

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2024] NZACC 001

**ACR 15/23,
17/23, and
18/23**

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

Submissions: The Appellant is self-represented
L Hawes-Gandar and F Becroft for the Corporation

Hearing: On the papers

Judgment: 5 January 2024

**JUDGMENT OF JUDGE P R SPILLER
[Leave to Appeal to the High Court – Section 162
Accident Compensation Act 2001]**

Introduction

[1] This is an application for leave to appeal against a judgment of His Honour, Judge McGuire, delivered on 26 September 2023.¹ Judge McGuire dismissed Mr Easthope's three appeals, in respect of different issues stemming from the same background.

¹ *Easthope v Accident Compensation Corporation* [2023] NZACC 158.

Background

[2] On 17 May 1986, Mr Easthope suffered an accident while playing rugby league. It appears that this accident involved him being spear-tackled to the ground.

[3] The claim registration date recorded in the Corporation's system is 23 March 1989. The Corporation's records show that it made a lump sum payment to Mr Easthope in 1989, based on an 8% whole person impairment. The Corporation also funded surgery on Mr Easthope's left shoulder in 2012.

[4] Over the following years, the Corporation continued to fund further assessment and treatment, including steroid injections, pain management programmes, physiotherapy, medical imaging and multiple orthopaedic assessments.

[5] In June 2022, a new case manager, Mr Kevin Rei, was appointed for Mr Easthope.

[6] On 19 June 2022, Mr Easthope emailed Mr Rei with various background details about the 1986 claim. Mr Easthope's email included a list of requests for items including a new mattress, a traction machine, and payment for a disability car.

[7] On 22 June 2022, Mr Rei discussed the contents of this email with Mr Easthope. Later that day, Mr Rei followed up the discussion with an email addressing the points that Mr Easthope had raised. The email included the following:

That Mr Easthope only had cover for a left shoulder dislocation in respect of the 1986 accident. Mr Rei suggested that if Mr Easthope wished to obtain cover for additional injuries, he discuss this with his GP who could lodge a formal request for any additional injury diagnosis.

That the requests for a traction machine and mattress had been made under a separate claim and had already been determined by the Corporation.

Mr Easthope needed to complete a form which Mr Rei sent him, to request modification to his vehicle.

Mr Easthope should see a physiotherapist to seek assistance with stretching and if appropriate the physiotherapist could seek funding for a new back brace, yoga mat and shoe inserts.

The Corporation was unable to provide assistance with Mr Easthope's power bill or legal assistance for a property dispute.

[8] On 27 June 2022, Mr Easthope resent his email of 19 June 2022, with a list of requests, and asked that Mr Rei respond, using the same email thread, and identify everything which the Corporation had declined.

[9] Later on 27 June 2022, Mr Rei and Mr Easthope had a discussion regarding entitlement to home help. Mr Rei then sent an email (reproduced here *verbatim*):

ACC will provide relevant supports including: Ancillary support assistance with transport/travel to treatment relevant to their covered injury. Social support assistance with such things as home help, attendant cares etc relevant to their covered injury. Treatment support Either full or part-payment towards the cost of treatment /medications relevant to their covered injury. Most if not all ACC clients can receive these supports. Vocational Support This includes weekly compensation support and vocational rehabilitation. In order to receive this support a client must be an Earner at the date of the injury Vocational rehabilitation includes programmes that would, first and foremost, support a client to return to work in the role they held at the date of accident. Even if the role is no longer available if a client is medically cleared and can safely and sustainably return to that role vocational support would cease. If this cannot be achieved, ACC must then review if (taking the covered injury into consideration) the client has the capacity to safely and sustainably return to any form of fulltime work more than 30 hours per week. However, if you were not an Earner on 17/05/1986 you will not be entitled to this support.

[10] Mr Rei concluded his email to Mr Easthope with some instructions for how to proceed with an application for entitlements, including social supports. There is no record that Mr Easthope made an application for home help and no evidence that the Corporation investigated or made a decision on home help.

[11] In accordance with Mr Rei's advice, Mr Easthope visited his general practitioner, Dr King Karthak, to lodge a formal request for cover for neck injury. On 28 June 2022 Dr Karthak lodged a medical certificate under the 1986 claim, certifying that Mr Easthope was unfit for work from 27 June to 28 June 2022, because of "additional diagnosis neck sprain". Mr Easthope sent several emails in response. While he did not clearly say whether he wished to apply for weekly compensation, he did mention that he believed he had "all the elements of reaching the threshold of weekly compensation".

[12] On 7 July 2022, the Corporation issued a decision declining Mr Easthope weekly compensation on the basis that he was a non-earner at the date of accident on 17 May 1986. On receipt of this decision, Mr Easthope emailed Mr Rei stating amongst other things that he “would like this decision reviewed as I have not asked for ACC weekly compo...”. This email was interpreted as an application for review of the Corporation’s decision declining weekly compensation. On 7 July 2022, Mr Easthope sent an email asking that his email be accepted as an application for review.

[13] On 8 July 2022 the Corporation issued decisions declining cover for both the neck sprain and the lumbar sprain. The decision letter explained that Mr Easthope had, in 2021, revoked permission for the Corporation to collect any further records, meaning that the Corporation was required to make a decision based on the available information on its file. The Corporation advised that there was insufficient evidence to establish the causal link between the accident and neck sprain, which would normally have been expected to resolve within six to eight weeks of the accident. Mr Easthope lodged a review application against the decisions.

[14] However, on 15 December 2022, the Corporation revoked the earlier decisions of 8 July 2022, and replaced them with a decision accepting cover for the neck sprain and the lumbar sprain.

[15] On 16 December 2022, review proceedings were conducted in relation to the Corporation’s decisions of 7 July 2022 (declining Mr Easthope entitlement to weekly compensation) and 8 July 2022 (declining Mr Easthope cover for a lumbar sprain and a neck sprain), and whether there was a reviewable decision regarding Mr Easthope’s entitlement to home help.

[16] On 20 December 2022, the Reviewer issued two decisions:

- (a) The Reviewer found that the Corporation’s decisions of 8 July 2022 to decline Mr Easthope cover for a lumbar sprain and a neck sprain were not reviewable decisions, because, on 15 December 2022, the Corporation reversed both decisions and awarded cover for both injuries.

- (b) The Reviewer found that the Corporation's decision of 7 July 2022 to decline Mr Easthope entitlement to weekly compensation was correct, on the basis that there was no evidence that he was an earner at the time of his injury.

[17] On 21 December 2022, the Reviewer issued a decision finding that there was no evidence that the Corporation made a decision on Mr Easthope's entitlement to home help, and therefore that there was no basis for a review.

The Court's judgment of 26 September 2023

[18] Judge McGuire noted that, in respect of appeal ACR 18/23, Mr Easthope did not advance argument that the email of 27 June 2022 constituted a reviewable decision. This was an email advising him about the different types of entitlements that the Corporation was able to provide. Judge McGuire noted that the email was plainly not a reviewable decision, and so this appeal was dismissed.

[19] In respect of appeal ACR 17/23, a decision of the Corporation dated 7 July 2022 declining weekly compensation on the basis that Mr Easthope was not an earner at the date of his injury, Judge McGuire noted that the Corporation's position that Mr Easthope was not an earner at the date of his injury had not been challenged, and so this appeal was dismissed.

[20] In respect of appeal ACR 15/23, Judge McGuire noted that the two decisions in question were revoked by the Corporation in a decision of 15 December 2022 with the Corporation accepting cover for a neck sprain and a lumbar sprain. Judge McGuire stated that, given that the basis for bringing appeal ACR 15/23 no longer existed, this appeal too was dismissed.

Relevant law

[21] Section 162(1) of the Accident Compensation Act 2001 (the Act) provides:

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

[22] In *O'Neill*,² Judge Cadenhead stated:

[24] The Courts have emphasised that for leave to be granted:

- (i) The issue must arise squarely from 'the decision' challenged: ... Leave cannot for instance properly be granted in respect of obiter comment in a judgment ...;
- (ii) The contended point of law must be "capable of bona fide and serious argument" to qualify for the grant of leave ...;
- (iii) Care must be taken to avoid allowing issues of fact to be dressed up as questions of law; appeals on the former being proscribed ...;
- (iv) Where an appeal is limited to questions of law, a mixed question of law and fact is a matter of law ...;
- (v) A decision-maker's treatment of facts can amount to an error of law. There will be an error of law where there is no evidence to support the decision, the evidence is inconsistent with, and contradictory of, the decision, or the true and only reasonable conclusion on the evidence contradicts the decision ...;
- (vi) Whether or not a statutory provision has been properly construed or interpreted and applied to the facts is a question of law

[25] Even if the qualifying criteria are made out, the Court has an extensive discretion in the grant or refusal of leave so as to ensure proper use of scarce judicial resources. Leave is not to be granted as a matter of course. One factor in the grant of leave is the wider importance of any contended point of law

[23] In *Gilmore*,³ Dunningham J stated:

[55] I accept that, for the purposes of leave, it is not necessary to show that a decision was wrong, but only that there is an arguable question of law which is of sufficient importance to outweigh the cost and delay of a further appeal. However, in this case I consider no seriously arguable question of law arises, nor can it be said there is any factor which the District Court did not take into account. Instead, I consider the matters sought to be raised are, in substance, questions of fact and where the findings made were open to ACC, and to the District Court Judge, on the materials before them. For that reason, I do not need to go on to consider whether, in the exercise of my discretion, leave should be granted.

[24] In *TR*,⁴ Isac J stated:

[24] ... the threshold for an appeal against factual findings on the basis of an error of law is very high. The challenged factual finding must be one that, on the evidence, was not open to the decision-maker. Put another way, TR must

² *O'Neill v Accident Compensation Corporation* [2008] NZACC 250.

³ *Gilmore v Accident Compensation Corporation* [2016] NZHC 1594.

⁴ *TR v Accident Compensation Corporation* [2023] NZHC 2991.

establish that the factual conclusion of the District Court was so clearly untenable that application of the law required a different answer.

The appellant's submissions

[25] Mr Easthope submitted as follows.

[26] In relation to the Corporation's decision declining weekly compensation, the Court focused on the fact that he was not an earner at the date of injury and did not take into account his subsequent history of work. In relation to the original Corporation decisions declining cover for neck sprain and lumbar sprain, the Court should have considered a different diagnosis, as he did not have sprains.

[27] The Court enabled a miscarriage of justice. He has had decades of avoidable crimes of torture and suffering. Since May 1986, there have been "blinding" treatment delays. The Corporation destroyed his files, thus preventing early surgery. The Court should direct an out-of-court settlement of a reasonable sum for just compensation.

Discussion

[28] This Court is required to decide whether Mr Easthope should be granted leave to appeal to the High Court against the judgment of Judge McGuire on the issues noted above. The Court is not required to address broader issues raised by Mr Easthope.

[29] The requirements for leave to appeal to the High Court have been set out above (see paragraphs [21] to [24]). For leave to appeal to be granted, Mr Easthope must establish that the decision of Judge McGuire is wrong in law. This means that Mr Easthope must show that there is an arguable question of law which is of sufficient importance to outweigh the cost and delay of a further appeal. In terms of the Judge McGuire's factual findings, Mr Easthope must establish that the factual conclusion of His Honour was so clearly untenable that application of the law required a different answer.

[30] This Court has read the judgment of Judge McGuire and the factual findings and the application of the law determined by His Honour. The Court can discern no arguable question of law which is of sufficient importance, or any factual conclusion that is so clearly untenable that application of the law required a different answer.

The Decision

[31] In light of the above considerations, the Court finds that Mr Easthope has not established sufficient grounds, as a matter of law, to sustain his application for leave to appeal, which is accordingly dismissed. Mr Easthope has not established that Judge McGuire made an error of law capable of *bona fide* and serious argument. Even if the qualifying criteria had been made out, this Court would not have exercised its discretion to grant leave, so as to ensure the proper use of scarce judicial resources and the finality of litigation. This Court is not satisfied as to the wider importance of any contended point of law.

[32] Costs are reserved.

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

Judge P R Spiller,
District Court Judge