

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2024] NZACC 022 ACR 222/22

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

Hearing: 1 December 2023 (part-heard);
 8 February 2024

Held at: Auckland/Tāmaki Makaurau

Appearances: The Appellant is self-represented (Mr S Davies in support)
 F Becroft for the Accident Compensation Corporation (“the
 Corporation”)

Judgment: 12 February 2024

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Interpretation of decision - s 6(1),
Accident Compensation Act 2001 (“the Act”)]

Introduction

[1] This is an appeal from the decision of a Reviewer dated 25 October 2022. The Reviewer dismissed, for want of jurisdiction, an application for review of the Corporation’s communication of 18 September 2013.

Background

[2] Mr Kaulima has cover for amongst other things, a gradual process injury involving solvent exposure dating back to January 1995, and back and neck injuries

sustained on 17 July 2003 and 3 December 2009. He has received a number of entitlements in relation to these claims, including weekly compensation.

[3] Along with disputes in relation to Mr Kaulima's weekly compensation calculation, there have also been a number of proceedings in which jurisdiction was at issue. From time to time, the Corporation has provided Mr Kaulima with copy files in response to information requests.

[4] On 13 August 2013, Mr Kaulima lodged a complaint with Mr Scott Pickering, the Chief Executive of the Corporation, copied to Mr John Key, the Prime Minister. Mr Kaulima referred to a number of operational matters, including management of his claim, and reviews and court processes he had experienced. Mr Kaulima believed that he had been treated unfairly, with bias and racism. He alleged that the Corporation had altered his taxes several times over a number of years. He believed fraud had been established and his ACC compensation needed to be audited for financial purposes.

[5] Mr Kaulima's letter was forwarded to the Minister for ACC. On 18 September 2013, Ms Gabriella Boag, Senior Adviser Government Services, ACC, sent the following email to Ms Julie Manderson and Mr Darrell Boyd (Corporation officers):

Please find attached a ministerial letter from Mr Kaulima, to the Prime Minister and the ACC Minister, which Government Services have been asked to provide information on. Also attached for you is a copy of a draft background memo on this case, which I've put together after reviewing the Eos claim file. Included in the body of this memo, are 4 questions please, that I need your response on. Additionally, please feel free to provide feedback on the other aspects of the memo, which has taken me quite some time to write. You can use the "Track Changes" function in word if that's easiest, to make your additions.

I'm hoping that I can provide a detailed memo, accompanied by a very short, generic response letter that puts responsibility back on ACC to keep working with this client (as opposed to the Minister commenting in any detail). However, in order to achieve this, I need as much information as possible in the memo to present the case reasonably.

Is there any chance I could have your answers/suggestions/corrections by this Friday 20th Sept?

NB Friendly reminder that these documents do not need to go onto the client's Eos claim file, as Government Services holds the records for Ministerial correspondence centrally.

Thank you.

[6] Ms Boag then sent the email to Ms Judy Hamilton, in Ms Manderson's absence.

[7] On 26 September 2013, the Minister for ACC replied, noting that she had sought advice from the Corporation. This advice led her to decide that the issues should be raised directly with the Chief Executive of the Corporation to facilitate an appropriate response.

[8] Ms Diana Barbara, listed as an internal party, advised:

Confirmation review received by ACC 5/9/2013 as this had originally been forwarded to PM and date stamped received 19 and 20th August 2013

Hi Diane – just to confirm that Mr Kaulima's letters to the PM were date stamped received by Parliament Security Services on 19 and 20 August 2013. It was later referred to ACC on 5 September 2013 – I suggest this is the date we'll need to use as having received his review application. On looking at the file now, I'm sorry we didn't send down the envelope straight away - we should have done this when we logged the case, but it sat closed on the file until last week.

I hope this helps.

[9] Mr Kaulima subsequently filed two applications for review, one of which was against Ms Boag's email dated 18 September 2013.

[10] On 27 September 2022, review proceedings were held. On 25 October 2022, the Reviewer dismissed the review applications for want of jurisdiction. The Reviewer held that the communication of Ms Boag was not a decision as defined by section 6 of the Accident Compensation Act 2001. On 6 December 2022, a Notice of Appeal was lodged.

Relevant law

[11] Section 134 of the Act provides:

- (1) A claimant may apply to the Corporation for a review of—
 - (a) any of its decisions on the claim:
 - (b) any delay in processing the claim for entitlement that the claimant believes is an unreasonable delay: ...

[12] Section 6(1) of the Act provides:

Decision or Corporation's decision includes all or any of the following decisions by the Corporation:

- (a) a decision whether or not a claimant has cover;
- (b) a decision about the classification of the personal injury a claimant has suffered (for example, a work-related personal injury or a motor vehicle injury);
- (c) a decision whether or not the Corporation will provide any entitlements to a claimant;
- (d) a decision about which entitlements the Corporation will provide to a claimant;
- (e) a decision relating to the level of any entitlements to be provided;
- (f) a decision relating to the levy payable by a particular levy payer;
- (g) a decision made under the Code about a claimant's complaint.

[13] In *Smith*,¹ Cadenhead DCJ noted:

[19] In *Hawea v ACC* (High Court, Napier, CIV-2003-441-607, 6 July 2004), Gendall J. referred to the definition of "decision" in s. 6(1) of the 2001 Act, and stated, at paragraphs 17-18:

"...The definition section is not exclusive. To make a decision is to make up one's mind, to make a judgement, to come to a conclusion or resolution. Only when a decision has been made can there be a right of review and if no right of review exists then s133(5) has no application. ... The substance [of the communication in question] has to be analysed."

...

[47] ... merely administrative issues and requests, do not amount to a 'decision' within the meaning of s.6 of the legislation. Whether a 'decision' has been made needs to be determined in the factual context and circumstances.

Discussion

[14] The issue in this case is whether the Corporation's communication of 18 September 2013 is a decision pursuant to the Accident Compensation Act 2001 and therefore capable of review and appeal.

¹ *Smith v Accident Compensation Corporation* [2004] NZACC 305.

[15] Mr Kaulima provided wide-ranging submissions with considerable evidence. In relation to his appeal against the Reviewer's decision in question, he submitted as follows. The Corporation has withheld personal information about him since 2013, and breached its obligations under the Privacy Act when releasing information it held on him. In 2013, he lodged a complaint about the Corporation to its Chief Executive and the Prime Minister. In relation to this, the Corporation did not release a full copy of his file. The email from Ms Boag, dated 18 September 2013, was a decision, in that it stated that his ministerial documents were not to be attached to his EOS claim file. Ms Boag had an alternative motive in stopping a Minister responding directly to him. She decided that his complaint should be treated as a legal issue rather than a complaint. Ms Boag and the Corporation claims' managers colluded to deceive him.

[16] This Court does not consider it appropriate or within its jurisdiction to address the wide-ranging issues raised by Mr Kaulima, and will confine its decision to the specific issue noted above at paragraph [14]. In this regard, the Court notes the following considerations.

[17] Mr Kaulima's appeal relates to his review of a Corporation adviser's email communication, on the basis that this constitutes a decision of the Corporation and so subject to review under section 134(1)(a) of the 2001 Act. Section 6(1) of the Act provides that a "decision" of the Corporation includes only decisions: whether or not a claimant has cover; about the classification of the personal injury a claimant has suffered; whether or not the Corporation will provide any entitlements to a claimant; about which entitlements the Corporation will provide to a claimant; relating to the level of any entitlements to be provided; relating to the levy payable by a particular levy payer; and made under the Code about a claimant's complaint. The High Court has defined "decision" to mean to come to a conclusion or resolution.²

[18] This Court notes that the email communication of Ms Boag falls within none of the categories in the definition of a Corporation "decision" in section 6(1). The email was not addressed to Mr Kaulima. The email made no conclusion or resolution about: any claim for cover made by Mr Kaulima, any classification of his

injury, whether or not and if so which and what level of entitlements (as defined in the Act) will be provided to him, a levy to be paid, or any complaint made by him under the ACC Code of Claimants' Rights. The email was a communication from a Corporation official to other Corporation employees, attaching a draft response to Mr Kaulima's ministerial letter, and requesting responses and information in relation to the draft. The email's reference to Mr Kaulima's ministerial documents was simply a "friendly reminder" that these documents did not need to go onto his Eos claim file, as Government Services held the records for ministerial correspondence centrally.

[19] If Mr Kaulima has a remaining concern about any breach of the Corporation's management of his financial and other affairs, there are alternative channels that he might choose to pursue.

Conclusion

[20] In light of the above considerations, the Court finds that the Corporation's communication of 18 September 2013 is not a decision pursuant to the Accident Compensation Act 2001, and is therefore not capable of review or appeal. The decision of the Reviewer dated 25 October 2022 is therefore upheld.

[21] This appeal is dismissed.

[22] I make no order as to costs.

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

P R Spiller
District Court Judge

Solicitors for the Respondent: Medico Law Ltd.

² Referred to in *Smith*, above note 1, at [19].