

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2024] NZACC 025      ACR 144/23**

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

Hearing:            7 February 2024

Held at:            Wellington/Whanganui-a-Tara by AVL

Appearances:    B Hinchcliff for the Appellant  
                         F Becroft for the Accident Compensation Corporation (“the  
                         Corporation”)

Judgment:        13 February 2024

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**RESERVED JUDGMENT OF JUDGE P R SPILLER**  
**[Suspension of entitlements - s 117(1),**  
**Accident Compensation Act 2001 (“the Act”)]**

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**Introduction**

[1] This is an appeal from the decision of a Reviewer dated 31 July 2023. The Reviewer dismissed an application for review of the Corporation’s decision dated 10 January 2022, and declined jurisdiction in respect of the Corporation’s decision dated 15 December 2022 suspending Ms Kaur’s entitlements.

## **Background**

[2] Ms Kaur, born 1987, worked as a packer and freight handler.

[3] On 7 March 2020, Ms Kaur suffered an injury when lifting a heavy box.

[4] On 10 March 2020, an ACC injury claim form was filed by Dr Vandana Rasela, GP, for Ms Kaur, for an elbow/forearm sprain and wrist ligament sprain on the right side, said to have occurred on 7 March 2020. Ms Kaur was certified unfit for anything other than light duties for the rest of that month.

[5] On 26 March 2020, Ms Kaur's claim for cover was accepted. Subsequently, Ms Kaur's work ceased due to the first COVID lockdown in New Zealand. She returned to work post-lockdown.

[6] On 3 July 2020, Ms Kaur suffered a further injury when she was again lifting a heavy box at work.

[7] On 6 July 2020, a further ACC injury claim form was filed for Ms Kaur for a right wrist sprain sustained on 3 July 2020.

[8] On 6 July 2020, an x-ray was taken of Mr Kaur's right finger, hand and wrist. Dr Anthea Liebenberg, Radiologist, reported no acute injury, joint spaces normal, and soft tissue swelling overlying distal ulnar styloid process.

[9] On 17 July 2020, Ms Kaur's new claim for cover was accepted.

[10] On 3 August 2020, a medical certificate from Dr Rasela stated that Ms Kaur was still getting quite a bit of pain and was not able to lift and do normal work.

[11] On 7 September 2020, a medical certificate from Dr Rasela stated that Ms Kaur was fit to return to normal work from 8 September 2020.

[12] On 29 October 2020, Mr Chris Taylor, Orthopaedic Surgeon, recorded that Ms Kaur had reported intermittent pain and swelling in her right wrist, causing

discomfort, since the lifting episode in March. She advised that her discomfort had settled over lockdown, but recurred with a return to work. Mr Taylor advised that there was little to find on examination apart from tenderness over the scapholunate ligament. He was unsure as to the aetiology of Ms Kaur's ongoing symptoms, and arranged for an MRI scan to rule out anything significant with respect to her soft tissues.

[13] On 31 October 2020, an MRI scan was taken of Ms Kaur's right wrist. Dr Andrew Clarke, Radiologist, reported:

There is evidence of mild high signal seen involving the volar aspect of the distal radioulnar joint raising the possibility of mild volar capsular sprain. No evidence of significant disruption of the radioulnar ligaments or articular disc. No other cause for symptoms identified.

[14] On 17 December 2020, Mr Taylor confirmed that the MRI scan showed little in the way of significant pathology. However, he noted that there was a small volar wrist ganglion cyst associated with the volar wrist ligament, with some tenderness in that area although nothing palpable. Mr Taylor suggested anti-inflammatories and hand therapy.

[15] On 27 January 2021, Mr Taylor reported further:

[Ms Kaur's] symptoms are generalised musculoskeletal discomfort in the upper limb. I have suggested she see the therapist at the Super Clinic with respect to splintage of her right wrist and gentle stretches and strengthening exercises to see whether we can't get her to manage her own symptoms. I do not think it is unreasonable for her to take anti-inflammatories as she requires. We will see how she is progressing over time with review in 4 to 6 months.

[16] On 10 May 2021, Ms Kaur sustained a further injury when awkwardly lifting a heavy box.

[17] On 10 May 2021, an x-ray was conducted on Ms Kaur's right wrist x-ray. Dr Mark Osborne, Radiologist, reported no significant bone or joint abnormality.

[18] On 12 May 2021, a claim was filed for Ms Kaur a right wrist sprain which occurred on 10 May 2021. She was certified as fit for light work only, up until 12 June 2021.

[19] On 14 May 2021, Ms Kaur's new claim for cover was accepted.

[20] On 21 May 2021, Dr Alex Thachankary, GP, provided a further medical certificate which certified Ms Kaur as fully unfit through to 6 June 2021, with a note to continue hand therapy. Weekly compensation payments then commenced on this claim.

[21] On 10 June 2021, Dr Giresh Kanji, Musculoskeletal Physician, saw Ms Kaur. She reported experiencing right wrist forearm and sometimes upper arm pain since May 2021. Dr Kanji questioned whether her cervical spine and tennis elbow were contributing to right arm symptoms. He arranged for a cervical MRI scan.

[22] On 15 June 2021, a cervical MRI was conducted on Ms Kaur. Dr Sunderarajan Jayaraman, Radiologist, reported that the scan showed a C5/6 broad-based disc bulge with bilateral foraminal compression at C6.

[23] On 23 June 2021, Dr Kanji reported that there was likely a contribution from both Ms Kaur's cervical spine and either tennis elbow or right wrist tendinosis, to ongoing symptoms.

[24] Meanwhile, medical certificates continued to certify ongoing pain for Ms Kaur, and she continued receiving weekly compensation.

[25] On 18 August 2021, Dr Kanji reported that Ms Kaur had been attending a chiropractor, acupuncture and a physiotherapist since her last appointment, but that her pain had increased. He arranged for another MRI scan.

[26] On 17 September 2021, an MRI was conducted on Ms Kaur's right elbow. Dr Marcus Ghuman, Radiologist, reported:

Previous low grade injury of the anterior band of the ulnar collateral ligament but appearances at the elbow are otherwise unremarkable.

[27] On 20 September 2021, the Corporation advised Ms Kaur that it was unable to help with the costs of ambulance service, peace pillow and chiropractor.

[28] On October 2021, Dr Rasela certified Ms Kaur as fit for work for two hours, three days a week. Her weekly compensation was abated.

[29] On 11 November 2021, Dr Kanji provided an Assessment Report and Treatment Plan for Ms Kaur's ongoing pain in her right wrist.

[30] On 23 November 2021, Dr Kanji reported again and questioned whether a local right wrist pathology was present, and noted the spread of the right-hand pain to the forearm. He arranged for another MRI scan of the right wrist.

[31] On 26 November 2021, an MRI of Ms Kaur's right wrist was conducted. Dr Sunderarajan Jayaram, Radiologist, reported a suspected low-grade partial tear of the dorsal band ligament, a full thickness perforation of the TFC disc, ECU tendinosis, and a small volar radiocarpal ganglion.

[32] On 2 December 2021, Dr Kanji noted that the MRI showed extensor carpi ulnaris tendinosis with tenosynovitis, a 4 mm ganglion, perforation of the TFC, and a few smaller ganglions. He suspected that ECU tendinosis was the source of symptoms, and thought that the ganglions were incidental. He arranged for an ultrasound-guided injection of the ECU tendon sheath.

[33] On 20 December 2021, Ms Kaur's claim was reviewed by Mr Jono Henry, Clinical Advisor, and Mr Caillin Nichols, Technical Specialist. A recommendation to suspend entitlements was made on the basis that ongoing symptoms were unrelated to the covered sprain injuries. The clinical advice was that the ganglion cysts, ECU tendinosis, and the subsequent tenosynovitis, were not accident-related conditions. The ongoing incapacity was not due to the covered sprain diagnoses, as these injuries were expected to have resolved.

[34] On 20 December 2021, Dr Hong Xia, Registrar, Plastic Reconstructive and Hand Surgery, reported that Ms Kaur had had ongoing discomfort and pain for more than a year. He confirmed however that there was no surgical intervention necessary.

[35] On 10 January 2022, the Corporation suspended Ms Kaur's weekly compensation, and stated:

After carefully assessing all the medical information available, we're unable to continue with your entitlement. We've now suspended your entitlement to weekly compensation, and you'll receive your last payment on 24/01/2022.

We're unable to continue providing you with this support as this medical information shows that your current condition is no longer the result of your personal injury of 10/05/2021.

The information available to ACC at this time does not support the cause of the current wrist symptoms as being due to a covered wrist sprain, nor any other personal injury caused by the described accident events. Rather, the information supports that the symptoms are likely to be caused by tendinosis and pathology in the elbow or neck, for which no cover is available nor is any causal link established between described accidents and any coverable personal injury. The covered injuries are otherwise considered to no longer be the cause of your symptoms or incapacity.

[36] On 11 January 2022, Ms Kaur was seen by a colleague of Dr Kanji's, Dr Toor, who did not think that there was any indication to undertake an injection that day.

[37] On 10 March 2022, Dr Kanji noted that Ms Kaur had made a return to work that month, and that this may have aggravated ongoing symptoms.

[38] On 9 May 2022, Dr Robert English, Registrar, Plastic, Reconstructive and Hand Surgery, noted Ms Kaur's pain in her wrist and elbow, and referred her for an MRI scan.

[39] On 28 June 2022, an MRI was conducted on Ms Kaur's right elbow. Dr Ushan De Silva, Radiologist, reported a moderate grade tear of the common extensor tendon origin, with background tendinosis.

[40] On 29 September 2022, Dr Rasela filed a medical certificate for Ms Kaur in regard to the 7 March 2020 claim, noting that she was unable to resume any work duties from 1 September 2022 for 30 days.

[41] On 15 December 2022, Mr Henry noted that Ms Kaur had cover only for sprain injuries, and concluded:

Any sprain the client may have sustained in the accident event ... would be considered resolved within 6-8 weeks due to normal tissue healing processes.

...

Clinical diagnosis and MRI right elbow dated 28/06/2022, is consistent with lateral epicondylitis with an associated tear. This condition is consistent with a tendinopathy; a non-accident related gradual process condition.

There is no indication that any accident-related condition or injury is the cause of the client's ongoing right wrist/hand and elbow symptoms, including any sprain of the right wrist/hand or elbow. ...

[42] On 15 December 2022, the Corporation wrote to Ms Kaur reiterating its earlier decision:

The suspension of weekly compensation decision issued on claim number 10052689562 (attached) remains.

ACC have investigated the additional information and the cause of ongoing symptoms and incapacity are not due to a personal injury caused by a covered accident.

[43] On 13 January 2023, a review application was filed against the 15 December 2022 letter. A second (late) review application was also filed against the earlier 10 January 2022 decision.

[44] On 7 February 2023, the Corporation accepted Ms Kaur's late review application in relation to the 10 January 2022 suspension decision.

[45] On 4 May 2023, a review case conference proceeded before a Reviewer. At that conference it was confirmed that the first issue to determine was whether it was the 10 January or 15 December 2022 decision which was reviewable; and that the second issue was to consider the underlying suspension.

[46] On 10 May 2023, Mr Daniel Harvey, Physiotherapist, filed a report, following a paper review, in which he stated.

Yes, the tissue healing model states that for a soft tissue injury, healing occurs in 6-8 weeks. This timeframe refers to tissue repair and the laying down of collagen and maturation of scar tissue. However, this model does not factor in if the claimant has regained all their pre-injury strength, function and if their nervous/pain system has returned to their pre-injury state. In the above case the claimant continued to have pain, swelling and loss of function up to 7 months after the initial accident. Yes, in theory the soft tissue capsular sprain may have repaired at a tissue level (although there is still evidence on MRI of a sprain 7

months later), but it is still apparent from the surgeon's assessment and claimant's history that seven months after the injury they still had ongoing pain, swelling and loss of function. For ACC to have a blanket supposition that ALL soft tissue sprains should be healed in 6-8 weeks based on the tissue healing model of the 1990s, is not best practice when managing soft tissue injuries. Some soft tissue injuries require comprehensive rehabilitation to regain functional strength and to reduce symptoms. There is clear evidence the claimant suffered a personal injury lifting a heavy box and had subsequent pain and swelling that persisted for seven months, that required specialist assessment and an MRI. The MRI did show mild ligamentous sprain – which is incompatible with ACC's claim that ALL soft tissue sprains should be healed in 6-8 weeks based on the tissue healing model. ... The claimant did suffer two further injuries to the same right wrist on 3rd July 2020 and 10th May 2021, with the reported weight of the box being 10kg. As per the United States Department of Labor Physical Demands Definition, 10kg is a medium load, not a light load as stated by ACC in their report. ...

This wrist ligament sprain is likely to have been sustained in the initial accident on the 7th March 2020. ...

A partial tear of the scapholunate ligament is usually caused by trauma – not by degenerative changes and can be visualized by MRI. The ligament stabilises the wrist joint and can be damaged with loading activities that exceed the ligament's physical properties. ... The claimant did not have tearing or significant tendinosis changes on MRI. The claimant did have tenosynovitis around the ECU and it is possible the injury on 3rd July 2020 and 10th May 2021 caused this tendon stress and inflammation. ...

In the right elbow the low-grade injury of the anterior band of the ulnar collateral had healed by the time of the second MRI on 28/06/2022.

In the right wrist the capsular sprain at the volar portion (distal RU joint) had resolved/healed by the time of the second MRI on 3/11/2021.

In the right wrist the partial tear of the band of the scapholunate ligament and ECU tendinosis with tenosynovitis found on the 3/11/2021 MRI is possibly still present but this would be determined by [sic] if the claimant had received appropriate management including treatment and load management and what their current presentation was.

[47] On 31 July 2023, Mr Taylor noted that Ms Kaur continued to complain of pain in her right lateral epicondyle, plus pain radiating down to her forearm.

[48] On 31 July 2023, review proceedings were conducted. On 31 July 2023, the Reviewer determined that the 10 January 2022 decision was the operative decision and concluded that the evidence supported the Corporation's suspension.

[49] On 2 August 2023, a Notice of Appeal was filed against the Reviewer's decision.

[50] On 16 October 2023, Mr Wolfgang Heiss-Dunlop, Hand Surgeon, reported:

[Ms Kaur] likely has a fairly mild form of lateral epicondylitis but possibly a radial tunnel syndrome and contributing to this may be a small ganglion arising from the radiocapitellar joint close to the radial nerve.

[51] On 19 October 2023, the Corporation's Clinical Advisory Panel ("CAP", comprising three Orthopaedic Surgeons and two Physiotherapists) issued a report. The CAP considered the contemporaneous evidence, the specialist reporting and the radiological evidence, and concluded that Ms Kaur likely suffered a sprain in each of the three accident events. The CAP considered the injuries to have been mild, and that Ms Kaur would have recovered from them in a matter of weeks (consistent with her return to work following the first two accidents). The CAP did not think that there was evidence that Ms Kaur had suffered an injury to the ulnar collateral ligament in any of the accidents, because there were no corresponding symptoms at the time of each accident. In the CAP's view, this pathology was more likely associated with overuse activities. The CAP also noted that Ms Kaur suffered from tendinosis, a gradual-process condition caused by repeated tendon overload. The CAP noted that this is a condition that can be associated with structural changes, including microtears. The CAP did not consider this pathology to be related to the three covered accident events, and confirmed that this pathology was the cause of Ms Kaur's ongoing symptoms.

[52] The CAP also did not think that there was any evidence that Ms Kaur had suffered an injury to the scapholunate ligament in the accident event of 10 May 2021. The CAP concluded that the accident mechanism was not consistent with this kind of injury, and noted that Mr Harvey was wrong to assert that this kind of injury was typically caused by trauma, and that the literature suggested otherwise.

[53] Overall, the CAP considered each of the accident events (and the clinical course that followed) to be consistent with Ms Kaur having suffered sprain injuries which would have resolved by January 2022. Ongoing symptoms at that stage were likely as a result of tendinosis, a gradual-process condition unrelated to any personal injury by accident.

## Relevant law

[54] Section 67 of the Act provides:

A claimant who has suffered a personal injury is entitled to 1 or more entitlements if he or she—

- (a) has cover for the personal injury; and
- (b) is eligible under this Act for the entitlement or entitlements in respect of the personal injury.

[55] Section 117(1) provides:

The Corporation may suspend or cancel an entitlement if it is not satisfied, on the basis of the information in its possession, that a claimant is entitled to continue to receive the entitlement.

[56] In *Ellwood*,<sup>1</sup> Mallon J stated, in regard to equivalent provisions under the Accident Insurance Act 1998:

[65] I therefore consider that s 116 combined with the requirement in s 62 on ACC to make reasonable decisions requires ACC to have a sufficient basis before terminating benefits. If the position is uncertain then there is not a sufficient basis. The “not satisfied” test is not met in these circumstances.

[57] In *Furst*,<sup>2</sup> Barber DCJ stated:

[13] ACC must have a “*sufficient basis before it is not satisfied that a claimant is entitled to continue to receive the entitlement*”. If the position is uncertain, “*then there is not a sufficient basis*” The “*not satisfied*” test is not met in these circumstances”. *Ellwood v the Corporation* [2007] NZAR 205. The “*not satisfied*” test requires a positive decision ... equivalent to being satisfied that there is no right to entitlements. This test would not be met where the evidence was in the balance or unclear: *Milner v the Corporation* (187/2007).

[58] In *Newton*,<sup>3</sup> Powell DCJ endorsed the decision of Judge Ongley in *Medwed*<sup>4</sup> in these terms:

[23]... While I have no information before me as to the reasons that cover for the Lake Hayes incident was declined it would be extraordinary and in my view quite inconsistent with s 67 of the Act if Mrs Newton could rely upon an injury

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<sup>1</sup> *Ellwood v Accident Compensation Corporation* [2007] NZAR 205.

<sup>2</sup> *Furst v Accident Compensation Corporation* [2011] NZACC 379. See also *Ellwood v Accident Compensation Corporation* [2012] NZHC 2887; and *Booker v Accident Compensation Corporation* DC Huntly 205/00, 17 August 2000.

<sup>3</sup> *Newton v Accident Compensation Corporation* [2015] NZACC 22.

<sup>4</sup> *Medwed v Accident Compensation Corporation* [2009] NZACC 87.

for which cover has been declined as a ground to obtain entitlements in respect of a different covered injury.

[24] As both Mr Sara and Mr Hunt noted the attempt to rely upon the Lake Hayes incident gives rise to a situation very similar to that which was considered by His Honour Judge Ongley in *Medwed v Accident Compensation Corporation*. The appellant in that case attempted to rely upon an injury that allegedly occurred in 1994 (and which was subsequently declined by the Corporation) to support an application for surgery made in respect of a 2007 covered injury. Of relevance to the present case Judge Ongley concluded:

[26] The deciding point is however the status of cover under the Act. No cover had been obtained for the 1994 injury. The best medical opinion for the appellant was that the sole cause was the 1994 injury, and that it was unlikely that the later covered injuries were causative of the condition requiring surgery. I have rejected the argument that a treatment entitlement could be obtained without first obtaining cover for the specified injury. I find that even if the condition resulted from personal injury caused by accident in 1994, there is no entitlement without cover for that injury...

[25] In the hearing before me Mr Sara suggested it was perhaps time for *Medwed* to be revisited. Given the conclusions I have reached in respect of the scheme of the Act I disagree, and instead consider that Judge Ongley quite correctly set out the law as it stands, and in my view there can be no basis for any different conclusion.

[59] In *Popoalii*,<sup>5</sup> Henare DCJ stated:

[24] ... before the medical evidence adduced by both parties after the Corporation's decision can be considered, this Court must first be satisfied that the Corporation had a sufficient basis to be not satisfied that Mr Popoalii had a right to continue to receive entitlements at the time the decision to suspend was made. Only if this can be established does the Court then consider whether there remains a sufficient basis to be not satisfied having regard to all the evidence now before the Court.

[25] ... for the Corporation to be satisfied as to whether a claimant remains entitled to an entitlement, the starting point is clearly s 67 of the Act...

[26] ... entitlements can only be suspended under s 117(1) if either of the two requirements in s 67 are not, or are no longer, met.

[27] With regard to the requirement under s 67(a) this is most often manifested when the covered injury is recorded as a sprain or a strain and the entitlement sought is for a more specific injury such as a rotator cuff tear or lumbar disc prolapse. In such situations, a causal inquiry is necessary to determine whether the tear or prolapse was indeed related to the injury for which cover was granted or whether the injury for which the entitlement is required occurred independently of the covered injury. Likewise, it is well established that a claimant cannot rely upon a non-covered injury to support a

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<sup>5</sup> *Popoalii v Accident Compensation Corporation* [2018] NZACC 123.

claim for entitlements, and in the absence of cover no entitlements can therefore flow.

[60] In *Ambros*,<sup>6</sup> Glazebrook J, for 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 ...

[61] In *Hull*,<sup>7</sup> Beattie DCJ stated:

There can only be one decision at any time on any particular claim or entitlement under the Act. When that decision has been made, that is it until such time as it may be revoked, revised or amended whereupon it becomes a new decision or as the Corporation is known to describe it, a "fresh" decision.

...

The mere reassertion of the status quo cannot be said to be a fresh decision ...

## Discussion

### *The Corporation's decision of 10 January 2022*

[62] On 10 January 2022, the Corporation suspended Ms Kaur's weekly compensation on the basis that the medical information showed that her current condition was no longer the result of her personal injury of 10 May 2021. The first

<sup>6</sup> *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

<sup>7</sup> *Hull v Accident Compensation Corporation* [1997] NZACC 249.

issue in this case is whether, as at 10 January 2022, the Corporation had sufficient information to be satisfied that Ms Kaur was no longer suffering the effects of elbow/forearm and wrist sprains suffered in 2020 and May 2021. The Corporation was entitled to suspend Ms Kaur's weekly compensation entitlement if it was not satisfied, on the basis of the information in its possession, that she was entitled to continue to receive the entitlement. If the Corporation can show that there was sufficient basis for it to be satisfied that Ms Kaur was no longer entitled to weekly compensation, then the second issue is whether Ms Kaur has discharged the onus of showing that the Corporation's decision was wrong.

[63] Mr Hinchcliff, for Ms Kaur, submits as follows. Mr Henry's opinion, on which the Corporation's decision of January 2022 was based, was flawed. He did not comment on Ms Kaur's right elbow tear of the common elbow extensor tendon, or the small volar wrist ganglion cyst associated with her volar wrist ligament sprain injury. He used general healing time frames, instead of looking at whether Ms Kaur's rehabilitation was complete within those time frames. Ms Kaur relies on evidence from the radiological reports, Mr Taylor, Dr Kanji and Mr Harvey. The evidence is that the injuries from the accident, or consequential injuries, were still present at least seven months after the accident. A scapholunate ligament injury is usually caused by trauma. The tears in the ligaments and tendons were not found to be gradual process conditions. Specific cover for the tear or other accident-related injuries are not required. The CAP report is flawed in light of the x-ray evidence, the MRI reports and Dr Kanji's report. The CAP overlooked the evidence of scapholunate ligament injury. Mr Harvey's opinion should be preferred as it is consistent with the evidence.

[64] This Court acknowledges the above submissions. The Court notes that, as a result of Ms Kaur's injuries on 7 March 2020, 3 July 2020 and 10 May 2021, Ms Kaur was granted cover for only right elbow/forearm and wrist sprains, and she returned to work following the first two accidents. Further, the Court points to the following medical evidence.

*Medical evidence up to 10 January 2022*

[65] Up to the time of the Corporation's decision to suspend Ms Kaur's weekly compensation, the Corporation had the following evidence:

- (a) The earliest imaging of Ms Kaur's right wrist and elbow after the accidents did not identify any acute pathology:
  - (i) On 6 July 2020 (three days after the second accident), Dr Liebenberg, Radiologist, reported that an x-ray of Mr Kaur's right finger, hand and wrist showed no acute injury, joint spaces normal, and soft tissue swelling overlying distal ulnar styloid process.
  - (ii) On 31 October 2020 (within eight months after the first two accidents), Dr Clarke, Radiologist, reported the possibility of mild volar capsular sprain of the right wrist, but no evidence of significant disruption of the radioulnar ligaments or articular disc.
  - (iii) On 10 May 2021 (immediately after the third accident), Dr Osborne, Radiologist, reported that the x-ray of Ms Kaur's right wrist showed no significant bone or joint abnormality.
  - (iv) On 17 September 2021 (four months after the third accident), Dr Ghuman, Radiologist, reported previous low-grade injury of the anterior band of the ulnar collateral ligament but that appearances at the elbow were otherwise unremarkable.
  - (v) On 26 November 2021 (six months after the third accident), Dr Jayaram, Radiologist, reported that an MRI of Ms Kaur's right wrist showed a partial tear of the dorsal band ligament, a full thickness perforation of the TFC disc, and ECU tendinosis.
- (b) The examinations of Ms Kaur after the first two accidents by Mr Taylor, Orthopaedic Surgeon, did not identify any acute pathology:

- (i) On 29 October 2020, Mr Taylor advised that there was little to find on examination apart from tenderness over the scapholunate ligament.
  - (ii) On 17 December 2020 Mr Taylor confirmed that the MRI scan on 31 October 2020 showed little in the way of significant pathology.
  - (iii) On 27 January 2021, Mr Taylor reported that Ms Kaur's symptoms were generalised musculoskeletal discomfort in the upper limb.
- (c) The examinations of Ms Kaur after the third accident by Dr Kanji, Musculoskeletal Physician, did not link Ms Kaur's ongoing symptoms to any injury suffered in an accident:
- (i) On 23 June 2021, Dr Kanji reported that there was likely a contribution from both Ms Kaur's cervical spine and either tennis elbow or right wrist tendinosis, to ongoing symptoms.
  - (ii) On 2 December 2021, Dr Kanji suspected, in light of the MRI on 26 November 2021, that ECU tendinosis was the source of Ms Kaur's symptoms, and thought that the ganglions were incidental.
- (d) On 20 December 2021, Mr Henry, Physiotherapist, advised that Ms Kaur's ongoing incapacity was not due to her covered sprain diagnoses, as these injuries were expected to have resolved. Mr Henry noted that recent specialist comment suggested that Ms Kaur's symptoms were due to a condition that was considered non-accident related.

[66] In light of the above evidence, this Court is satisfied that the Corporation has discharged the onus to show that, as at the time of its suspension decision on 10 January 2022, there was sufficient basis for it to be satisfied that Ms Kaur was no longer entitled to weekly compensation.

*Medical evidence after 10 January 2022*

[67] Since the Corporation's decision to suspend Ms Kaur's weekly compensation, the following medical evidence has been received:

- (a) On 28 June 2022 (13 months after the third accident), Dr De Silva, Radiologist, reported that an MRI on Ms Kaur's right elbow showed a moderate grade tear of the common extensor tendon origin, with background tendinosis.
- (b) On 15 December 2022, Mr Henry, Physiotherapist, advised that the recent MRI scan of Ms Kaur's right elbow showed that her condition was consistent with a tendinopathy, being a non-accident-related gradual-process condition, and that there was no indication that any accident-related condition or injury was the cause of Ms Kaur's ongoing right wrist/hand and elbow symptoms.
- (c) On 10 May 2023, Mr Harvey, Physiotherapist, accepted in a paper review that the model was that healing of a soft-tissue injury occurred in 6-8 weeks, but noted that Ms Kaur's pain and swelling from her first injury (on 7 March 2020) persisted for seven months. Mr Harvey accepted that Ms Kaur had tenosynovitis around the ECU, and that it was difficult to attribute her tear in the common extensor origin to one of her covered injuries. He thought it possible that the injuries on 3 July 2020 and 10 May 2021 caused this tendon stress and inflammation, and that a small ganglion cyst showing in the right elbow MRI of 17 September 2021 was probably on the basis of low-grade injury. Mr Harvey assessed that the right-wrist capsular sprain had resolved/healed by the time of the MRI on 3 November 2021; that the right-elbow low-grade injury of the ulnar collateral had healed by the time of the MRI on 28 June 2022; and that the right-wrist partial tear of the band of the scapholunate ligament and ECU tendinosis with tenosynovitis found on the 3 November 2021 MRI was possibly still present.

- (d) On 16 October 2023, Mr Heiss-Dunlop, Hand Surgeon, reported that Ms Kaur likely had a fairly mild form of lateral epicondylitis, but possibly a radial-tunnel syndrome and contributing to this may be a small ganglion arising from the radiocapitellar joint close to the radial nerve.
  
- (e) On 19 October 2023, the Corporation’s Clinical Advisory Panel (“CAP”, comprising three Orthopaedic Surgeons and two Physiotherapists) assessed that Ms Kaur’s injuries from her three accidents had been mild, and that she would have recovered from them in a matter of weeks, and resolved by January 2022. The CAP did not think that there was evidence that Ms Kaur had suffered an injury to the ulnar collateral ligament in any of the accidents, because there were no corresponding symptoms at the time of each accident. The CAP also did not think that there was any evidence that Ms Kaur had suffered an injury to the scapholunate ligament in the accident event of 10 May 2021. The CAP noted that Mr Harvey had not stated which specific accidents had caused Ms Kaur’s ongoing injury and not provided any clinical rationale as to how any of the three lifting events could have caused the injury. The CAP noted that Ms Kaur suffered from tendinosis, a gradual-process condition caused by repeated tendon overload, and the CAP did not consider this pathology to be related to the three covered accident events.

[68] This Court finds that the weight of the above evidence continues to support that Ms Kaur’s ongoing right elbow/forearm and wrist symptoms were not caused by her covered accident-related injuries, and, rather, that her ongoing right elbow/forearm and wrist condition is consistent with a non-accident-related gradual-process condition.

***The Corporation’s decision of 15 December 2022***

[69] The Corporation’s 15 December 2022 decision stated that the suspension of weekly compensation decision of 10 January 2022 remained. The Corporation noted that it had investigated the additional information provided by Ms Kaur, and found

that the cause of her ongoing symptoms and incapacity were not due to a personal injury caused by a covered accident.

[70] Mr Hinchcliff, for Ms Kaur, accepts that the Corporation's 15 December 2022 decision relates to the same issue as in the Corporation's 10 January 2022, that is, whether Ms Kaur's weekly compensation should be suspended on the basis that her ongoing symptoms and incapacity were not due to a personal injury caused by a covered accident.

[71] In the 15 December 2022 decision, the Corporation expressly stated that the suspension of weekly compensation decision (of 10 January 2022) remained. The 15 December 2022 decision was therefore, effectively, not a fresh decision. This Court therefore agrees with the Reviewer that she did not have jurisdiction to hear the review in respect of the 15 December 2022 decision.

### **Conclusion**

[72] In light of the above considerations, the Court finds that the Corporation, on 10 January 2022, had sufficient basis to suspend Ms Kaur's weekly compensation entitlements in January 2022, and that Ms Kaur has, in light of evidence since that suspension, not demonstrated that her ongoing condition is caused by her covered injuries. The Court also finds that the Reviewer did not have jurisdiction to hear the review in respect of the Corporation's 15 December 2022 decision.

[73] The decision of the Reviewer dated 31 July 2023 is therefore upheld. This appeal is dismissed.

[74] I make no order as to costs.



P R Spiller  
District Court Judge

Solicitors for the Respondent: Medico Law Ltd.