

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2024] NZACC 40**

**ACR 118/22**

|                  |   |
|------------------|---|
| UNDER            | THE ACCIDENT COMPENSATION ACT<br>2001                           |
| IN THE MATTER OF | AN APPEAL UNDER SECTION 149 OF<br>THE ACCIDENT COMPENSATION ACT |
| BETWEEN          | ALEXANDRA HODGSON<br>Appellant                                  |
| AND              | ACCIDENT COMPENSATION<br>CORPORATION<br>First Respondent        |
| AND              | AFFCO HOLDINGS LIMITED<br>Second Respondent                     |

Hearing: 23 November 2023

Heard at: Wellington / Whanganui-A-Tara

Appearances: Mr Q Vugler for the Appellant  
No appearance for the First Respondent  
Ms E Anderson for the Second Respondent

Judgment: 29 February 2024

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**RESERVED JUDGMENT OF JUDGE C J MCGUIRE  
(Work Related Personal Injury – Section 26; Section 28)**

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[1] At issue on this appeal is the decision of Talley’s Group Limited Injury Management Unit’s decision of 21 December 2021 declining the appellant’s claim for cover for a work related personal injury on the basis that no physical injury could be

attributed to an accident during the appellant's employment at AFFCO reported on 13 February 2021.

[2] The first respondent, the Accident Compensation Corporation has advised through Counsel in a memorandum dated 17 March 2023 that it will abide the decision of the Court on this appeal and will take no further steps.

### **Background**

[3] The appellant started her employment at AFFCO Imlay Whanganui on 3 February 2021. She was employed as a slaughterhouse labourer. Her work role involved rotating through six stations in the slaughter chain every 15 to 30 minutes. Namely:

- (a) Washing station, where she would wash the chest of sheep;
- (b) Kidney peeling station;
- (c) Vacuum fat machine station;
- (d) Kidney removal station;
- (e) Steam machine station to clean the sheep carcasses;
- (f) Hock cutter station.

[4] The kidney peeling station required Ms Hodgson to grip a sheep kidney with her left (non dominant) hand while she peeled fat or skin from the kidney with a tool in her right hand. Ms Hodgson described having to have the kidney gripped tightly to make sure the kidney is firm to enable this peeling to occur.

[5] On 13 February 2021, she was working at the kidney peeling station when she felt the onset of pain in her left thumb and wrist. She advised her supervisor about this pain. However, she continued to work.

[6] Following her day off, she returned to work on 15 February 2021 and remained on the kidney peeling station for 45 minutes at one point, which caused significant pain to her left hand. Again, she continued to work through.

[7] On 16 February 2021, she again worked in spite of the pain and again at one point worked on the kidney peeling station for a period of 45 minutes. Towards the end of this period, Ms Hodgson felt a “ping” sensation in her left hand while gripping a kidney.

[8] On 17 February 2021, Ms Hodgson called her supervisor to say she would not be coming to work due to the pain persisting. Ms Hodgson was advised to go to the emergency department, as she could not see her GP until 23 February 2021.

[9] Ms Hodgson presented to Whanganui Accident and Medical Limited on 17 February 2021 and an ACC claim form was completed. The description of injury was noted as:

Was working at the slaughterhouse at AFFCO, started getting pain in the thumb and wrist ... sprain tendon wrist or hand.

[10] Included in the clinical notes from this consultation is the following:

(Registered Nurse) Shirley Kuzman: Patient presents with left thumb pain – pain shooting into wrist and index finger. Feels like something is pinging. Works on slaughter line at AFFCO. Pain started this week – good radial pulse. Has strapping on wrist.

(Dr Raju Mathew) Was working at AFFCO at slaughterhouse – started getting sore on the (left) thumb and getting worse. Strapped it but not getting better.

[11] On 18 February 2021, a workplace injury needs assessment was lodged by AFFCO. It notes that Ms Hodgson’s accident occurred on 13 February 2021. It notes that her job classification is “heavy” and she has been employed for three weeks. The assessment also notes:

Sprain tendon wrist/hand ... peeling kidneys in slaughter floor. Started getting pain in wrist and thumb on right hand.

[12] General practitioner, Dr Firth, provided a medical certificate on 23 February 2021 with the diagnosis:

Sprained hand plus wrist with excessing work in slaughterhouse.

[13] She was declared unfit for work until 9 March 2021 “because unable to use hand”.

[14] In the consultation notes from Dr Firth from 23 February 2021 is this:

**Subjective**

Pain and numbness side of hand since excess hand work peeling kidneys in work. Not fallen or banged it. No past hand or wrist injury ... low mood since L hand injury.

**Objective**

Exam tender radial side left wrist + base of thumb. Numb distal end of thumb palm side. Thumb + wrist movements painful but tendons intact.

**Impression**

Sprain tendonitis ? nerve compression.

Plan – physio, diclofenac.

[15] On 26 February 2021, the appellant completed what appears to be an AFFCO accident report. It bears the claim number: AFF0045095. The appellant attached to it the following description of the accident:

My hand started to get sore on Saturday 13/02/21. I told one of the shift supervisors that it was sore and they sort of laughed it off, then walked away.

Then I went to work Monday (15/02/21), before our 9.00pm (30 minute) break, I was stuck on the kidney peeling station for 45 minutes. There was two of us on the station for 30 minutes in total. When one had done 30 minutes, they would rotate then so on, however this night, one of the newer guys didn't realise he was at the station that the rotation started from and stayed there for an extra 30 minutes, which left me at the kidney peeling station for 45 minutes as the other employee next to me was moved to do something else. My hand started to hurt more and I kept having to run it under the tap station next to me to get a little bit of relief.

I went to work Tuesday (16/02/21). While each of us were signing our covid papers in the office, an employee, Roy, was meant to be filling in for us at workstation and rotating each of us when our 15 minutes was up, instead he was just swapping places and rotating them. So, after I signed my papers and went back to the kidney peeling station where Roy rotated the four other

stations, but didn't get anyone to rotate my station. While at the kidney peeling station, I felt a sharp ping in my right hand (in the gap between my thumb bone and my index finger bone). I ran my hand under the hot water at the tap station next to me, but had to keep working as it would stuff the chain up and make more work for others further down the chain. I finished my shift and when I got home, I noticed the inside of my thumb was numb and my hand was swollen and very sore.

The next day it hadn't gotten any better, so I rang work to say I wouldn't be in for today's nightshift and stated about my thumb being numb and my hand being very sore. I had a doctors appointment booked, but could not get to see him until 23/02/21. Later that day, Pio (not sure if spelling is correct), the supervisor, rang to advise me to go to the emergency department to get all the paperwork for work and to see what was wrong with it. So I went up to hospital and here we are ...

[16] On 1 March 2021, supervisor P Gray completed an incident report/investigation document. He recorded the injury as "strain/sprain". The cause of the incident was noted as "squeezing kidneys with a closed hand" and that the hazard was noted as "closed hand around kidney".

[17] Under the heading "What action has or will be taken to prevent a recurrence?", there is this:

15 minute rotations on six different tasks.

[18] Ms Hodgson was referred to physiotherapy. Physiotherapist, Ms Edgecombe, noted in her assessment of 1 March 2021:

**Mechanism:** Pain plus numb thumb side of hand since excess hand work peeling kidneys at work, hurt hand during kidney peeling for an hour – felt a pinch between index and thumb.

**Current Symptoms:** 3,700 sheep per shift. Wrist will click at times, can hurt through the second and third MCP joints and clicking does make it feel better. Taking voltaren as needed for pain. Morning is painful.

**Aggravating Features:** Movement is painful.

**Easing Features:** Voltaren.

...

#### **Hand Objective Assessment**

**Observation:** Reduced free AROM (active range of motion) thumb shaking on AROM.

**Palpation/Physiological Movement:** pt is very tender to move and very tender on palpation all over the radial/thumb side of the wrist – she is tender on palpation all over and unable to confirm diagnosis.

**Treatment:** Discussed normal healing timeframes for soft tissue of six weeks. But unable to give a good guess as I am unable to confirm her diagnosis due to her ++ pain today – fabricated a radial sided thumb spica gutter with orficast ...

**Exercise Details:** Heat and gentle AROM a few times per day.

**Differential Diagnosis:** Sprained radial side of the wrist/thumb - ? de quervains.

**Analysis:** One week old left thumb injury after being stuck on one station at AFFCO (peeling kidneys). Felt a pinging sensation in the web space between the index and thumb resulting in ++ pain of the thumb and radial side of the wrist. Today we have splinted her in a radial sided gutter made of orficast as we used all the soft casts this morning and we will change this to a soft cast next week in effort to reduce pain and allow for more thorough assessment.

[19] IMU Claims Manager, Kelly Gray, made this note of a call to the appellant on 9 March 2021:

Call to Alex: discuss accident + SOE – advised was reaching down to pick up a kidney and felt a ping. She indicated there was no kidney in her hand and was just reaching down, no force.

[20] Note: This record is disputed by the appellant.

[21] The appellant undertook an ultrasound on 19 March 2021. which found a normal thumb ultrasound study.

[22] A consultation in surgery occurred with Nurse Practitioner, Hina, on 22 March 2021. The appellant was certified unfit for work until 21 April 2021. Nurse Hina noted the recent ultrasound finding of nil tear and that her physiotherapist advised four weeks in a brace, to be reviewed on 19 April. The appellant reported that it was “still tender radial side plus base of thumb, numbness still there, painful to fully move”.

[23] The nurse noted:

**Impression:** Acute injury to wrist + thumb L hand.

**Plan:** ACC off work, continue with hand physio. Review with one month.

[24] On 1 April 2021, IMU declined cover for her claim due to not enough evidence to what the diagnosis is and to prove a causal link to the work incident.

[25] On 9 April 2021, Ms Hodgson lodged a review application through her advocate at the time.

[26] On 10 May, physiotherapist/hand therapist, Anja Edgecombe, provided a summary that was intended to be a referral to a doctor. Ms Edgecombe noted:

She was employed by AFFCO and is part of the slaughter chain where they rotate between duties every 15-30 minutes. At the time of the injury, she was left on her station for an hour peeling kidneys – gripping with the left hand and peeling with the right. There is considerable force required to sustain her grip on the kidney, like gripping a filled balloon. She felt a sudden pinging sensation with considerable pain. Initially Alexandra presented with very high levels of pain and limited AROM as well as a numb tip of the left thumb.

We have treated her conservatively with forearm-based thumb spica for nine weeks. Alexandra's pain has finally settled for us to locate the focal point of pain as the first CMC. We have progressed today to a thumb-based first CMC splint. US shows no inflammation of the thumb tendons. She has a negative finkelstein's test and is tender on palpation over STT, the tip of her thumb remains numb. Seeing as there is so much discomfort still at 11 weeks post-injury, I feel it would be beneficial for her to have access to further investigation.

[27] GP, Dr Megan Brew, provided a report in support of the appellant's claim for cover, dated 3 June 2021. The report included:

I have reviewed Alex's notes, as provided, and assessed that the medical evidence supports a diagnosis of a sprain of the left thumb/wrist.

[28] On 4 June 2021, AFFCO Imlay Health and Safety Co-ordinator, Kelli Taylor, noted that Ms Hodgson had been provided a chain speed reduction from an average of 5.5 per minute to 4.4 per minute on 13 February 2021. Ms Taylor noted:

At this speed, it is not uncommon for the time of the rotations to be extended as to rotate the operators, the chain has to be stopped completely and therefore rotations of low risk and low difficulty level of the tasks will be extended. Alexandra was part of ie. kidney peeling, kidney plucking, fat sucker and hind quarter plus forequarter hock cutters. All of these tasks are considered to be lighter duty tasks.

[29] Ms Hodgson was referred to occupational physician, Dr Asghar, who undertook a file review and provided a report dated 22 June 2021. Dr Asghar said:

Alexandra was symptomatic in her non-dominant left hand. She was asymptomatic during her training period and initial work days, where extra manning was available in her usual tasks. Alexandra became symptomatic and had a sore hand on the first day working solo on kidney peeling. It is noted that her pain symptoms were not reported on 13 February 2021.

I note, in Alexandra's opinion, being on the chain for about 45 minutes on 15 February 2021 led to further symptoms in her hand. The sharp "ping" sensation on 16 February 2021 where no significant mechanism is described developed at the outset of work, however Alexandra continued working towards the end of the day. She noticed numbness in the inner aspect of her thumb and noted her hand was swollen and was very sore (side not specified).

I consider a single event leading to wrist sprain is likely responsible for the symptoms on 13 February 2021. There was a likelihood of aggravation of symptoms due to the initial event in subsequent days. ...

I consider, there is low likelihood of an acute injury due to spending excessive time on a single station, provided there is an appropriate chain speed. The presence of extra manning further reduces the likelihood of the injury resulting from the process. I conclude there is low likelihood of involvement of series of events in this claim ...

[30] Dr Asghar then answered the following referral questions:

1. *What is the current diagnosis/s of this claim?*

Left wrist sprain.  
Left thumb strain.

2. *Given Alexandra had worked in the same role without concerns at AFFCO for ten days prior to her DOA, would time above 15 minutes on one of six rotation stations, with chain speeds set appropriately, constitute a series of events?*

I do not consider that at an appropriate chain speed, the initial symptoms/injury reported on 13 February are a result of a series of events. It is more likely that a single event is responsible for the symptoms on the DOA.

Subsequent symptoms on 15 and 16 February 2021 are likely an aggravation of the events sustained on 13 February 2021. I note there is no specific incident/mechanism described on 13 February, nor on 16 February, when a "ping" sensation is described.

In conclusion, there is low likelihood of the series of event type injury and high likelihood of a single event responsible for the symptoms, further aggravated by the work tasks.

3. *What is causing the ongoing incapacity and limited response to rehabilitation and is this causally linked to any accident or series of events on 13/02-16/02/2021?*



I note biological principles of sprains and strains are that they are acute soft tissue injuries, which present acutely following injury. They are most symptomatic in the first two-four weeks and with appropriate return to normal activity resolve and are usually considered spent between eight and 12 weeks following injury. Therefore, recovery timeframes from those injuries are ordinarily three months.

Given non-resolution of symptoms and normal ultrasound findings, further investigations are recommended to clarify the anatomy and occult injury changes by way of an MRI.

...

[31] On 16 July 2021, Reviewer, Ms Linde, quashed the decision and instructed the accredited employer to investigate an injury by a series of events. Notably she was of the opinion that Ms Hodgson had suffered a sprain or strain of the left wrist or thumb.

[32] Ms Hodgson had an MRI on her left thumb and left wrist on 4 August 2021. The findings were essentially normal, except for this:

Scapholunate ligament: probable small tear of the mid-central band. Normal scapholunate interval.

...

[33] Dr Singh, who had ordered the MRI scan, saw the appellant on 6 August 2021. He reported:

I saw Alexandra today following an MRI scan of her wrist and thumb which was done the day before the wrist MRI scan during the consultation. However, I called the on-call radiologist and got a verbal message.

[34] Dr Singh recorded that Dr Moaut advised:

... There is no gross or significant finding in left thumb MRI scan.

[35] Under the heading “Discussion and Advice”, Dr Singh said:

I explained to Alexandra that she is still quite symptomatic after that length of time. She has done quiet a bit of physiotherapy. I would like to get an opinion from an orthopaedic colleague, therefore I will refer her to Dr Andy Stradtmueller for a further opinion with regard to further management.

[36] Dr Stradtmueller examined the appellant on 6 October 2021. In his report he said:

I reviewed Alex's MRI scans which show a small tear of the scapholunate joint with a high signal going through the joint space in the T2 sequences.

I had a long discussion with her and her father around her symptoms and possible treatment options. As a first measure, I have organised for her to have an image guided steroid injection to the scapholunate joint of the left wrist, which I will endeavour to do as soon as possible at the Whanganui DHB. I told her that she could possibly be considered for wrist arthroscopy and debridement of the scapholunate ligament if that would alleviate her symptoms, but I have told her already that I would not do that keyhole surgery myself, and I would have to refer her to a specialist in Palmerston North for this.

[37] On 10 October 2021, the appellant was referred to occupational physician Dr Antoniadis. Dr Antoniadis recorded this under the heading "Summary":

Ms Hodgson is a 30 year old right-hand dominant woman, most recently employed as a slaughter room labourer with Imlay AFFCO in Whanganui, who in mid-February 2021 experienced relatively sudden onset of pain associated with the left hand, particularly the radial hand. This appears to be associated with the area of the left first web on the dorsal aspect and therefore relatively quickly evolving pain associated with the ventral aspect of her left wrist and thenar eminence. There was sensory disturbance affecting the left thumb at its tip.

[38] As to current diagnosis, Dr Antoniadis said this:

In my opinion a plausible diagnosis, at this time, is of a left carpal tunnel syndrome. It is plausible that the median nerve was irritated within the carpal tunnel during the course of her work activity, particularly the sustained or repeated forceful gripping and holding the kidneys in the course of peeling them.

It is possible that this presentation associated with symptoms associated with median nerve irritation within the right carpal tunnel.

It will be helpful to have nerve conduction studies completed to assess the neurophysiology of the left median nerve at this time.

[39] Dr Antoniadis referred Ms Hodgson to Angela McDonnell, Neurophysiologist, for a nerve conduction study in order to consider carpal tunnel syndrome. Under "Summary of Result" she said:

Nerve conduction studies from the left median nerve show a single potential, the median 2<sup>nd</sup> lumbrical which is borderline prolonged in latency. This, although

suggestive, in isolation does not provide sufficient evidence to diagnose Carpal tunnel syndrome.

[40] Dr Antoniadis provided a supplementary report on 3 December 2021. He said:

The symptoms are more of a peripheral nerve irritation without entrapment or injury. The contributing factors to this irritation is plausibly attributed to an intense period of sustained gripping during the course of approximately ten days of work activity without confirmed physical injury to the median nerve. It is implausible that ten days of gripping and holding kidneys with the left and peeling with the right would be a causative factor of a carpal tunnel syndrome.

I am not able to confirm any clear plausible injury to the wrist associated with the gripping of kidneys while peeling sustained during that time in February this year. I do note a small tear reported within the scapholunate ligament, which may have been rendered symptomatic by the actions described during the ten days in the workplace. ...

[41] Dr Antoniadis went on to state that the current diagnoses associated with Ms Hodgson's presentation and earlier presentation to medical practitioners in Whanganui would include:

1. Probable left median nerve irritation without confirmation of injury, ie. no support for clear peripheral nerve injury to support, neurophysiologically, a diagnosis of carpal tunnel syndrome.
2. Small tear mid-central band scapholunate ligament left wrist – MRI 4 August 2021 – potentially rendered symptomatic in the course of her work in early February 2021, but again not caused by that activity.

[42] Dr Antoniadis went on to say:

The actions of sustained squeezing with a background of class 3 obesity are plausibly linked to a median nerve irritation within the carpal tunnel without presence of carpal tunnel syndrome and without any support, particularly neurophysiologically for median nerve injury.

[43] Dr Antoniadis also said:

The discomfort over the dorsal wrist is plausibly attributable to changes within the scapholunate ligament, but caused specifically by the activity described during the period of ten days or so in February 2021.

[44] Based on Dr Antoniadis' opinions, IMU declined cover on 20 December 2021 due to the inability to attribute a physical injury to the ten days working at AFFCO. Ms Hodgson lodged a review of this decision.

[45] Mr Stadtmueller provided a progress report on 10 March 2022 noting that Ms Hodgson's symptoms were alleviated for roughly six weeks as a result of the steroid injection. As such, an additional steroid injection was arranged. The diagnosis listed by Mr Stadtmueller was:

Sprain left wrist and thumb, partial tear scapholunate ligament.

[46] The reviewer, Ms Hill, upheld IMU's decision in her review decision dated 18 May 2022. She noted that Ms Hodgson did not discharge the onus to prove causation of an accident by a series of events led to physical injury.

[47] On 25 August 2022, AFFCO's payroll officer wrote to the appellant advising that owing to her extended absence from work, her employment was terminated under the provisions of the individual employment agreement – clause 18, Sick Leave, subclause 18.9.

[48] A late appeal application was lodged and the appellant obtained a report from musculoskeletal specialist, Dr Iain Bell, who undertook a personal assessment of the appellant on 5 April 2023 and provided a report dated 12 April 2023.

[49] Dr Bell recorded the appellant's history in some detail, which included the following:

Ms Hodgson initially sustained a sprain/strain of one of the soft tissue structures around the radial aspect of the wrist/hand on 16 February 2021 as a result of forceful gripping that was required as part of her job.

A sprain is generally regarded as a soft tissue injury involving the ligamentous or soft tissues supporting structures around a body part. A strain is an equivalent injury involving a muscle. It is a non-specific term.

It is both impossible and impractical to diagnose precisely the actual structure injured with every sprain or strain that ever occurs, and indeed there is no need, given that the vast majority of these spontaneously recover. However, not all do. Some sprains/strains persist and can continue to cause symptoms long-term.

In Mrs Hodgson's case, a sprain involving one of the soft tissues structure around the radial aspect of her wrist or caused by her stated work activities is unsurprising. She commenced work in a role requiring repetitive and forceful gripping using her left hand some ten before she developed symptoms. It is well recognised that repetitive heavy for forceful activities can give rise to

microscopic damage to involved soft tissues, which day to day do not cause pain and ordinarily the body is able to recover from.

However, when the body's capacity to heal is unable to keep up with ongoing repetitive micro trauma, then the condition may become symptomatic as a sprain or strain. This is entirely consistent with Ms Hodgson's account of symptom development when she initially experienced the onset of symptoms three days prior to 16 February 2021. She continued to work and matters reached the point that on 16 February 2021 an acute injury occurred, the involved structure no longer able to resist or recover from the forces being applied.

The precise structure involved, like the majority of soft tissue injuries that occur, is unlikely to ever be known. However, the fact that Ms Hodgson sustained an acute injury on 16 February 2021 is evidenced by:

- The sudden severe pain she experienced in the course of gripping a kidney, this consistent with the injury occurring at the moment;
- Rapid onset of swelling following the event. This is consistent with the typical inflammatory response that occurs following acute injury;
- Ongoing severe pain and impairment in function also entirely consistent with a soft tissue injury;
- Examination findings in the days that followed including loss of range of motion and tenderness, consistent with a soft tissue (injury) occurring;
- No alternative cause of pain and tenderness identified, such as infection or fracture.

...

Ms Hodgson described that gripping the kidneys between her thumb and forefingers, so considerable force was applied by the thumb against the kidney to maintain grip. She described that it was like gripping a slippery balloon.

It was in the performance of this task that over time repetitive micro trauma weakened the soft tissues around the thumb, until eventually the capacity to heal was overcome, becoming symptomatic in the days prior to February 16, and then on February 16 sudden severe pain developing when she sustained an acute sprain of the soft tissues in the region.

In my opinion, the exposure to her workplace tasks in the days prior to February 16<sup>th</sup> was sufficient to ultimately cause a sprain, this compounded by the pace of the work, and the fact that Ms Hodgson was new to the job and therefore not physically conditioned or "work fit" for the actions required ...

Given that this discrete pain event was significant in terms of symptomatology and from that point on she experienced severe symptoms and functional limitation, the sprain/strain constituted a personal injury caused by accident.

...

On review of Dr Antoniadis' report, he documents a number of symptoms and signs at the time of his initial assessment that could plausibly be in keeping with a diagnosis of median nerve irritation. However, median nerve irritation on its own would not explain the widespread tenderness that he noted on examination. Such a finding suggests an alternative, or additional diagnosis.

### **Appellant's Submissions**

[50] On behalf of the appellant, Mr Vugler took the Court through the background of this case from the time the appellant started her employment with AFFCO Imlay Whanganui on 3 February 2021. Ten days later, on 13 February 2021, the accident event occurred.

[51] He notes that on 17 February 2021, when the ACC claim was lodged following the appellant's attendance at Whanganui Accident and Medical Limited, the nurse records:

Left thumb pain – pain shooting into wrist and index finger. Feels like something is pinging. She also told the physiotherapist on 1 March 2021 that she “hurt hand during kidney peeling for hours – felt a pinch between index and thumb”.

[52] The pinging sensation is mentioned again when the ultrasound is carried out on 19 March 2021.

[53] Reference to the pinging sensation occurs again when the physiotherapist makes the doctor's referral on 10 March 2021.

[54] Mr Vugler refers to the medical case review carried out by Dr Antoniadis on 10 October 2021, with Dr Antoniadis saying:

At this time, I am not able to confirm a physical injury associated with the median nerve. This level of peripheral nerve irritation is plausibly associated to her symptoms without any permanent injury event.

[55] Dr Antoniadis also notes:

The actions of sustained squeezing with a background of class 3 obesity are plausibly linked to median nerve irritation within the carpal tunnel ...

[56] Mr Vugler refers to the report of musculoskeletal medicine physician, Dr Iain Bell, dated 12 April 2023. Dr Bell notes:

It is well recognised that repetitive heavy for forceful activities can give rise to microscopic damage to involve soft tissues, which day to day do not cause pain and ordinarily the body is able to recover from.

However, when the body's capacity to heal is unable to keep up with ongoing repetitive micro trauma, then the condition may become symptomatic as a sprain or strain. This is entirely consistent with Ms Hodgson's account of symptom development, when she initially experienced the onset of symptoms three days prior to 16 February 2021.

[57] Mr Vugler then refers to the items listed by Dr Bell as evidence that the appellant suffered an acute injury, being:

- Sudden severe pain;
- Rapid onset of swelling;
- Ongoing severe pain and impairment in function;
- Examination findings in the days that followed including loss of range of motion and tenderness, consistent with a soft tissue (injury) occurring;

[58] Mr Vugler refers to s 25 of the Accident Compensation Act defining accident as involving, amongst other things, the application of force of force or resistance external to the human body, or the sudden movement of the body to avoid a force or resistance external to the body.

[59] He notes that s 26 defines personal injury as including a strain or sprain.

[60] Mr Vugler refers to the decision in *Waghorn v ACC*<sup>1</sup> where Judge Ongley said, at paragraph 39:

No really clear conclusion emerges from the evidence, but the overall picture is one of a series of individual stressors and a significant event, the fall while playing cricket, either completing a fracture or starting a stress fracture as the initiating event.

[61] Mr Vugler, in our case, points to similarities which include the “pinging” evidence of the appellant.

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<sup>1</sup> *Waghorn v ACC* [2013] NZACC 2

[62] Mr Vugler concludes by saying:

The overwhelming majority of medical professional opinion has diagnosed the appellant as suffering from a sprain/strain of her left wrist/thumb.

[63] He notes that this includes all the immediate treating medical professionals who assessed the appellant immediately following her symptoms arising. He notes that Dr Bell in particular, appropriately and meticulously identifies the symptoms that give rise to his opinion that a sprain or strain was suffered, including:

- (a) Acute onset of severe pain following the event;
- (b) Rapid onset of swelling;
- (c) Ongoing symptoms of pain and impairment that are consistent with a soft tissue injury;
- (d) Acute findings of loss of range of motion and tenderness, which is again consistent with a sprain or strain;
- (e) No alternative explanation for the pain and tenderness.

### **Respondent's Submissions**

[64] Ms Anderson accepts that the symptomology exhibited by the appellant in this case is consistent with a sprain injury. However, she says the key issue is “was it caused by a sprain?”.

[65] She refers to s 25(3), namely 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.

[66] Ms Anderson notes that the appellant’s “full description” of the injury event referring to “ripping a kidney and feeling a ping” did not emerge until months later. She does acknowledge however that when the left thumb ultrasound scan was carried out on 19 March 2021, there is the following clinical note:



## **Indication**

Squeezing kidneys in meatworks and felt pinging sensation. Ongoing pain base left thumb.

[67] However, Ms Anderson contrasts this with the AFFCO file note of 9 March 2021 which records:

Discuss accident and SOE – advised was reaching down to pick up a kidney and felt a ping. She indicated there was no kidney in her hand and was just reaching down. No force. Clarified situation again. See internal to this.

Alex is adamant she wasn't peeling a kidney or anything at the time, and hadn't picked up the kidney. She then worked the rest of the day and at home noticed the inside of her thumb was numb, hand sore and swollen.

[68] Ms Anderson notes that the physiotherapist was unable to confirm a diagnosis and the 19 March ultrasound was normal. Counsel then listed the further enquiries made and advice sought.

[69] Counsel notes that the law is set out in ss 20, 25, 26 and 28 and that for a claim to be successful, the applicant must establish:

- (a) A personal injury has occurred, such as a physical injury, including for example a strain or sprain;
- (b) That the personal injury was work related;
- (c) That there has been an accident; and
- (d) The accident was caused by the work related personal injury.

[70] Counsel submits that the decision of the reviewer was correct. The reviewer correctly interpreted the available evidence and applied the relevant law and that on the information available, there was insufficient causal connection or evidence that the injury (strain/sprain) was caused by a workplace accident.

[71] Dr Asghar's comments, in his file review of 22 June 2021, that the work tasks undertaken by the appellant were classified as "lighter duty tasks" and that taking

account of the chain speed of 4.4 and the appropriate manning level on 13 February 2021, this doctor considered there was low likelihood of acute injury.

[72] She submits that in the months that followed, the examinations that occurred are of limited value as any original sprain was likely to be long since healed. She acknowledges Dr Bell's report of 12 April 2023, but notes that this was over two years after the alleged accident occurrence.

[73] Ms Anderson acknowledges that Dr Bell, in his report of 12 April 2023, notes that it is well recognised that repetitive heavy or forceful activities can give rise to microscopic damage to involved soft tissues. But she submits that was not the case with Ms Hodgson, because while the tasks were repetitive, they were "light duties".

[74] She submits that in this case causation is not made out. She also submits that the rotation of the different duties lessens the possibility of injury.

[75] She submits that if the Court accepts there was a work place accident/injury, the appellant is entitled to cover for a short duration sprain injury, which she submits the experts say should have healed within three months.

### **Appellant's Reply**

[76] In reply, Mr Vugler again referred to Dr Bell's report. He submits that Dr Bell is a highly skilled specialist and provided a robust assessment of causation and his conclusion should be accepted.

### **Decision**

[77] Ms Hodgson started her employment with AFFCO Imlay Whanganui on 3 February 2021. She was employed as a slaughterhouse labourer on the slaughter chain. Her job involved a rotation through six work tasks every 15 minutes.

[78] The appellant in her undated statement to "Heidi" says:

We are meant to rotate (*through the work tasks*) every 15 minutes, 30 minutes at the longest.

[79] She essentially repeats this in her signed statement of 26 February 2021. So on the evidence before me it appears that at that time, this task rotation protocol was often not followed.

[80] I note too that in the AFFCO “Incident Report/Investigation” document signed off by supervisor P Grey on 1 March 2021 under the heading “ PREVENTION-What action has or will be taken to prevent a recurrence?”, is this:

“15 minute rotations on 6 different tasks.”

[81] The kidney peeling role required her to grip a sheep kidney with her left hand, while she peeled fat or skin from the kidney with a tool in her right hand. Her description of having to have the kidney gripped tightly to make sure the peeling occurred, is accepted.

[82] It was on 13 February 2021 while working at the kidney peeling station that the appellant reports she felt the onset of pain in her left thumb and wrist, and that she advised her supervisor about the pain.

[83] Ms Hodgson said she continued to work through the pain and following her day off, she returned to work on 15 February and remained at the peeling station for 45 minutes at one point and that this caused significant pain in the left hand. The following day she again, at one point, worked at the kidney peeling station for a period of 45 minutes and in her statement of 26 February 2021, she said that towards the end of the period, she felt a “ping” sensation in her left hand while gripping the kidney.

[84] In her undated and unsigned document to “Heidi” the appellant describes the activities that make up the slaughter chain “loop”.

[85] In respect of the kidney peeling station activity, the appellant gives the following description:

There are metal buckets that are about 40cm x 40cm and about 2 inches deep. The guts and intestines get put into the tray, then in the next tray the kidneys and liver. The kidneys are usually covered in a layer of fat which you have to peel off with a tool ... then you have to peel off a thin skin-like layer off the kidney, then repeat on the next, as there is always two kidneys, if you are lucky

when peeling the fat, the skin hooks on and peels at the same time. You have to have a firm grip on the kidney because if it's loose, the fat or film won't catch properly with the hook on the tool. I picked the kidney up in my left hand, pulling the fat or skin firm in a downward motion to make sure it is firm (like holding a balloon tight), and peel with my right hand, scraping along the kidney then again either peeling towards or away from myself to remove the majority of the skin-like film.

[86] In her signed statement of 26 February 2021, as part of the required formalities for her work-related accident claim number AFF0045095, the appellant said:

My hand started to get sore on Saturday 13/02/21. I told one of the shift supervisors that it was sore and they sort of laughed it off, then walked away.

Then I went to work Monday (15/02/21), before our 9.00pm (30 minute) break, I was stuck on the kidney peeling station for 45 minutes. There was two of us on the station for 30 minutes in total. When one had done 30 minutes, they would rotate then so on, however this night, one of the newer guys didn't realise he was at the station that the rotation started from and stayed there for an extra 30 minutes, which left me at the kidney peeling station for 45 minutes as the other employee next to me was moved to do something else. My hand started to hurt more and I kept having to run it under the tap station next to me to get a little bit of relief.

I went to work Tuesday (16/02/21). While each of us were signing our covid papers in the office, an employee, Roy, was meant to be filling in for us at workstation and rotating each of us when our 15 minutes was up, instead he was just swapping places and rotating them. So, after I signed my papers and went back to the kidney peeling station where Roy rotated the four other stations, but didn't get anyone to rotate my station. While at the kidney peeling station, I felt a sharp ping in my hand (in the gap between my thumb bone and my index finger bone). I ran my hand under the hot water at the tap station next to me, but had to keep working as it would stuff the chain up and make more work for others further down the chain. I finished my shift and when I got home, I noticed the inside of my thumb was numb and my hand was swollen and very sore.

The next day I hadn't gotten any better, so rang work to say I wouldn't be in for today's nightshift and stated about my thumb being numb and my hand being very sore. I had a doctor's appointment booked, but could not get in to see him til 23/02/21. Later that day, Pio ... the supervisor, rang to advise me to go to the emergency department to get all the paperwork for work and to see what was wrong with it. So, I went up to hospital and here we are.

My medical has been extended to 09/03/21 after seeing my own doctor on the 23/02/21 (which was given to AFFCO Reception on 23/02/21) and have been referred to the "physiotherapy hand clinic" with an appointment on the 01/03/21.

Kind regards, Alexandra Hodgson  
26/02/21  
Injury claim number AFF0045095.

[87] In answer to the question on the claim form:

*“Who the injury was reported to, when and how it was reported?”*, the appellant wrote:

To my supervisor, Pio, by phone. I rang to say I wouldn't be at work and why. Pio rang back and advised me to go to the emergency department to get the paperwork and get my hand looked at.

*Whether you were aware of any accident reporting procedures required by the employer, and if so, whether these procedures were followed?*

Yes, I was, but nothing was done when I advised the supervisor on 13/02/21 about my hand hurting.

[88] The above report by the appellant is consistent with the record of what she did on 17 February in attending the Whanganui Accident and Medical Limited clinic.

[89] The ACC injury claim form records the accident date as 13 February 2021 at 1800 hours and the description of injury was:

Working at the slaughterhouse at AFFCO, started getting pain in the thumb and wrist. The accident date is recorded as 13 February 2021 and the time 1800. The diagnosis is sprain tendon wrist or hand.

[90] The doctor's triage notes from the 17 February 2021 consultation were as follows:

Was at AFFCO at slaughterhouse, started getting sore in the right (should read left) thumb and getting worse. Strapped it but not better. The doctor's impression was “wrist/thumb sprain”.

[91] A wrist splint was applied at that consultation. Also noted on that consultation was the following:

Patient presents with left thumb pain – pain shooting into wrist and index finger. Feels like something is pinging. Works on slaughter line at AFFCO. Pain started this week – good radial pulse. Has strapping on wrist.

[92] I have taken more time than would ordinarily be the case to document what the appellant said and did in the time immediately after her “injury event”. Apart from an initial mistake by those documenting her injury in saying that the injury was to her right wrist and hand, the initial history of her accident event is internally consistent and I accept her descriptions as accurate.

[93] Then follows the long series of investigations and reports from medical professionals to identify with more precision what the actual trauma was that the appellant had suffered.

[94] This inquiry was not assisted by the fact that an ultrasound carried out on 19 March 2021 yielded a “normal thumb ultrasound study”, however the working diagnosis remained that of a sprain to her left thumb/hand/wrist. An MRI carried out in August 2021 was near normal, but noted a small tear of the mid-central band scapholunate ligament. On 10 October 2021, Dr Antoniadis carried out a medical case review. He diagnosed:

- Probable left median nerve irritation without confirmation of injury.
- Small tear mid-central band scapholunate ligament left wrist.

[95] Dr Antoniadis also stated:

The actions of sustained squeezing with a background of class 3 obesity are plausibly linked to median nerve irritation within the carpal tunnel without presence of carpal tunnel syndrome ...

[96] Musculoskeletal medicine physician, Dr Bell, provided a report dated 12 April 2023 following a meeting with the appellant on 5 April 2023. Under the heading “IMPRESSION”, he noted:

It is well recognised that repetitive heavy or forceful activities can give rise to microscopic damage to involved soft tissues, which day to day do not cause pain and ordinarily the body is able to recover from.

However, when the body’s capacity to heal is unable to keep up with ongoing repetitive micro trauma, then the condition may become symptomatic as a sprain or strain. This is entirely consistent with Ms Hodgson’s account of symptom development when she initially experienced the onset of symptoms three days prior to 16 February 2021. She continued to work and matters reached the point that on 16 February 2021 an acute injury occurred, that involved structure no longer able to resist or recover from the forces being applied.

[97] Dr Bell concludes:

It was in the performance of this task (at the kidney peeling station) that over time repetitive micro trauma weakened the soft tissues around the thumb, until eventually the capacity to heal was overcome, becoming symptomatic in the

days prior to February 16, and then on February 16 sudden severe pain developing when she sustained an acute sprain of the soft tissues in the region.

In my opinion, the exposure to her workplace tasks in the days prior to February 16<sup>th</sup> was sufficient to ultimately cause a sprain, this compounded by the pace of the work, and the fact that Ms Hodgson was new to the job and therefore not physically conditioned or “work fit” for the actions required.

...

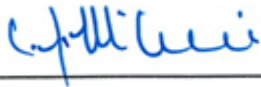
Given that this discrete pain event was significant in terms of symptomatology and from that point on she experienced more severe symptoms and functional limitation, the sprain/strain constituted a personal injury caused by accident.

[98] I find the criteria set out in s 25 are met and that what occurred to the appellant satisfies the definition of accident, being the application of force or resistance external to the human body. As a result, the appellant suffered a personal injury as described in s 26, being a strain or sprain.

[99] Accordingly, the appeal is allowed. Accordingly, IMU’s decision of 20 December 2021 that she did not sustain a physical injury as a result of the 10 days working at AFFCO is reversed. That means that she has cover for this work related personal injury.

[100] It is noted that the appellant is legal aided.

[101] Costs are reserved.



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CJ McGuire  
District Court Judge

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