini has degenerative disc disease in at least three of her lower lumbar intervertebral discs. This includes annular tears, reduced disc height, loss of signal and protrusions reported on her imaging. Such features are often seen incidentally in imaging and do not mean that they are caused by any trauma. ...

Ms Rapatini's facet joint arthropathy and the small cyst seen on her MRI imaging is also common, seen in almost half of all young people without any back problems, symptoms or trauma.

This degenerative process occurs at the lowest lumbar discs first, as in Ms Rapatini's case, because the lower spine is exposed to the greatest normal, daily axial rotation and compression loads. Disc degeneration, annular fissures and facet joint cysts usually occur without any trauma and are part of the natural process of deterioration of almost all our lumbar spines.

On balance, the CAP concluded that Ms Rapatini's history, physical examination findings, progress, imaging and medical reports are most consistent with gradual lumbar spinal deterioration over a long time, which is common even in her demographic. It has not been established that any of these features are caused by a single event of trauma nor are they causing her low back or right leg symptoms.

Ms Rapatini's lower back and right leg symptoms were certainly flared up by her accidents on 13/03/2015 and 23/02/2018, by her physically strenuous forestry work, and other multidimensional factors may be contributing too. However, a causal link with any of her ACC-covered accidents or any combination of these cannot be established. ...

The scoliosis noted on the 21/12/2018 X-ray is common curvature of the spine which develops in our teenage years and is normally problem free. The cause of scoliosis is unknown and thought to be related to genetic and developmental factors. Ms Rapatini's scoliosis is around the lower rib area, anatomically distant to and irrelevant to her lower back pain. Her mild thoraco-lumbar

scoliosis is unlikely to be a contributor to her current lower back or right leg problems and does not generally lead to symptoms or impairment.

CAP SUMMARY:

The CAP concluded that a causal link between Ms Rapatini's ACC claims on 13/03/2015, 23/02/2018 and 14/03/2018, or any combination of these, and her lower back, right leg and right foot problems was not established.

[29] On 22 September 2022, the Corporation obtained a report from Dr Scott Adams, Occupational Medical Specialist, in relation to Ms Rapatini's back injury about matters relating to a work-related gradual process injury.

[30] On 26 October 2022, the Corporation wrote to Ms Rapatini inviting her to provide any further information and advising that the next step would be for the Corporation to organise a medical case review to investigate her work-related gradual process injury claim.

Relevant law

[31] Section 20(2)(a) of the Act provides that a person has cover for a personal injury which is caused by an accident. Section 26(2) states that "personal injury" does not include personal injury caused wholly or substantially by a gradual process, disease, or infection (unless it is personal injury of a kind specifically described in section 20(2)(e) to (h)). Section 25(1)(a)(i) provides that "accident" means a specific event or a series of events, other than a gradual process, that involves the application of a force (including gravity), or resistance, external to the human body. Section 25(3) notes that the fact that a person has suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident.

[32] In *Johnston*,¹ France J stated:

[11] It is common ground that, but for the accident, there is no reason to consider that Mr Johnston's underlying disc degeneration would have manifested itself. Or at least not for many years.

[12] However, in a passage that has been cited and applied on numerous occasions, Panckhurst J in *McDonald v ARCIC* held:

¹ *Johnston v Accident Compensation Corporation* [2010] NZAR 673.

“If medical evidence establishes there are pre-existing degenerative changes which are brought to light or which become symptomatic as a consequence of an event which 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 an accident which renders symptomatic that which previously was asymptomatic does not alter that basic principle. The accident did not cause the degenerative changes, it just caused the effects of those changes to become apparent ...”

[13] It is this passage which has governed the outcome of this case to date. Although properly other authorities have been referred to, the reality is that the preceding decision makers have concluded that Mr Johnston’s incapacity through back pain is due to his pre-existing degeneration and not to any injury caused by the accident.

[14] ... I consider it important to note the careful wording in the McDonald passage. The issue is not whether an accident caused the incapacity. The issue is whether the accident caused a physical injury that is presently causing or contributing to the incapacity.

[33] In *Ambros*,² the Court of Appeal envisaged the Court taking, if necessary, a robust and generous view of the 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 ...

[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 ...

[34] In *Sparks*,³ Judge Ongley stated:

[29] By s26(2) and (4) of the Injury Prevention, Rehabilitation, and Compensation Act 2001, personal injury does not include personal injury

² *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

³ *Sparks v Accident Compensation Corporation* [2006] NZACC 45.

caused wholly or substantially by a gradual process, disease, or infection, or by the ageing process. The legal test for entitlements requires sufficient evidence to show that 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. In the present case therefore, the appellant has to be able to point to evidence demonstrating that the condition, as it was when the need for surgery was identified in August 2004, was substantially and effectively caused by the covered injury and not by a pre-existing process.

[35] In *Stewart*,⁴ Judge Barber stated:

[33] The cases consistently highlight that the question of causation cannot be determined by a matter of supposition. There must be medical evidence to assist the respondent Corporation, and now the Court, to determine that question. A temporal connection, in itself, will be insufficient. There needs to be a medical explanation as to how the ongoing condition has been caused by the originally covered injury. In this case the evidence does not establish this.

[36] Section 53 of the Act states that a claim for cover must (in principle) be made within 12 months after the date on which a person suffers a personal injury. Section 57(1)(d) provides that a claim for cover lodged after 12 months is classed as a “complicated” claim. The remainder of section 57 sets out the framework for assessing and investigating complicated claims:

- (2) The Corporation must take the following steps as soon as practicable, and no later than 2 months, after the claim is lodged:
 - (a) investigate the claim—
 - (i) at its own expense; and
 - (ii) to the extent reasonably necessary to enable it to take the following steps in this subsection; and
 - (b) either—
 - (i) make its decision on the claim and give notice of it under section 64; or
 - (ii) decide that it cannot make its decision on the claim, or any other decision, without additional information, and tell the person of the extension, which must not exceed 2 months, that will be required.
- (3) The Corporation must take the following steps as soon as practicable, and no later than the expiry of the extension:
 - (a) make a reasonable request to the person, or decide to make a request to another person, for the additional information; and

⁴ *Stewart v Accident Compensation Corporation* [2003] NZACC 109.

- (b) if the Corporation proposes to make a request to another person for the additional information, tell the person making the claim about the making of the request and its nature; and
- (c) make its decision on the claim and give notice of it under section 64.

[37] Section 58 states that, when the Corporation fails to comply with a time limit under sections 56 or 57 of the Act, the claimant is to be regarded to have a deemed decision in favour of cover for the personal injury in respect of which the claim is made.

[38] In *Esapour*,⁵ Judge Beattie stated:

[20] I find that the relationship between Sections 57 and 58 is purely that if the Corporation fails to meet the time-lines provided then, and only then, do the deeming provisions come into play.

[21] Section 58 of the Act is entitled Effect of failure to meet time limits. Using fundamental principles of statutory interpretation, it must be the case that Section 58 is a provision which provides for certain outcomes in the event of failure to meet time limits. Nowhere in Section 58 is there mention of any breach of investigative requirements as giving rise to a statutory remedy ...

Discussion

[39] The issue in this appeal is whether the Reviewer, in a decision dated 22 March 2021, correctly dismissed an application for review of the Corporation's decision dated 4 November 2020 declining cover for Ms Rapatini's back sprain, lumbar sprain and postural scoliosis.

Deemed Corporation decision?

[40] When the Corporation fails to comply with a time limit under section 57, a claimant is to be regarded as having (that is, deemed to have) a decision by the Corporation that he or she has cover for the personal injury in respect of which the claim was made.⁶ It has been established that the deeming provision applies only if the Corporation fails to meet the time-line, and does not apply to any breach of

⁵ *Esapour v Accident Compensation Corporation* [2009] NZACC 155. This judgment was confirmed in *Harvey v Accident Compensation Corporation* [2015] NZACC 314, at [16].

⁶ Section 58(1).

investigative requirements.⁷ Ms Rapatini submits that the Corporation failed to meet the time limits in section 57, and so there should be a deemed decision in her favour.

[41] A claim for cover needs to be lodged within 12 months after the date on which he or she suffers the personal injury.⁸ Ms Rapatini's claim for cover was lodged on 9 July 2020, over three years after her accident on 19 May 2017. Her claim therefore needed to be treated as a "complicated claim" under section 57 of the Act.⁹ As a result, the Corporation was required, within two months, to investigate her claim and, if it decided that it could not make its decision on the claim without additional information, inform Ms Rapatini of an extension of time which could not exceed a further two months.¹⁰ On 21 July 2020, Ms Rapatini was advised of this process. On 24 July 2020, the Corporation advised Ms Rapatini that it required a two-month extension (to 5 November 2020) to investigate the claim because the Corporation required additional information. On 4 November 2020, the Corporation declined Ms Rapatini's claim. The Corporation therefore complied with the deadlines imposed by the Act.

[42] In light of the above, this Court finds that Ms Rapatini is not entitled to a deemed decision in her favour.

Incorrect Corporation decision?

[43] Ms Rapatini submits that the Corporation conducted a shallow investigation into the cause of her injury, failed to conduct a medical case review, and should not have declined cover just because it was not finished investigating her injury.

[44] This Court notes that, at the time of the Corporation's decision of 4 November 2020 declining cover for Ms Rapatini's back injury, on the basis that the Corporation had not received the relevant information that it required to make a decision, there was the following medical evidence at hand:

⁷ *Esapour*, above n 5, confirmed in *Harvey*, above n 5.

⁸ Section 53(3)(a).

⁹ Section 57(1)(d).

¹⁰ Section 57(2).

- (a) The report of Dr O'Brien, Radiologist, that Ms Rapatini had mild degenerative changes including minimal sigmoid scoliosis: this report did not make a connection between the scoliosis identified and an accident or injury.
- (b) The report of David Lyon, Orthopaedic Specialist, noting that an MRI scan showed loss of disc hydration and mild narrowing of the lower 3 discs associated with posterior annular tears and a small central disc bulge at L5/S1: this report did not advise whether Ms Rapatini's condition was caused by a degenerative condition or by accident or injury.
- (c) The claim lodged by Ms Rapatini's GP for back sprain, lumbar sprain and postural scoliosis with an injury date of 19 May 2017.
- (d) The report of Dr Molloy, Musculoskeletal Specialist, noting the MRI scan and suggesting the zygapophyseal joints as the very likely cause of Ms Rapatini's pain: this report did not link Ms Rapatini's condition to an accident or injury.

[45] In light of the above evidence, this Court finds that the Reviewer, in her decision, correctly found that the Corporation did not have enough information to be able to confirm that her injuries were caused by her 2017 accident.

Work-related gradual process injury investigation?

[46] Ms Rapatini submits that the Corporation failed to conduct a work-related gradual process injury investigation, after she communicated to the Corporation that she understood her claim to be for a work-related gradual process injury.

[47] This Court notes that a claimant may apply for a review of the Corporation's decision on his or her claim.¹¹ In Ms Rapatini's case, the Corporation's decision under review was that of 4 November 2020 declining cover back sprain, lumbar sprain and postural scoliosis due to her injury on 19 May 2017. This decision was in response to Ms Rapatini's claim of 8 July 2020 for these injuries. (It was this claim

¹¹ Section 134(1)(a).

(AJ35006) that Ms Rapatini insisted was the correct claim, and the Corporation finally accepted her position on 21 July 2020.) The Patient Copy of Injury Claim form which accompanied Ms Rapatini's claim of 8 July 2020 explicitly stated that the claim was not for employment related gradual process. The Corporation's decision of 4 November 2020 contains no reference to a claim for a work-related gradual process injury.

[48] In light of the above, this Court finds that the Reviewer, in her decision, correctly noted that the Corporation had not made a decision on cover for a work-related gradual process injury, and so any claim for such injury was outside the scope of the review.

Conclusion

[49] In light of the above considerations, the Court finds that Ms Rapatini has not established that the Reviewer, in a decision dated 22 March 2021, incorrectly dismissed an application for review of the Corporation's decision dated 4 November 2020 declining cover for Ms Rapatini's back sprain, lumbar sprain and postural scoliosis. The decision of the Reviewer of 22 March 2021 is therefore upheld. This appeal is dismissed.

[50] I make no order as to costs.

[51] In making the above decision, this Court records its sympathy for Ms Rapatini's sense of frustration in relation to her dealings with the Corporation. This Court notes that are two areas where the Corporation's conduct appears to have fallen short:

- (a) There appears to have been inadequate follow-up on the Corporation's technical specialist's recommendation on 20 July 2020 that it was appropriate to confirm the basis of Ms Rapatini's claim as it appeared that she considered it to be a work-related gradual process injury claim; and that conciliation might assist with this and agreed next steps.

- (b) In the months preceding the Corporation's decision of 4 November 2020, the Corporation did not complete a medical case review or receive clinical comment on the claim; it appears that the Corporation believed that it had requested further information from Ms Rapatini, however, in error, it had not.

[52] This Court notes that the Corporation has advised Ms Rapatini that it intends to arrange a medical review of her work-related gradual process injury claim, and, once it has completed its investigation, will decide whether it needs to issue a new decision. This Court observes that, should the Corporation make a decision on whether Ms Rapatini has cover for a work-related gradual process injury, this decision would attract review and appeal rights. It is to be hoped that Ms Rapatini will co-operate with this process, despite her justifiable disappointment with the Corporation's handling of her case, so that her claim can be properly addressed and brought to a conclusion.

A handwritten signature in black ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller
District Court Judge

Solicitors for the Respondent: Meredith Connell.