

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2023] NZACC 83**

**ACR 188/22**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPLICATION FOR LEAVE TO APPEAL UNDER SECTION 162(1) OF THE ACT
BETWEEN	ALBERT GILES Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: On the papers at Auckland

The applicant is self-represented  
S Arnold for the respondent

Date of Judgment: 18 May 2023

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**JUDGMENT OF JUDGE D L HENARE  
[Leave to Appeal to the High Court –  
Section 162(1) Accident Compensation Act 2001]**

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**Introduction**

[1] Mr Giles applies for leave to appeal to the High Court pursuant to s162 of the Accident Compensation Act 2001 (the Act) against a decision of Judge Spiller declining an application for leave to file his appeal in the District Court out of time.<sup>1</sup>

[2] Judge Spiller's decision is dated 6 December 2022. The application for leave to appeal to the High Court was filed on 21 March 2023.

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<sup>1</sup> *Giles v Accident Compensation Corporation* [2022] NZACC 236

## **Background**

[3] A Notice of Appeal dated 17 August 2022 was filed in the District Court by Mr Giles on 30 August 2022 challenging a review decision issued on 26 July 2010. The Reviewer upheld the Corporation's decision of 19 April 2010 suspending Mr Giles' weekly compensation payments.

[4] By Minute dated 18 October 2022, Judge Spiller noted the appeal was filed considerably outside the 28-day timeframe specified under the Act for filing new appeals. The Judge directed that Mr Giles formally apply for leave to file the appeal out of time and set out the reasons why the appeal was filed late.

## **Grounds of appeal**

[5] Mr Giles set out the health issues faced by himself and his wife noting:

... I would like to show how the lives of myself and wife have been impacted since 2007 and that is one of the reasons my submissions were not on time ...

Unfortunately this is quite a lengthy list of the medical history that we have been through to show how this affected our everyday living and the reasons behind not being able to file my submissions on time.

[6] Mr Giles set out his medical history "in sequence information that would not be expected in a normal person's retirement years".

## **The District Court's Decision**

[7] The Judge considered Mr Giles' submissions which set out the reasons for the delay, being the health problems of himself and his wife.

[8] The Judge calculated that the appeal was filed some 12 years and 8 weeks out of time, being a significant delay. Further, the Judge considered the applicant's conduct, any prejudice arising out of the late appeal and the significance of the issues raised in the appeal.

[9] The Judge then turned to evaluate the reasons for late filing against the statutory requirements. Section 151(3)(a) of the Act prescribes the time Mr Giles is

required to appeal the review decision, being 28 days after the date on which the Reviewer provided a copy of the review decision to him.

[10] The Judge then applied the relevant principles from the case law, including from the Supreme Court, guiding the exercise of the Court's discretion to grant or deny the application.

[11] Judge Spiller concluded there was significant delay and an absence of valid reasons for the delay.

[12] The Judge was not satisfied the proposed appeal was of more general significance when weighed with the principles he was required to evaluate, and he dismissed the application for late filing of the appeal in the District Court.

### **Decision**

[13] The Court acknowledges the health problems experienced by Mr Giles and his wife throughout the years.

[14] However, there is not only a significant delay in late filing of the appeal in the District Court as found by Judge Spiller, but also late filing of the application to seek leave to appeal to the High Court. The second period of delay is fatal to the current application.

[15] Section 162 of the Act provides that a party to an appeal who is dissatisfied with a decision of the District Court as being wrong in law, may, with the leave of the District Court, appeal to the High Court.

[16] Section 162 (2) however provides that leave of the District Court *must* be sought within 21 days after the District Court's decision. This is a mandatory requirement in the legislation.

[17] Mr Giles' leave application to appeal to the High Court was filed two and a half months out of time.

[18] The time limit for filing an application to appeal to the High Court under s162 is strict, as confirmed by the Court of Appeal in *Siola 'a*.<sup>2</sup>

[19] The Court of Appeal stated that the District Court only has jurisdiction to consider a late application for leave if the Corporation agrees to waive the time limit in accordance with s 3 of the Inferior Courts Procedure Act 1909.

[20] Ms Becroft informed the Court that the Corporation does not agree to any waiver in this case.

[21] Accordingly, the leave application to appeal to the High Court is dismissed on the basis that it is both out of time and this Court has no jurisdiction in the matter.

[22] There are no issues as to costs.



D L Henare  
District Court Judge

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<sup>2</sup> *Siola 'a v Accident Compensation Corporation* [2008] NZCA 483.