

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 158

**ACR 15/23
ACR 17/23
ACR 18/23**

UNDER THE ACCIDENT COMPENSATION ACT
2001

IN THE MATTER OF AN APPEAL UNDER SECTION 149 OF
THE ACCIDENT COMPENSATION ACT

BETWEEN TERENCE EASTHOPE
Appellant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: 22 September 2023

Heard at: Auckland / Tāmaki Makaurau

Appearances: Appellant in person, together with support person Ms Stevens
Mr L Hawes-Gandar and Ms F Becroft for the Respondent

Judgment: 26 September 2023

**RESERVE JUDGMENT OF JUDGE C J McGUIRE
[Entitlements - Part 4 Accident Compensation Act 2001]**

[1] The appellant Mr Easthope has lodged three appeals in respect of different issues stemming from the same background.

[2] ACR 18/23 relates to an email to Mr Easthope dated 27 June 2022 advising him about different kinds of entitlements the Corporation can provide. The Corporation's position is that this email does not constitute a reviewable decision.

[3] ACR 17/23 relates to a decision by the Corporation dated 7 July 2022, declining Mr Easthope weekly compensation on the basis that he was not an earner at the date of his injury. Mr Easthope does not appear to dispute this, and the Corporation considers the decision to have been correct.

[4] ACR 15/23 relates to two decisions by the Accident Compensation Corporation both dated 8 July 2022, revoking deemed cover for a lumbar sprain and declining cover for a neck sprain. The Corporation's position is that this appeal is moot as the two decisions at issue have been revoked, with ACC accepting cover for a neck sprain and lumbar sprain.

Background

[5] On 17 May 1986, Mr Easthope suffered an accident while playing rugby league. It appears that this accident involved him being spear tackled to the ground.

[6] ACC's records are sparse. The claim registration date recorded in ACC's system is 23 March 1989. The Corporation's records show that it made a lump sum payment to Mr Easthope in 1989 based on an 8% whole person impairment.

[7] ACC also funded surgery on Mr Easthope's left shoulder in 2012.

[8] Over the following years, the Corporation continued to fund further assessment and treatment, including steroid injections, pain management programmes, physiotherapy, medical imaging and multiple orthopaedic assessments.

[9] In June 2022 a new case manager, Kevin Rei, was appointed.

[10] On 19 June 2022, Mr Easthope emailed Mr Rei with various background details about the 1986 claim. Mr Easthope's email included a list of requests for items including a new mattress, a traction machine and that ACC pay for a disability car.

[11] Mr Rei discussed the contents of this email with Mr Easthope on 22 June 2022. Mr Rei followed up the discussion with an email of the same date addressing the points that Mr Easthope had raised that. The email included the following:

- That Mr Easthope only had cover for a left shoulder dislocation in respect of the 1986 accident. Mr Rei suggested that if Mr Easthope wished to obtain cover for additional injuries, he discuss this with his GP who could lodge a formal request for any additional injury diagnosis.
- That the requests for a traction machine and mattress had been made under a separate claim and had already been determined by the Corporation.
- Mr Easthope needed to complete a form which Mr Rei sent him, to request modification to his vehicle.
- Mr Easthope should see a physiotherapist to seek assistance with stretching and if appropriate the physiotherapist could seek funding for a new back brace, yoga mat and shoe inserts.
- The Corporation was unable to provide assistance with Mr Easthope's power bill or legal assistance for a property dispute.

[12] On 27 June 2022 Mr Easthope resent his email of 19 June with a list of requests and asked that Mr Rei respond, using the same email thread, and identify everything which the Corporation had declined.

[13] On 7 July 2022 Mr Easthope sent an email asking that his email be accepted as an application for review.

[14] At the review hearing on 9 February 2023 there was some confusion over the scope of the review. However the position reached was that the application for review had been brought in relation to the email sent by Mr Rei on 27 June 2022 at 1:42 pm.

[15] The application for review was dismissed by Ms Robbers in a decision dated 20 December 2022 on the basis that Mr Rei's email did not constitute a reviewable decision.

ACR 15/23 – Decisions Regarding Cover for Sprains

[16] In accordance with Mr Rei's advice, Mr Easthope visited his general practitioner, Dr Karthak, to lodge a formal request for cover for neck injury. On 28 June 2022 Dr Karthak lodged a medical certificate under the 1986 claim certifying Mr Easthope was unfit for work from 27 June to 28 June 2022, because of "additional diagnosis neck sprain".

[17] On 8 July 2022 the Corporation issued a decision declining cover for the diagnosis of neck sprain. The decision letter explained that Mr Easthope had, in 2021, revoked permission for ACC to collect any further records, meaning that the Corporation was required to make a decision based on the available information on its file and that there was insufficient evidence to establish the causal link between the accident and neck sprain – which would normally have been expected to resolve within six to eight weeks of the accident.

[18] Eventually a pragmatic decision was made by ACC to accept cover for both the neck sprain and the lumbar sprain, despite the lack of contemporaneous records. A decision to this effect was issued on 15 December 2022 revoking the two earlier decisions which were the subject of the review applications and replacing it with a decision accepting cover for the sprains.

[19] At the review hearing on 9 February 2023, it was noted that the decisions at review had been revoked and that there were no live decisions to consider.

[20] Mr Easthope declined to withdraw his review applications and these were dismissed by the reviewer in a decision dated 20 December 2022.

ACR 17/23-Decision Declining Weekly Compensation

[21] As noted above, the medical certificate lodged by Dr Karthak certified Mr Easthope as unfit for work for one day from 27 June 2022 to 28 June 2022.

[22] Mr Rei noted this in an email to Mr Easthope on 6 July 2022 and questioned whether Mr Easthope was intending to apply for weekly compensation, noting that the Corporation would have to decline weekly compensation as it was understood that Mr Easthope had not been an earner at the date of injury.

[23] Mr Easthope sent several emails in response. While he did not clearly say whether he wished to apply for weekly compensation, he did mention that he believed he had “all the elements of reaching the threshold of weekly compensation”.

[24] A decision was issued on the same day, declining Mr Easthope weekly compensation on the basis that he was a non-earner at the date of accident on 17 May 1986.

[25] On receipt of this decision, Mr Easthope emailed Mr Rei stating amongst other things that he “would like this decision reviewed as I have not asked for ACC weekly compo...”.

[26] This email was interpreted as an application for review of the Corporation’s decision declining weekly compensation.

[27] The application for review was dismissed in the decision dated 20 December 2022 on the basis that the Corporation’s decision declining weekly compensation was correct as Mr Easthope was not an earner at the date of injury.

Appellant’s Submissions

[28] Mr Easthope spoke generally of his accident and the support and assistance that he says he should have got in the 1980s.

[29] He did say that at least ACC is talking now and “not telling me to get lost”.

[30] His partner Ms Stevens told the court that the appellant was suffering. She said that he had very disturbed sleep. She said he was unable to wash and dry himself, and that he could not lie on his back.

[31] When asked by the court when his last needs assessment occurred Mr Easthope said that the Auckland Regional Pain Service carried out an assessment in 2014.

[32] He said that Auckland Regional Pain Service is his preferred provider for a needs assessment. He said that right now the task of drying himself and getting his clothes on was a big problem.

Respondent’s Submissions

[33] Mr Hawes-Gandar acknowledged Mr Easthope’s dissatisfaction with ACC.

[34] However he said that ACC had offered Mr Easthope a medical case review to consider what was causally related to Mr Easthope's accident.

[35] Mr Hawes-Gandar advised the court that he would ask the appellant's case manager to arrange a support needs assessment. He noted that the appellant was seeing a physiotherapist and psychologist at the moment so such an assessment may already be in train.

[36] Referring to appeal ACR 18/23, Mr Hawes-Gandar submitted that the email to Mr Easthope dated 27 June 2022 advising him about different kinds of entitlements the Corporation can provide, was not a reviewable decision. He said it is up to Mr Easthope to request an entitlement and ACC's decision on such a request would be a reviewable decision.

[37] In respect of appeal ACR 15/23, Mr Hawes-Gandar advised that ACC has revoked the two decisions in issue, with ACC accepting cover for a neck sprain and lumbar sprain.

[38] In respect of appeal ACR 17/23, Mr Hawes-Gandar says that weekly compensation was declined because the appellant was not an earner at the date of injury.

Further Inquiry of ACC

[39] In light of what the court heard from the appellant and Ms Stevens, Mr Hawes-Gandar readily accepted the court's suggestion that he seek instructions from ACC so that a fresh support needs assessment of Mr Easthope could be made and the court took a short break for this to occur.

[40] A short time later, having contacted ACC, Mr Hawes-Gandar was able to advise the court that ACC agreed to this course and that Mr Easthope's case manager would be in touch with him regarding a fresh support needs assessment.

[41] It was evident following this that Mr Easthope and Ms Stevens were pleased that the process for a fresh support needs assessment had been initiated.

Decision

[42] In respect of appeal ACR 18/23, Mr Easthope did not advance argument that the email of 27 June 2022 constituted a reviewable decision. This was an email advising him about the different types of entitlements that the Corporation was able to provide. It was plainly not a reviewable decision. Accordingly this appeal must be dismissed.

[43] In respect of appeal ACR 17/23, a decision of the respondent dated 7 July 2022 declining weekly compensation on the basis that Mr Easthope was not an earner at the date of his injury, ACC's position that Mr Easthope was not an earner at the date of his injury has not been challenged. This appeal therefore must be dismissed.

[44] In respect of appeal ACR 15/23, as recorded above, the two decisions in question were revoked by ACC in a decision of 15 December 2022 with ACC now accepting cover for a neck sprain and a lumbar sprain.

[45] Given that the basis for bringing appeal ACR 15/23 no longer exists, this appeal too must be dismissed.

[46] Costs are reserved.



CJ McGuire
District Court Judge

Solicitors: Medico Law, Grey Lynn