

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 88

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

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

Hearing: 4 April 2023
Heard at: Christchurch/Ōtautahi
Appearances: The Appellant in person
Mr I Hunt for the Respondent
Judgment: 24 May 2023

**RESERVED JUDGMENT OF JUDGE C J MCGUIRE
[Entitlement to Vocational Rehabilitation Costs; Decision Capable of Review]**

[1] ACR 87/22 is an appeal against a review decision dated 4 May 2022. The decision of the respondent which gave rise to the review is dated 27 August 2021, in which it declined to provide reimbursement for vocational rehabilitation and transportation costs, saying:

With regards to vocational rehabilitation you have been unable to provide a basis, including statutory basis, for such reimbursement. Furthermore, ACC have been unable to identify evidence to support that the provision of the requested vocational rehabilitation would have enabled you to sustain employment in your farming enterprise or that it would have been cost effective in the context of entitlements under your claim.

With regards to your transportation costs, there is no evidence to support that this related to rehabilitation and as such, ACC would not be liable to reimburse these costs.

[2] In respect of appeal ACR 102/22, this is an appeal against a review decision dated 9 June 2022 in which seven review applications were addressed.

[3] The issue before the reviewer was whether the respondent had issued decisions that were capable of review.

[4] The reviewer determined that she had no jurisdiction to determine the matters raised by the appellant, and on that basis, the applications for review were dismissed for want of jurisdiction.

Appeal ACR 87/22

[5] Following the respondent's decision of 27 August 2021, the essence of which is set out in paragraph 1 above, declining entitlement to reimbursement for costs described as vocational rehabilitation costs and associated travel costs, the appellant sought review and a review hearing was held on 8 April 2022, with the reviewer dismissing the review application in a decision dated 4 May 2022.

[6] In that decision, Ms Ormondy, the reviewer, summarised the appellant's background as follows:

(9) On 23 November 1984, Mr Chalecki injured his back lifting steel and corrugated iron. At the time of his injury, he was working as a builder. He also had a small farm running pigs. From 29 July 1986, Mr Chalecki was certified unfit for work. He received earnings related compensation from ACC.

(10) For a period of approximately eight years from January 1988, Mr Chalecki put considerable money into his farm, including running chickens as well as pigs. Eventually, he also purchased a larger farm. This was to enable him to be fully self-employed as an alternative to retaining or going into another job.

(11) Unfortunately, Mr Chalecki was never able to become self-sufficient and he incurred considerable expenses and losses in his attempt. These costs are described as vocational rehabilitation and transportation costs.

(12) From my review of the file, and as previously documented, it appears generally accepted that Mr Chalecki was encouraged by ACC to build up his farm as a means to enable him to become financially independent. It is Mr Chalecki's view that this encouragement from ACC amounted to a decision on his vocational rehabilitation and that the decision did not come with review rights. It is on this basis that he believes he is entitled to be reimbursed his rehabilitation and transportation costs.

(13) Mr Chalecki's claim for rehabilitation and transportation costs has been the subject of lengthy litigation over the years. For the sake of clarity and ease of reference, I have provided a brief summary of the key decisions that have been issued below.

[7] The reviewer then set out the following:

2012-Appeal Decision

(14) The first decision of note is the 2012 decision of the Accident Corporation Appeal Authority (*Chalecki v Accident Compensation Corporation*¹). This appeal concerns a review decision issued on 17 August 2011, in which the reviewer declined jurisdiction to consider the rehabilitation and training received by Mr Chalecki under the Accident Compensation Act 1982 because no reviewable decisions had been made by ACC.

(15) Authority member, Mrs Bedford, issued her decision on 26 October 2021. She recorded the grounds of appeal were that the reviewer:

Was wrong to decide that a decision letter was required before a claimant could show ACC made up its mind as no written notice of the two decisions that were subject to the review was given to the appellant, so the one month time period does not start ticking ...

(16) During that appeal, Mr Chalecki submitted that there were three actions of ACC that could be seen as ACC:

- (a) ACC told him to see a vocational officer at the Department of Labour;
- (b) He was told he had to attend a polytechnic course or else his only future would be self-employment; and
- (c) He needed to pursue self-employment, or the entitlements would be stopped.

(17) Mr Chalecki relied on the definition of *decision* in the 1982 Act, which includes any determination, requirement, assessment, order or direction, and the expansive definition of rehabilitation under s 37 concerning ACC's obligation to offer retraining and where justified, the granting of financial assistance to the incapacitated person. On that basis, Mr Chalecki submitted that given the communications between him and ACC, it simply cannot be correct that ACC did not make a decision with regard to his rehabilitation.

(18) In response to that submission, the authority found:

[39] For the Corporation, Mr Barnett submitted that it is not sufficient to refer to an administrative process and assert, for example, that the claimant wanted certain rehabilitation or treatment and did not get it. There is, he argued, no right of review against an administrative process undertaken over a number of years, nor a right of review as seeking a remedy of a generally expressed dissatisfaction.

¹ *Chalecki v Accident Compensation Corporation* [2012] NZACAA 15

[40] I tend to agree, and I am not prepared to find that the Corporation made reviewable decisions by requiring the appellant to attend certain vocational rehabilitation programmes, or that in this case, such decisions could be implied by the Corporation's actions as demonstrated by the evidence that was before me.

(19) The Authority found further that:

[45] Regarding the directions sought by the appellant, I find as a fact that there is only one reviewable decision disclosed by the evidence, being the Corporation's decision of 14 April 1993. That decision did not contain the right of review under the 1982 Act, which the appellant validly sought to exercise under the 1982 Act by way of the application for review dated 27 April 1993.

(20) The decision dated 4 April 1993 was a decision declining to accept Mr Chalecki's self-employment grant request under s 36(2)(b) of the 1982 Act. Mr Chalecki had lodged an application to review that decision on 27 April 1993.

(21) The Authority directed that the review application against the 14 April 1993 decision be referred to a reviewer for determination. The Authority noted that it was appropriate for Mr Chalecki to put in further proof of the actual costs incurred in developing and implementing the farming business between January 1988 up to April 1993 ahead of that hearing.

2015 Appeal Decision

(22) The review against the 14 April 1993 decision was heard and a decision issued on 22 October 2013. By that decision, the reviewer found that Mr Chalecki had originally sought a self-employment grant to fund the construction of a new milking shed. However, by the time ACC made its decision, Mr Chalecki's proposal had changed to one involving poultry and he sought funding from ACC to increase the size of his poultry farm.

(23) The reviewer did not accept that ACC should be liable for these rehabilitation costs. In particular, the reviewer found Mr Chalecki had not shown that ACC had made an error of law, nor that any material factor had been overlooked when considering the grant. The reviewer considered that ACC's requirement that Mr Chalecki's reliance on ERC should decrease if a grant was made was consistent with the law and policy at that time. Furthermore, there had been changes in Mr Chalecki's circumstances since 1993, such that the request for a self-employment grant was no longer relevant, given that he no longer lived on a farm (Mr Chalecki gave up farming in 2000 or 2001). He therefore dismissed the application for review.

(24) That review decision was appealed and is the subject of a decision of the Accident Compensation Appeal Authority issued on 4 February 2015 by the Authority, Mr Plunkett.

(25) The Authority sets out in detail the attempts made by Mr Chalecki to develop the farm and the additional farm property. The Authority then wrote:

[93] The Corporation was keen to reduce Mr Chalecki's dependence on it and therefore reduce or eliminate the ERC payments to him. At the time of his injury, he had a small "hobby farm" as it has been described. He bred pigs. This was seen as the most promising source of independence from the Corporation.

[94] Mr Chalecki alleges the Corporation forced him to build up the farm, but I do not accept this. While it put reasonable pressure on him to rehabilitate, when it was entitled to do so, it is clear from his review application of 27 April 1993 that it was a mutual decision to focus on the farm. It is probable that the farm was first proposed as the preferred rehabilitation by Mr Chalecki himself ...

[95] This brings me to what it is that Mr Chalecki seeks now. He contends that the Corporation, given the obligation to rehabilitate him ("to the fullest vocational and economic usefulness" – section 36(2)(b)) was required to fund the expansion of his then hobby farm as the identified rehabilitation programme. Accordingly, he says the Corporation is responsible for his actual and reasonable expenses from January 1988 to April 1993 as he built up the farm (actually buying a larger one) and/or his losses on the farm, attributable to his injuries. In the alternative, he seeks the self-employment grant of at least \$5,000 in line with the accounting advice the Corporation received from Mr Gunn, contending there is no statutory maximum amount ...

(26) The Authority considered Mr Chalecki's claim for expenses and/or costs in building up his farm, but concluded he did not have jurisdiction to consider such a claim. This was because jurisdiction was limited to determining whether ACC correctly declined to pay Mr Chalecki a self-employment grant. The Authority also noted that Mr Chalecki had not yet made such a claim.

[111] ... While he has repeatedly sought a contribution towards his costs in expanding the farm, he never itemised in the context of any claim any actual or anticipated expenses for which he sought reimbursement (aside from those connected with the self-employment grant, to which I will return). It was for Mr Chalecki to identify specific costs in relation to a particular venture and put that to the Corporation in a form which can be said to be a claim.

[112] Mr Chalecki had numerous ideas over the years and sent financial information (forecasts and the like) of varying particularity to the Corporation, but I can identify no specific claim on which he sought a decision, aside from the self-employment grant.

(27) The Authority considered whether s 80(1) of the 1982 Act applied in relation to Mr Chalecki's farm expenses, but concluded it did not. The Authority wrote:

Section 80(1) of the 1982 Act is also relied on. It allows for recovery of actual and reasonable expenses (necessarily and directly) resulting from the injury. These farm costs do not so arise. They arise from Mr Chalecki's earnest attempt to rehabilitate himself and therefore find alternative income. They are potentially recoverable only under ss 36 and/or 37. This is another obstacle to the s 80(1) claim, in addition to the fact that no such claim had been made by April 1993.

(28) In relation to the self-employment grant, the Authority noted this had been applied for by Mr Chalecki as contribution to the capital outlay required to increase the size of his farm. The Authority described the proposal as being specific and backed with detailed accounts. The Authority also noted that it was found to be feasible and viable by an

accountant. Accordingly, the Authority concluded that Mr Chalecki was entitled to a self-employment grant of \$5,000 pursuant to s 36(2)(b) of the 1982 Act and directed that this be paid to Mr Chalecki in today's money.

(29) Mr Chalecki then sought leave to appeal to the High Court against the Authority's decision of 4 February 2015. The application was dismissed.

2016 Appeal Decision

(30) The final decision of note is the District Court decision *Chalecki v ACC* [2016] NZACC 202. This appeal considered the question of whether Mr Chalecki was entitled to a deemed decision in respect of a claim for compensation for money spent on vocational rehabilitation developing his hobby farm to a full economic unit.

(31) By decision dated 29 July 2016, Judge Powell found that a claim for reimbursement of expenses associated with the build up of the farm was first made on 6 June 2007. Judge Powell wrote:

[12] ... The first document identified by Mr Foster as amounting to a claim for reimbursement of expenses is in fact a letter from Mr Chalecki's then solicitor, Jonathan McCarthy, who on 6 June 2007 wrote to the Corporation and, with relevance to the issues at issue in the present appeals, advised:

[1] As you will appreciate, ACC directed and required Mr Chalecki to build up his hobby farm as part of a vocational rehabilitation agreement.

...

[10] As you will appreciate, the vocational rehabilitation plan which resulted in Mr Chalecki being required to build up his hobby farm to a full economic unit was never the subject of any specific IRP, and review rights were not advised regarding Mr Chalecki's ability to challenge this ACC initiative. Indeed, at various times, Mrs Lorraine Hilton threatened Mr Chalecki with cancellation of weekly compensation if he did not keep adding a higher volume of stock, to the enterprise.

...

[12] As a result of this vocational rehabilitation plan, Mr Chalecki expended many years of his weekly compensation in the futile attempt to build the enterprise, from a hobby farm, to a fully economic venture.

[13] By this letter, my client now seeks reimbursement of all of his historical expenditure on the hobby farm. Please deliver a decision, regarding this entitlement request, and I thank you in anticipation.

(32) In the light of the application for entitlement, Judge Powell found that:

There can be no doubt that (Mr Chalecki) was entitled to a deemed decision on that review given it was not set down within the three months required by s 146(1) of the Act.

(33) Judge Powell then went on to consider the effects of that deemed decision. He found that:

[47] ... Having looked through all the documents filed by the parties, I am unable to ascertain exactly what was sought to be reimbursed by Mr Chalecki in respect of rehabilitation and transportation costs, let alone the statutory basis for any such reimbursement to be made. In particular, it is not clear to me exactly what is sought to be reimbursed, given Mr Chalecki already owned his hobby farm at the date of his 1984 injury and presumably, at least some of the costs attributable to the hobby farm were not necessarily related to any intensification of the farming activities at the hobby farm, even if that intensification was done at the behest of the Corporation. Likewise, in the absence of any reimbursement claim for transportation costs, it is difficult to see why or how the Corporation could be requested to reimburse Mr Chalecki for all his travel. In a similar vein, it is impossible to ascertain if what is sought is simply the actual annual loss suffered by Mr Chalecki, or just particular expenses incurred by him in the course of different years farming activities, including indeed the transportation costs that underpin appeal ACR 543/11 ...

[48] As a result, I conclude there is insufficient information before the Court to enable the Court to give effect to Mr Chalecki's claim for entitlements in respect of the rehabilitation and transportation costs. Indeed, as the Accident Compensation Corporation Appeal Authority noted in its 2014 decision, the mere provision of financial information is not the same as a specific claim, and I am quite simply unable to identify what the terms of any deemed review decision could possibly be. On the contrary, given the lack of any identifiable or specific claim, I conclude the Corporation was not only entitled, but was clearly obliged to request further information prior to determining Mr Chalecki's claim for entitlements to be reimbursed for rehabilitation and transportation costs and as a result, in terms of s 147(3) of the 2001 Act until that information was provided Mr Chalecki, it is unclear what entitlements could possibly be provided in respect of the claim pursuant to the 2001 Act.

[49] The fact that no decision has been made on these claims cannot therefore amount to an unreasonable delay for the purposes of s 134(1)(b). Put simply, the Corporation was entitled to farm or particularity with regard to the application or rehabilitation and transportation costs than was ever provided and in the absence of that information, the Corporation is not and remains in no position to determine the claim. Indeed, were the Corporation to be pressed to determine the claim at the present time, the only decision that could be made would be to decline on the basis that insufficient information had been provided by Mr Chalecki to enable the Corporation to make a decision. Taken together and applying Weal, I conclude that notwithstanding the deemed review decision, there has been no failure by the Corporation to make a decision in a timely manner with regard to the claim for reimbursement for rehabilitation and transportation costs and as a result the appeals must be dismissed.

(34) Judge Powell noted that no decision had been made in response to the specific request for reimbursement of the rehabilitation and transportation costs that was made on 6 June 2007. As such, he directed the parties work together to ensure that these applications are substantively addressed as soon as possible. Judge Powell directed Mr Chalecki to advise ACC:

- (a) The detail of the reimbursement sought in respect of rehabilitation and transportation costs, including:
 - (i) The amounts claimed by Mr Chalecki; and

- (ii) When those sums were paid by Mr Chalecki; and
- (b) The basis for the Corporation's ability to reimburse Mr Chalecki for those sums, including the statutory basis for reimbursement of rehabilitation and transportation costs, given my conclusion that the date of the application for these entitlements was 6 June 2007.

ACC Considers Claim for Entitlement

(35) Over the following years, Mr Chalecki submitted further information that he considered supported his claim for reimbursement of his expenses and losses associated with building up his farm. This information was then considered by ACC's Technical Advisor, Mr Grant Mercer.

(36) In a report dated 10 June 2021, Mr Mercer concluded that Mr Chalecki had made clear the amounts claimed and the dates those amounts were paid. It was noted that in effect, Mr Chalecki was claiming for all expenses related to his farm business and his transportation costs, including vet costs, vehicle maintenance, stock food, stationery, work clothes, killing and processing fees, and tolls. It also included transport costs seemingly in addition to other transport costs requested, which relate to road user charges and costs related to picking up waste bread.

(37) However, Mr Mercer noted that Mr Chalecki had still not made clear the basis, including statutory basis, for such reimbursement. In this respect, it was noted that the District Court decision made clear that this was necessary in order for ACC to deal with any application for reimbursement. Although Mr Mercer acknowledged Mr Chalecki's reference to the 1982 Act, he wrote that this was irrelevant that the application was made under the 2001 Act.

(38) Nevertheless, Mr Mercer decided that it may be appropriate for ACC to determine whether there is a statutory basis for the proposed reimbursement of vocational rehabilitation and transportation costs. He wrote that in order for ACC to do that, any and all completed initial occupational assessments and initial medical assessments needed to be identified, as well as any completed individual rehabilitation plans.

(39) To consider the transport costs, Mr Mercer wrote that ACC would require a breakdown as to the destinations of travel and the distances related to the transport costs requested. Some evidence of the claimed destinations and distances would also be required.

(40) Mr Mercer provided further comment on 24 August 2021. He wrote in part:

I have failed to identify any evidence to support that the provision of the requested vocational rehabilitation would have enabled the client to sustain employment in his farming enterprise or that it would have been cost effective in the context of entitlements under his claim.

Further there is no evidence that the vocational rehabilitation would have achieved a specific purpose under an individual rehabilitation plan and therefore ACC can reasonably conclude that the vocational rehabilitation is, or at least was, not appropriate.

With respect to the transport costs, there is no evidence to support that this related to rehabilitation and as such ACC would not be liable.

ACC Issues Decision on Claim for Entitlement

(41) By decision dated 27 August 2021, ACC declined Mr Chalecki's request for reimbursement of vocational rehabilitation and transportation costs. ACC wrote:

ACC has carefully assessed all the information available and finds that we are unable to provide reimbursement towards these costs. I understand this is not the outcome you had hoped for. Please see below how ACC came to this decision.

With regards to vocational rehabilitation, you have been unable to provide a basis, including statutory basis, for such reimbursement. Furthermore, ACC has been unable to identify evidence to support that the provision of the requested vocational rehabilitation would have enabled you to sustain employment in your farming enterprise, or that it would have been cost effective in the context of entitlements under your claim.

With regards to your transportation costs, there is no evidence to support that this related to rehabilitation and as such ACC would not be liable to reimburse those costs.

[8] Following Mr Chalecki's unsuccessful application for review, ACC's decision of 27 August 2021 is now before this Court on appeal.

Appellant's Submissions

[9] Mr Chalecki asked to be sworn in and duly was. He told the Court that in 1988 he was in a very bad mental state and he told ACC he was not coping with his maintenance work at the hospital and being a pig farmer. He says in that year ACC told him to go to a rehabilitation course in Greymouth, but that he could not do that and look after his pigs.

[10] He said that under the 1982 Act, any decision was a decision (for the purposes of the Act).

[11] He said the fact that there was no rehabilitation officer was against ss 35 and 37 of the Act.

[12] He said that under s 36 of the 1982 Act, ACC must provide a rehabilitation programme and he never got that.

[13] He said he was told that if he sold his pigs, he would lose compensation.

[14] He said ACC then told him to go on a rehabilitation course. He said this consisted of "booze" cruises and watching videos. He said there was no classroom and no tutors and he was eventually sent home.

[15] He said that ACC were forcing him to work in a job that he was not fit for and that they tried “all these administrative ways to get rid of me”.

[16] He said that ACC then sent him to the Labour Department and they did a report. The Labour Department person told him “With your back, you are unemployable”.

[17] He said that when ACC realised they were stuck with him, they were keen to limit their liability, so they supported him building up the number of pigs that he had.

[18] He said ACC was told by specialists that he was sick; in chronic pain and that he needed rehabilitation.

[19] He said that ACC had a private investigator check whether he was working and that they went to the Police, his bank and his neighbour. He said “it got that bad for us that me and my wife had to move”. He said that ACC breached ss 35 and 37 of the 1982 Act. He said they committed fraud by hiding anything they didn’t like.

[20] He said that ACC were “surgeon shopping” and that is how the case manager finds way to get rid of claimants and how to get claimants to come to heel.

[21] He said that when he told his case manager that he was not coping, he was told ACC would investigate, but it did nothing.

[22] He said that all he wants is for his reviews to be heard under the Act under which they were made, namely the 1982 Act.

[23] He said that when he appeared before Justice Hansen, the latter was “not impressed” and he told ACC to settle, which they did almost immediately. He says however that ACC is “still defaming me”.

[24] He asks how can ACC make a claimant work on an “unfit certificate”?

[25] He wants ACC to pay his rehabilitation costs and to give him an unreserved apology.

[26] He says he was never given the opportunity of the safety net that Parliament intended and that he is 68 years old this year.

[27] He said that as part of any settlement, he wants a sincere apology.

Respondent's Submissions

[28] Mr Hunt said to the Court that he did not have a magic wand and that jurisdiction is framed with the decisions that precedes the appeals.

[29] He said that there are other avenues for claimants, including via the Code of Claimants Rights.

[30] Mr Hunt says that the issues are now raised by the appellant being largely dealt with in the District or the High Court.

[31] Mr Hunt notes that the 1982 Act provisions were not preserved in the 2001 Act.

[32] He refers to *Chalecki v Accident Compensation Corporation*² and notes that this decision follows a review decision in which a reviewer declined jurisdiction to consider the rehabilitation and training received by the appellant under the 1982 Act, because no reviewable decisions had been made by the respondent.

[33] Mr Hunt notes that the Appeal Authority concluded that Mr Chalecki's claim must fail because it had not been a matter which the respondent had dealt with in its decision of 14 April 1993, noting that no such claim had been dealt with in the 14 April 1993 decision because the appellant had made no such claim.

[34] Mr Hunt reminds the Court that ACC's decision of 27 August 2021, the decision under appeal, was respect of an application for entitlement first lodged by the appellant on 7 June 2007 and that therefore it is to be addressed under the 2001 Act.

[35] Mr Hunt refers to the decision of the reviewer in this case, where the reviewer said:

² *Chalecki v Accident Compensation Corporation* [2012] NZACA 15

(89) ACC has considered Mr Chalecki's claim under the vocational rehabilitation provisions of the 2001 Act. A decision made on a claimant's vocational rehabilitation is a discretionary decision. It means the question I must determine is whether ACC exercised its discretion wrongly when it declined Mr Chalecki's application for reimbursement. This requires an assessment of whether the decision is based on an error of law or principle; whether ACC considered irrelevant considerations; whether ACC failed to consider relevant considerations; or whether the decision is plainly wrong.

(90) Having considered this matter, I am unable to find ACC wrongly exercised its discretion.

[36] In the review decision of 4 May 2002, the reviewer, Lisa Ormandy reached the following conclusion.

[106] At paragraph 101, in relation to Mr Chalecki's claim for reimbursement of vocational rehabilitation costs, I am satisfied that there is no evidence that ACC acted on an error of law or principle, failed to take account of any relevant matter, took into account any irrelevant matter or otherwise reached a decision that is plainly wrong.

[107] In relation to Mr Chalecki's claim for reimbursement of travel costs, I am also satisfied that there is no statutory basis for ACC to make such a payment to Mr Chalecki.

[108] On this basis, I do not find that any ground has been established for setting aside ACC's decision of 7 August 2021. I therefore dismiss the application for review.

Decision

[37] I acknowledge the reviewer's careful analysis of the issues in this case. She reminds us that in terms of the 2001 Act, there are two circumstances where ACC is able to provide vocational rehabilitation, first where there is an individual rehabilitation plan agreed, and if the individual rehabilitation plan is not yet agreed, ACC may fund any vocational rehabilitation it considers suitable for the claimant and appropriate to the circumstances having regard to the purpose of s 80 to help the claimant maintain employment; or obtain employment; or regain or acquire vocational independence.

[38] As the reviewer pointed out, the exercise of discretion to provide vocational rehabilitation requires consideration of the matters listed in s 87 of the Act, which speaks of the appropriateness of the particular rehabilitation in the circumstances; its cost effectiveness and its likelihood of achieving its purpose under an individual rehabilitation programme.

[39] In its decision of 27 August 2021, ACC said:

... ACC have been unable to identify evidence to support that the provision of the requested vocational rehabilitation would have enabled you to sustain employment in

your farming enterprise, or that it would have been cost effective in the context of entitlements under your claim.

With regards to your transportation costs, there is no evidence to support that this related to rehabilitation and as such, ACC would not be liable to reimburse these costs.

[40] In the course of his submissions, it was apparent that Mr Chalecki bears a great burden of resentment in respect of a variety of matters connected with ACC, including derogatory notes on his file. He said that things got so bad that he and his wife had to move.

[41] I have no reason to doubt that the grievances Mr Chalecki feels are genuinely felt by him. However, as has been said before, the social contract embodied in s 3 of the Act is designed to cushion the effects of injury by accident. The Act never set out to provide comprehensive wrap around benefits.

[42] Accordingly, therefore, I must find that the appellant has been unable to prove on the balance of probabilities that ACC's decision of 27 August 2021 was wrong.

[43] Accordingly, I must dismiss appeal ACR 87/22.

Appeal ACR 102/22

[44] This is an appeal against a review decision dated 9 June 2022 in which seven review applications were addressed.

[45] The reviewer determined that she had no jurisdiction to determine the matters raised by the appellant and on that basis, the applications for review were dismissed.

[46] In respect of reviews 7427687, 7428187 and 7421307, these relate to issues of weekly compensation which the appellant claims he is owed. He said:

ACC owe me my weekly compensation plus interest from 1986 to November 5, 2020, less the \$222,000 payout I received back payment received approx ten years ago and the extra paid from that time.

[47] As the reviewer noted, no valid decisions in terms of the Act have been identified for the purpose of the review.

[48] In respect of review 7427687, this was an application to review three further claimed decisions:

- a. ACC's decision to hire a private investigator;
- b. ACC's decision to pass around private information without his consent; and
- c. ACC's decision not to stop with their aggressive rehabilitation when he kept having more accidents.

[49] In respect of review 7426185, this refers to an application lodged on 1 September 2021. Mr Chalecki wrote the basis of the review application was:

- a. ACC never gave him review rights when it made him work while on a fully unfit for work medical certificate;
- b. ACC never provided an individual rehabilitation plan as per the 1982 Act; and
- c. ACC made him pay all his rehabilitation costs and travel costs.

[50] In respect of review 7444820 lodged on 5 November 2021, Mr Chalecki wrote:

The Case Manager told me I had to use my lump sum to help pay for rehab for this under the 82 Act. The Case Manager was asked about the capital expenditure and losses, she replied she would investigate. This under the 82 Act.

[51] Review 74216185.1 refers to an application lodged on 8 September 2021. Mr Chalecki wrote that ACC failed to give him review rights when it made the following four decisions, which affect the way ACC case managed his file, treatment and rehabilitation:

- a. A decision not to refer him to a psychiatrist when recommended by Dr Strack;
- b. A decision not to refer him to the pain clinic;
- c. A decision to send him on a re-training course, which was pointless; and
- d. A decision to proceed with aggressive rehabilitation, despite advice from his treating surgeon that this was not appropriate.

[52] Mr Chalecki did not address submissions at the appeal hearing in respect of these listed matters.

[53] Mr Hunt notes that the reviewer found that none of the decisions involved in the seven applications for review, according to the reviewer, related to reviewable decisions. Accordingly, the reviewer found she had no jurisdiction to determine the substance of each of these applications.

[54] Before me, Mr Chalecki did not address the submissions in respect of the seven reviews.

[55] The reviewer, Lisa Ormandy, found that the seven review applications did not relate to reviewable decisions. That too is the position that Mr Hunt takes on the matters. Accordingly, he asks that appeal ACR 102/22 be dismissed.

[56] In her decision of 9 June 2022, the reviewer said:

[34] Under the relevant Acts, I have jurisdiction if a review application is against a reviewable decision. I accept Mr Chalecki's submission that the definition of decision is much broader under the 1982 Act. However, there is a difference between a decision and a reviewable decision. Section 101 of the 1982 Act makes it clear that reviews can only be lodged against those decisions that affect whether a person has suffered a personal injury; the liability of a person to pay any levy; and the granting or payment of rehabilitation assistance or compensation to any person. Review rights do not attach to any other decision that falls outside these three categories.

[35] Accordingly, based on my interpretation of the 1982 Act and contrary to Mr Chalecki's view, the 1982 Act does not extend review rights to administrative decisions of ACC. Subsequent Acts also do not provide such review rights.

[36] In particular, under the 2001 Act, reviewable decisions are only those relating to cover or a claim for entitlements (treatment, weekly compensation, lump sum payment or vocational rehabilitation); an unreasonable delay in processing a claim for an entitlement; or a decision issued under the Code of Claimants Rights (the Code).

[37] This requirement for a review application to be against a reviewable decision in order for there to be jurisdiction is regardless of whether the decision is in writing or not (although for completeness, I do note that decisions can be implied in some circumstances).

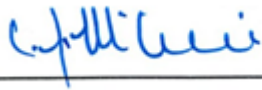
[38] On this basis, I do not consider I have jurisdiction to determine any of Mr Chalecki's review applications. This is because none of those matters raised by him across his seven review applications constitute decisions capable of review under the 1982 Act or subsequent Acts. ACC has neither accepted nor declined cover, or approved or declined funding for a specific entitlement that was based on a claim for that entitlement.

[39] In other words, Mr Chalecki's cover status and access to entitlements have not been altered in any way – the actions alleged to have been taken by ACC did not change the status quo for Mr Chalecki.

[57] The position therefore is that although Mr Chalecki has not before me addressed argument in support of his appeal against the seven review decisions, I am satisfied that in respect of those review decisions, the reviewer's analysis and conclusions were correct.

[58] Accordingly, appeal ACR 102/22 is dismissed.

[59] Costs are reserved. All memoranda in respect of costs are to be filed within one month.



CJ McGuire
District Court Judge

Solicitors: Young Hunter, Christchurch