

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 101 ACR 005/23

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

Date of Hearing: 23 June 2023

Heard at: Auckland/Tāmaki Makaurau

Appearances: The appellant is self-represented
Ms K Anderson for the respondent

Judgment: 27 June 2023

**RESERVED JUDGMENT OF JUDGE D L HENARE
[Cover and funding for treatment Part 3 and s 67
Accident Compensation Act 2001]**

[1] The appellant, Abdulrahman Elkadi, appeals two decisions of the Corporation declining cover for meibomian gland disease and funding for IPL treatment.

Background

The accident

[2] There is a dispute of fact relating to the accident.

[3] Mr Elkadi states that on 28 December 2020 when out for a walk, he felt that something flew into his eyes, and he sought treatment.

[4] However, the contemporaneous medical notes and the claim as filed, report the incident as affecting the left eye only, not both eyes.

[5] The notes of the nurse record “presenting complaint as ‘Out for a walk and foreign body has flown into Lt eye, felt pain immediately’, concerned as he reports that his vision in left eye, feels quite blurry”. The GP notes record an impression of “Foreign body in left eye, resolved” and 'feels something flew into left eye with immediate pain and change in outer hemisphere of left eye vision'.

[6] Mr Elkadi says these notes are incorrect and both his eyes were affected.

[7] The original claim form requested cover for “foreign body on external eye, left, suspected”. On 29 December 2020 the Corporation accepted cover.

The diagnosis of meibomian gland disease (MGD)

[8] Dr Best, a specialist ophthalmologist, saw Mr Elkadi on 15 January 2021, and reported to Mr Elkadi's doctor on 19 January 2021 of his diagnosis of mild meibomian gland disease as follows:

Thank you for your letter concerning Mr Elkadi who sustained a foreign body injury to his left eye two weeks ago. Since that time, he has had some intermittent discomfort and discharge more on the left than the right.

Past medical history is unremarkable.

He is currently on no systemic medications and reports no allergies to medications.

There is no family history of eye disease noted.

When seen today, unaided acuities are 6/6 with each eye. Pupillary examination is normal with no relative afferent pupillary noted. Anterior segments are quiet. Undilated fundal examination is unremarkable bilaterally.

Eversion of the upper lid shows signs of mild meibomian gland disease with the inspissation of the meibomian glands particularly involving the upper lid on the left side. There are some mild signs of allergic conjunctivitis on both sides.

The request for IPL treatment

[9] Just over a year later, on 3 February 2022, Mr Elkadi’s optometrist (Dr Lee), sought funding for Mr Elkadi for an eye exam and if needed dry eye treatment (consisting of gland expression followed by IPL treatment) to treat MGD.

[10] Dr Lonergan, Medical Advisor, reviewed the file on 2 May 2022 and noted:

[a] Mr Elkadi has cover for 'foreign body in L eye'. This is not an injury.

[b] The eye specialist diagnosed MGD in both eyes, with the left greater than the right.

[c] MGD is not due to trauma.

[11] On 2 May 2022 the Corporation declined to pay for IPL treatment for Mr Elkadi, who then applied to review that decision.

[12] Dr Lee forwarded another letter on 7 July 2022 to the Corporation stating Mr Elkadi “is still having problems with glare since his eye injury”.

The request for MGD cover

[13] The Corporation informed Mr Elkadi that he did not have cover for the gland dysfunction, and so the Corporation could not fund the IPL treatment for it.

[14] On 4 August 2022 Mr Elkadi filed a new claim for cover for MGD.

[15] Dr Macaulay, Medical Advisor, reviewed the claim for MGD. In her note of 5 August 2022, she commented:

[a] MGD 'often manifests as a foreign body sensation ie, irritation, grittiness, dryness of the eyes and sometimes blurred vision and sensitivity to light'.

[b] The cause is duct blockage or a change of the quality of eye lubricant.

[c] It can be associated with allergic conjunctivitis, which Mr Elkadi has.

[d] There is no causal relationship between the accident and MGD.

[16] On 8 August 2022, the Corporation declined cover on the basis MGD was not caused by the accident. Mr Elkadi applied to review that decision.

[17] The Corporation sought the opinion of Dr Best whether the MGD could have been caused by the accident. Dr Best's response was brief. He stated:

It's difficult when patient fronts to GP and claims a “foreign body” in the eye historically and when seen there is no evidence of injury but underlying non accident-related eyelid inflammation.

[Emphasis added]

The Review

[18] The first claim by Mr Elkadi that the accident affected both eyes was before the Reviewer who found as follows:

- [a] Apart from the temporal link (a connection in time), there is no evidence to suggest MGD was caused by accident.
- [b] The medical evidence shows it was more likely than not that MGD was non-accident related and an underlying condition.
- [c] Accordingly, the Corporation's decision dated 8 August 2022 declining cover for MGD was correct.
- [d] As Mr Elkadi does not have cover for MGD, he is not entitled to funding for the IPL treatment to treat the MGD.
- [e] Accordingly, the Corporation's decision dated 2 May 2022 declining funding for IPL treatment was correct.

The case for Mr Elkadi

[19] Mr Elkadi submits:

- He felt something fly into both his eyes, not just the left eye;
- He did not experience any symptoms of a pre-existing condition in his eyes;
- He believes the MGD was the result of the foreign body in his eyes;
- Mr Lee has referred to an eye injury.

Issues

[20] The parties agree the issues in the appeal are whether the Corporation was correct to:

- (a) Decline to cover Mr Elkadi for meibomian gland dysfunction
- (b) Decline funding for IPL (dry eye treatment)

Discussion

[21] There is no dispute that Mr Elkadi has meibomian gland dysfunction (MGD). The diagnosis is not the issue. The issue in this case is causation, what caused the MGD for which cover is sought.

[22] Section 26 of the Accident Compensation Act 2001 (the Act) defines personal injury in terms of the Act. Section 26(2) specifically excludes “injury caused wholly or substantially by gradual process, disease or infection” from being a personal injury. The Court observes that MGD is specifically described by Dr Macauley as a disease.

[23] Section 20 requires that unless an injury was caused by accident, it cannot be covered. Likewise, pursuant to s 25, notwithstanding an injury has been suffered, it is not an indication or presumption it was caused by accident. It is only the injury caused by the accident that can be covered and not any underlying condition or disease.

[24] The Court of Appeal’s decision in *Ambros*¹ sets out the guiding principles:

[65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense

...

[67] The different methodology used under the legal method means that a court’s assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty --see para [32] above. **However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture**

...

[Emphasis added]

[25] There must be robust evidence of a causal link between the accident and injury. Risk of causation is insufficient. An underlying condition triggered or accelerated by the accident does not amount to causation.

¹ *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

[26] Having had the opportunity to to consider the available evidence, I am satisfied the Corporation's decisions are correct for the reasons that follow.

[27] First, the evidence of Dr Macaulay is clear that MGD is an inherent problem or underlying condition. She noted that:

Meibomian gland dysfunction is a medical problem of the eyelids which often manifests as a foreign body sensation, irritation, grittiness, dryness of the eyes and sometimes blurred vision and sensitivity to light.

The underlying cause is either blockage of the ducts of the meibomian glands leading to less oil (meibum) in the tear layer which lubricates the eye, or a change in the quality of the oil itself. The condition can be associated with another medical condition – allergic conjunctivitis, which our client has. The symptoms are often persistent due to the inherent problem with oil or its flow.

(Emphasis added)

[28] Secondly, I take into account Dr Best is the most qualified to give an opinion on causation in this case and for this reason, though his opinion is brief, it is preferred by the Court. Dr Best confirmed that MGD was not caused by accident and “is an underlying, non-accident related eyelid inflammation”.

[29] Thirdly, Mr Lee, does not provide an opinion on causation. Rather, Mr Lee describes the IPL treatment that is available to treat MGD. The second report from Mr Lee refers to Mr Elkadi having problems with glare, which is a symptom of MGD as noted in Dr Best's first report. Further, Mr Lee refers to eye injury, but does not say what this injury is. Importantly, Mr Lee does not address the issue of causation.

[30] Fourthly, whilst there is medical review from the Corporation's internal medical advisors addressing MGD, their opinions on causation are based on the opinion of Dr Best.

[31] Fifthly, there is no counter evidence supporting MGD caused by trauma or accident.

[32] The Court accepts the best case for Mr Elkadi is the temporal connection, that he felt something fly into his eyes when he was out for a walk. While a temporal connection between an accident and the onset of symptoms is an important factor to be taken into account, it is not, in itself, evidence that MGD was caused by the accident as the Court explained to Mr Elkadi at the hearing.

[33] On balance, the weight of the available evidence shows that the accident on 28 December 2020 did not cause MGD. For this reason, the claim for cover for MGD does not succeed.

[34] I turn to consider the second decision of the Corporation declining funding for treatment of MGD. Treatment is an entitlement. Under s67 of the Act, entitlements must be linked to covered injuries. Since I have concluded that Mr Elkadi's claim for cover for MGD as a personal injury does not succeed on the available evidence before me, he is not eligible to receive any entitlement for MGD. In consequence, Mr Elkadi is not eligible to receive entitlement for IPL treatment for MGD.

[35] I am satisfied on the weight of the available evidence that the decisions of the Corporation dated 2 May 2022 and 8 August 2022 respectively, are correct. Mr Elkadi's appeal is unsuccessful.

Decision

[36] Accordingly, the appeal is dismissed.

[37] There is no issue as to costs.



Judge D L Henare
District Court Judge

Solicitor for the respondent: ACC Legal Services, Wellington

Barrister: Ms K Anderson, Sangro Chambers, Auckland