

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2024] NZACC 023

**ACR 87/22;
102/22**

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

Submissions: The Appellant is self-represented
I Hunt for the Corporation

Hearing: On the papers

Judgment: 13 February 2024

**JUDGMENT OF JUDGE P R SPILLER
[Review Rights s 162 Accident Compensation Act 2001]**

Introduction

[1] This is an application for leave to appeal against a judgment of His Honour Judge McGuire, delivered on 24 May 2023.¹ At issue in appeal ACR 87/22 was the Corporation's decision of 27 August 2021 declining to provide reimbursement for vocational rehabilitation and transportation costs; and at issue in appeal 102/22 was whether the Corporation had issued decisions that were capable of review. The Court dismissed both appeals.

¹ *Chalecki v Accident Compensation Corporation* [2023] NZACC 88.

[2] On 7 February 2024, Mr Chalecki lodged an application for leave to appeal against Judge McGuire’s decision.

[3] On 9 February 2024, Mr Hunt for the Corporation advised that the Corporation did not agree to any waiver of the time limit for lodging an appeal in this case, and submitted that the application for leave ought to be declined.

Relevant law

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

- (1) A party to an appeal who is dissatisfied with the decision of a District Court as being wrong in law may, with leave of the District Court, appeal to the High Court.
- (2) The leave of the District Court must be sought within 21 days after the District Court’s decision.

[5] In *Siola’a*,² O’Regan J for the Court of Appeal stated:

[17] ... Section 162(2) requires not only that leave be sought under Part 5 of the District Courts Act but also that this be done within 21 days of the relevant decision. If leave is sought after that 21 day period has elapsed, the inescapable conclusion is that the second requirement of s 162(2) has not been complied with.

...

[19] Nor do we consider that NZBORA [New Zealand Bill of Rights Act] is engaged in this case. We reject the notion that s 27(2) of NZBORA mandates a second appeal (or at least an opportunity to seek leave for one) notwithstanding non-compliance with the time limit for seeking leave, given that the original (ACC) decision has already been subject to a full merits appeal to the District Court. Equally, we do not accept that the requirement to file applications for leave within 21 days of the decision of the District Court is more “punitive” than the regime under s 71A(4) for other District Court appeals as Mr Beck described it. There is nothing onerous in a 21 day time limit: indeed it is a reasonably standard requirement.

...

[33] ...If, in a case such as the present, ACC is prepared to waive the non-compliance with the time limit and does so, then the District Court would have jurisdiction to consider and decide the application. So, until a Judge decides that the leave application should be struck out, there is an application before the Court which requires a judicial decision to determine it. In cases where no

² *Siola’a v Wellington District Court* [2008] NZCA 483, [2009] NZAR 23.

question of acquiescence or waiver arrives, that decision will be obvious. The decision to strike out the leave application could simply state that, in the absence of acquiescence or waiver, the lateness of filing deprives the Court of jurisdiction to hear the application.

Discussion

[6] This Court notes that Mr Chalecki's application for leave to appeal was lodged eight-and-a-half months after Judge McGuire's decision. The law as outlined above is as follows:

- (a) the leave of the District Court to apply for leave to appeal must be sought within 21 days after the District Court's decision in question, and
- (b) lateness of filing deprives the Court of jurisdiction to hear the application, unless the Corporation waives non-compliance with the time limit.

[7] In this case, the Corporation has not waived Mr Chalecki's non-compliance with the time limit required to apply for leave to appeal.

Decision

[8] In light of the above considerations, this Court finds that it does not have jurisdiction to entertain Mr Chalecki's application for leave to appeal, which is therefore declined.

[9] Costs are reserved.

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

Judge P R Spiller,
District Court Judge