

[3] On 17 September 2019, Mr Alves hurt his right shoulder moving a heavy desk at home. On 9 December 2019, the Corporation accepted cover for a right shoulder sprain and right rotator cuff sprain. On 10 June 2020, the Corporation received Mr Alves' application for weekly compensation from 18 May 2020 onwards, arising out of his injury on 17 September 2019.

[4] On 7 July 2020, the Corporation declined Mr Alves' application for weekly compensation. This was on the basis that there was insufficient clinical evidence to support the requested incapacity being causally linked to the accident event of 17 September 2019. Mr Alves sought a review of that decision.

[5] On 2 March 2021, Mr Alves wrote to the Corporation requesting cover for a right rotator cuff tear. Because a decision was not made within the statutory time limit, Mr Alves was deemed to have cover for that injury.

[6] On 2 March 2021, a review hearing was convened to consider the Corporation's decision of 7 July 2020. The Corporation reiterated its position that Mr Alves' right shoulder and rotator cuff sprain, which had resolved, did not cause his incapacity from work. The Corporation thought that the incapacity was caused by Mr Alves' right shoulder rotator cuff tearing, which represented a pre-existing gradual process condition. However, Mr Alves had not sought cover for the tear, even though the Corporation had offered to lodge such a claim internally. Mr Alves agreed to withdraw his application for review on the basis that the Corporation would consider a request by Mr Alves for additional cover for a rotator cuff tear, and the Corporation would issue a further decision which would attract fresh review rights.

[7] On 5 March 2021, the Reviewer awarded Mr Alves costs relating to the above review, for a medical report, attendance at a specialist examination, and attendance at the hearing. Mr Alves lodged a Notice of Appeal.

[8] On 13 May 2021, the Corporation issued a decision revoking the deemed cover decision for a rotator cuff tear. Mr Alves applied to review that decision.

[9] On 9 August 2021, following review proceedings concerning the Corporation's revocation decision of 13 May 2021, the Reviewer quashed the Corporation's decision, and directed it to make a fresh decision on the question of whether Mr Alves should have cover for a right rotator cuff tear.

[10] On 22 September 2021, the Corporation issued a fresh decision declining cover for a rotator cuff tear. Mr Alves applied to review that decision.

[11] On 8 December 2021, review proceedings were held regarding the Corporation's decision of 22 September 2021. On 10 December 2021, the Reviewer dismissed the review application. Mr Alves lodged a Notice of Appeal.

[12] On 3 March 2022, the Court dismissed Mr Alves' appeal in relation to the Reviewer's decision of 5 March 2021, regarding costs of review.¹

[13] On 22 November 2022, the Court allowed Mr Alves' appeal in relation to the Reviewer's decision of 10 December 2021, regarding cover for a rotator cuff tear. The Court found that Mr Alves' rotator cuff tear was caused or at least contributed to by an accident on 17 September 2019. The Court noted that Mr Alves may be entitled to costs/disbursements, and, if these could not be agreed within one month, the Court would determine the issue following the filing of memoranda.²

[14] On 9 January 2023, Mr Alves lodged a complaint on an ACC709 Complaint form regarding his treatment by the Corporation. Mr Alves sought the following:

I want full reimbursement for all the expenses I had to gather more and more medical evidence requested by ACC which ACC insistently deemed to be insufficient but the Judge considered to be more than enough.

That includes doctors fees, examines costs, travel expenses when needed to consult with specialists from out of town and loss of pay due to missing work days.

This amount would have to be corrected for three years worth of inflation.

I want compensation for the long hours I had to waste on a huge amount of paperwork ACC used to try and drown me with - sometimes many files with hundreds of pages a day or two before the date set for a hearing - plus the time

¹ *Alves v Accident Compensation Corporation* [2022] NZACC 27.

² *Alves v Accident Compensation Corporation* [2022] NZACC 215.

spent on researching, compiling of data to represent myself which arguably could have been easier and briefer if not for the incompetence of ACC' representative.

And I also want compensation for the deterioration of my mental health of being put through a lot of stress with this whole ordeal during which I had to lose days at work that would put me in a difficult situation regarding my employment and having to deal with the incompetence and carelessness of ACC's representatives for three whole years with mistake after mistake and consistently failing to meet deadlines.

The total reimbursement sought for expenses is \$1,650.10 - already adjusted for inflation.

The total of hours spent on this case were approximately 20 hours to a cost of \$24 an hour (my wages at the time) and the reimbursement sought is \$480.

Compensation is sought for deterioration of my mental health is \$3,000.

[15] On 16 January 2023, the Corporation responded to Mr Alves' complaint in an email as follows:

I have looked at your file, including the three previous review applications and outcomes, and understand your appeal was accepted which means you now have cover for right rotator cuff tear.

At the time of review, any review costs need to be heard directly by the FairWay or ICRA reviewer. They consider where any costs should be awarded, and if so, direct ACC to make these payments.

I can see in your previous reviews you have sought costs for lost earnings which have been awarded. Therefore no other costs in relation to the reviews can be considered if they were not raised with the reviewer at the time.

However, because you now have approved cover, some of the items you have claimed for could be considered under the provisions of the Act, however the Act specifies you need to apply for these entitlements. I also note you have recently received backdated weekly compensation, are you still incapacitated? If you are and wish to apply for further weekly compensation for your incapacity, please see your doctor to look at lodging an ACC18 medical certificate to advise us of this. Within this your doctor can also specify other entitlements you may be seeking, e.g., reimbursement for specific medical assessment.

Finally, I acknowledge your comments regarding how this has impacted your mental health. I recommend you speak directly with your doctor regarding this. They can consider whether the physical injury is causing mental injury, and if so whether it would be necessary to lodge a claim with ACC regarding a further diagnosis, which ACC can investigate once received.

Carlos, I understand your appeal has been accepted and would encourage you to raise your current needs with your GP so they can refer these to us for funding or cover consideration.

[16] On 17 January 2023, Mr Alves applied for a review of the Corporation's response.

[17] On 24 May 2023, the Reviewer dismissed the review, on the basis that the Corporation's email of 16 January 2023 was not a decision capable of review. The Reviewer found that the email was not a decision by the Corporation to decline or award costs, but simply advised Mr Alves that the issue of costs had already been determined; and that the email did not approve or decline cover for mental injury but simply advised that, if a claim for such injury was lodged, the Corporation would investigate it. The Reviewer also found that Mr Alves was not entitled to an award of costs/further costs or to compensation for mental injury consequent on the Corporation's handling of his claim.

[18] On 1 June 2023, Mr Alves lodged a Notice of Appeal. He sought compensation for:

- (a) "the travels and doctor's appointments I only went to due to ACC's refusal in accepting said doctor's reports"; and
- (b) "the mental duress I been put through by ACC's representatives either on purpose or by incompetence which lead to a lot of mental health issues".

Relevant law

[19] Section 67 of the Accident Compensation Act 2001 ("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

[20] Section 134(1) of the Act provides:

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;
- (c) any of its decisions under the Code on a complaint by the claimant.

[21] Section 149(3) of the Act provides:

- (1) A claimant may appeal to the District Court against—
 - (a) a review decision; or
 - (b) a decision as to an award of costs and expenses under section 148.
...
- (2) However, neither a claimant nor the Corporation may appeal to the District Court against a review decision on a decision by the Corporation under the Code on a complaint by the claimant.

[22] Section 317 of the Act provides:

- (1) No person may bring proceedings independently of this Act, whether under any rule of law or any enactment, in any court in New Zealand, for damages arising directly or indirectly out of—
 - (a) personal injury covered by this Act; or
 - (b) personal injury covered by the former Acts.
- (2) Subsection (1) does not prevent any person bringing proceedings relating to, or arising from,—
 - (a) any damage to property; or
 - (b) any express term of any contract or agreement (other than an accident insurance contract under the Accident Insurance Act 1998); or
 - (c) the unjustifiable dismissal of any person or any other personal grievance arising out of a contract of service.
- (3) However, no court, tribunal, or other body may award compensation in any proceedings referred to in subsection (2) for personal injury of the kinds described in subsection (1).

Discussion

[23] The issue in this case is whether the Reviewer correctly dismissed Mr Alves' review application, on the basis that the Corporation's email of 16 January 2023 was not a decision capable of review and that he was not entitled to costs and compensation for mental injury.

[24] Mr Alves submits as follows. The Corporation's response to his complaint of 9 January 2023, sent by the Corporation on 16 January 2023, is a reviewable decision. He claims compensation for the travels and doctor's appointments he went to, due to the Corporation's refusal to accept his doctor's reports; and for the time he has taken to represent himself. He has provided the Corporation with details of the costs and disbursements that he is claiming. He also claims compensation for the mental duress he has been put through by the Corporation's representatives either on purpose or by incompetence, which led to a lot of mental health issues.

[25] This Court acknowledges Mr Alves' submissions in relation to this appeal. The Court also notes that Mr Alves raised an issue of tax liability that was not addressed by the Reviewer, and so this issue is not considered by the Court in this judgment.

[26] The Court also refers to the following considerations.

[27] First, the decision of the Reviewer concerning Mr Alves' complaint of 9 January 2023 is not a decision which may be appealed to the District Court. This is made clear by section 149(3) of the Act, which provides that a claimant may not appeal to the District Court against a review decision on a decision by the Corporation under the Code on a complaint by the claimant. Mr Alves' complaint was set out in the ACC709 Complaint form, which is the form provided for complaints under the Code of ACC Complaints' Rights.

[28] Second, Mr Alves' claim for costs in relation to his previous proceedings involving the Corporation have already been addressed in the appropriate way, at review and on appeal. The Court refers, in particular, to the Reviewers' decisions of 5 March 2021 and 24 May 2023, and this Court's decisions of 3 March 2022 and 22 November 2022.³

[29] Third, Mr Alves may be granted entitlements by the Corporation only as provided by the Act (section 67(b)). Mr Alves is not entitled to bring proceedings independently of the Act in any court in New Zealand, for damages arising directly

³ See above notes 1 and 2.

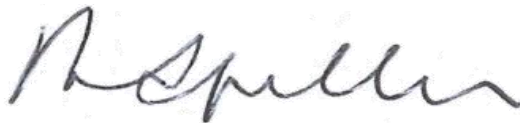
or indirectly out of personal injury covered by the Act, and no Court may award compensation in that regard (section 317(1) and (3)). In the absence of a claim for cover for mental injury which has been subject to review, this Court has no jurisdiction to consider Mr Alves' claim for compensation for mental duress and resultant mental health issues.

Conclusion

[30] In light of the above considerations, the Court finds that the Corporation's response of 16 January 2023 to Mr Alves' complaint of 9 January 2023 is not an appealable decision, and in any event Mr Alves' claim cannot be sustained. The decision of the Reviewer dated 24 May 2023 is therefore upheld. This appeal is dismissed.

[31] I make no order as to costs.

[32] The Court reiterates, for the sake of completeness, that, in its judgment of 22 November 2022, the Court noted that Mr Alves may be entitled to costs/disbursements in relation to the appeal then determined (ACR 2/22), and, if these could not be agreed within one month, the Court would determine the issue following the filing of memoranda. The Corporation states that it has not received a claim for costs/disbursements in relation to the appeal then determined. The Court notes that Mr Alves has the opportunity to present such a claim, and suggests that, if he chooses to do so, he should act as soon as possible.



P R Spiller
District Court Judge

Solicitors for the Respondent: Young Hunter.