

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 68

ACR 171/22

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

Hearing: 20 March 2023
Heard at: Auckland/Tamaki Makaurau
Appearances: Mr B Hinchcliff for the Appellant
Mr B Marten for the Respondent
Judgment: 9 May 2023

**RESERVED JUDGMENT OF JUDGE C J MCGUIRE
[Cover; s 100 Weekly Compensation
Accident Compensation Act 2001]**

[1] At issue on this appeal are two decisions of Well NZ on behalf of Pan Pac Forest Products Limited (an accredited employer). The first is dated 3 March 2022 declining to pay the appellant weekly compensation on the basis that his covered injury of 31 October 2021 was not the cause of his incapacity.

[2] A second decision dated 11 July 2022, declines cover for neck and thoracic sprains in relation to the accident on 31 October 2021.

[3] ACC's position on each issue is first, the evidence does not demonstrate that any of Mr Hart's covered sprain injuries are the cause of his incapacity, and second, there is no

factual or medical evidence to support the suggestion that Mr Hart suffered neck or thoracic sprains during his accident on 31 October 2021.

[4] In October 2013, Mr Hart suffered an accident when he was hit by a falling scaffolding pole, causing injuries to his back and neck.

[5] An ACC injury claim form was lodged on 21 October 2013 with the accident date given as 11 October 2013. In the claim form, the accident description was:

Large scaffolding pole fell onto back, neck, and skull. Still ... pain and numbness in hand and shoulder.

[6] On 29 October 2013, the appellant had an x-ray of his cervical spine. No bony injury was identified. However, the report noted “still has hand numbness”.

[7] On 13 November 2013, the appellant attended a physiotherapist, who diagnosed a lumbar spine strain with contusions.

[8] The appellant’s GP’s notes of 13 November 2013 record:

Carl is still in pain with his cervical thoracic spine, but also his lumbar sacral spine. This all happened when he was hit over the back of the head, shoulders, and low back with falling scaffolding, particularly when he reached down to save a mate, who was also hit. When seen by Dr Vallance (Locum), he was apparently fully examined down his spine and did mention tender low back etc, but this was never put on an ACC form and never mentioned in the notes. The parathesis down the left arm had settled, but his neck, upper back and low back pains have persisted. He feels like the neck and upper back are “out of place” which gives him neck pains, tightness, and a headache ...

[9] On 11 February 2014, Dr Craig, GP, stated that the appellant had ongoing lower back pain radiating out to the left sacroiliac area, left buttock and left hip.

[10] An x-ray performed on 13 February 2014 showed minor intervertebral disc space narrowing at the L5/S1 but no other significant pathology.

[11] An MRI of the sacroiliac joints was performed on 20 March 2014. The findings included the following:

A short distance below the left PSIS (posterior-superior iliac spine) there is a mild to moderate degree of subcutaneous oedema.

[12] The MRI also revealed L5/S1 disc disease.

[13] On 12 June 2014, Dr Floyd, Occupational Medicine Specialist, included the following in his report:

From the information on file, the diagnosis is not clear cut. The information would support a left sacroiliac inflammation secondary to injury. These injuries can be very slow to settle and to that end, would account for his slow recovery ...

[14] On 13 June 2018, the appellant suffered a further accident when he jumped down onto a nearby walkway to escape flame and debris shooting out of a boiler. The injury was reported, but he was able to continue working and did not require any time off. His GP lodged a claim for a lumbar sprain.

[15] On 18 July 2018, the appellant was struggling to complete 12 hour days, so his GP certified him unfit to work for a week.

[16] On 10 September 2018, the appellant's GP noted that he was experiencing ongoing back pain, which was aggravated by heavy tasks at work.

[17] During a consultation on 20 September 2018, his GP noted that her impression was of acute-on-chronic back pain, with some possible nerve involvement. She noted that Mr Hart and his boss agreed that he could not work, and so certified him unfit for two weeks.

[18] The appellant had intermittent issues with graduated returns to work and by 1 February 2019, he was cleared for full time work on the recommendation of his GP and occupational therapist.

[19] On 4 May 2019, the appellant suffered another accident bending and twisting at work to try and remove a blockage from a furnace. The GP consultation notes recorded an acute-on-chronic aggravation of his lumbar back pain.

[20] On 22 May 2019, Mr Hart suffered a non-work-related accident, helping a person involved in a car accident. The force of pulling the crash victim from the car while holding the door ajar caused discomfort in his shoulder area, with pins and needles into his fingers and lingering pain in the mid thoracic spine. A claim for a neck sprain was lodged.

[21] On 18 July 2019, Dr Antoniadis, Occupational Medicine Specialist, prepared a report on Mr Hart. His impression was that Mr Hart was suffering from significant disc disease, causing recurrent and protracted lower back symptoms with a “simple sprain type event” on 4 May superimposed on that. He referred Mr Hart for an MRI.

[22] On 5 August 2019, an MRI was undertaken. The conclusions were:

Mild spondylotic changes of the lumbar spine, with disc dehydration in L4/5 and L5/S1 with disc protrusion.

[23] On 2 September 2019, Dr Antoniadis issued another report addressing the MRI changes at L5/S1. In his view, these were consistent with his symptoms and a likely explanation of his pain. He stated:

To provide some clarity on the events of 4 May 2019 and his incident described at work while bending and twisting, trying to remove a blockage, this would be seen as a significant exacerbation of what is already a diseased and disrupted disc, with more persistent support for nerve root irritation at the L5/S1 level impacting on the left L5 nerve root.

[24] On 6 November 2019, Dr Cleary, Musculoskeletal Medicine Specialist, saw the appellant and provided a report. Under the heading “Opinion”, he said:

He has lumbar discogenic pain potentially from the L4/5 disc and the L5/S1 disc and intermittent L5 radicular leg pain of the left L5/S1 foramen. When his pain is bad he has impulse pain, an indication of inflammation of the dural from the chemicals coming from the damaged discs.

Today he was trying to understand the decision of Well NZ to attribute his symptoms to a pre-existing condition at the L5/S1 disc. Unlike the L5/S1 disc, there is no L4/5 imaging to indicate that Carl had pre-existing changes to this disc prior to the 2018 accident. I do not know if this decision took into account the MRI changes at the L4/5 disc. If it did not, it needs to be reviewed.

[25] On 26 May 2020, the appellant was assessed by Mr Suhindra Rao, Orthopaedic Surgeon, further to the accident he had suffered assisting a person in the car accident. Mr Rao’s impression was of a significant traction strain to the shoulder girdle muscles resulting in possible post traumatic enthesopathy of the attachment of the rhomboids to the spinous process, or irritation of the spinous process itself.

[26] On 1 July 2020, Mr Rao reviewed the appellant following an MRI scan, noting that the scan confirmed a central disc extrusion at T7/8 and no stenosis. Mr Rao stated that this was

the likely source of pain, but the scan also showed significant disc abnormalities up and down the spine.

[27] On 12 August 2021, Mr Enright, Orthopaedic Surgeon, undertook a “complex” assessment of the appellant. Under the heading “Specific Diagnosis” he said:

There are a number of factors in this man’s case. I would think it likely that he suffered a T7/8 disc injury in 2013. Whether there was any cord effect at that time is difficult to know, but at this time, by both exam and imaging, there is no current effect. It would localise well with his lower thoracic spine pain. I do not believe there is any reliable intervention to be offered to either treat or assess this pathology.

[28] Mr Enright added:

I have suggested looking at retraining and a possible new job may be of use. This is a big move for him and his family, but given the chronicity of his pain and the lack of successful intervention surgically, it may be worthy of consideration.

[29] On 31 October 2021, Mr Hart suffered another workplace accident. He was using a six foot crowbar and twisted his back. Since then, he had experienced increased lower back and upper back pain, with numbness and burning into the left foot. His injury claim was accepted by ACC on 16 November 2021.

[30] By 10 January 2022, the appellant was having problems with his return to work, finding it less and less sustainable.

[31] On 9 February 2022, Dr Ruttenberg, Occupational Medicine Specialist, assessed the appellant and provided a detailed report.

[32] The appellant told Dr Ruttenberg that he was not currently working and that he had last worked “about a month ago”. He told Dr Ruttenberg he stopped work, saying “it got to the point where I couldn’t handle it”.

[33] Dr Ruttenberg noted that his symptom complex had remained stable with the MRI scan of 2019.

[34] Dr Ruttenberg said that in respect to his accident of 31 October 2021, the appellant had aggravated a pre-existing symptom complex. Dr Ruttenberg added:

I firmly believe he has aggravated a previous work injury. When he was seen by Dr Antoniadis, there were no clinical findings to suggest nerve root irritation or compression on the left side.

[35] Dr Ruttenberg continued:

I have reviewed the supplied documentation and previous injuries dating back to 2013.

I agree there is no indication of radicular symptoms and certainly no signs to suggest radiculopathy after the event of 2013. This is extensively noted in contemporaneous notes from the time.

The event of 2018, when he had to jump out of the way of the exploding event, resulted in subsequent back and left leg symptoms. Symptoms have been intermittent and ongoing since then, becoming exacerbated again in 2019 and more recently in October 2021.

It is my opinion that the causative event was the event in 2018.

[36] Dr Ruttenberg also said:

It would be my opinion today that unfortunately the long-standing disc disease is likely the substantial cause of his ongoing back pain. This has been aggravated on several occasions.

[37] On 3 March 2022, Well NZ declined weekly compensation arising from the 31 October 2021 accident, relying on Dr Ruttenberg's opinion that it was not the cause of the appellant's incapacity. The letter also said "If you wish to apply for weekly compensation under an earlier claim, please submit an application to ACC for consideration."

[38] On 10 March 2022, Well NZ received a further request from Mr Hart's GP to add neck and thoracic sprains to his 31 October 2021 claim.

[39] On 7 April 2022, Mr Enright provided a report stating that based on his review of the radiology, the cause of Mr Hart's lower limb symptoms was not clear.

[40] Dr Ruttenberg provided a further report on 4 May 2022. Amongst other things, he again noted that sprain injuries do not last six months to years in duration.

[41] On 11 July 2022, Well NZ declined to add thoracic and neck sprains to the 2021 accident claim on the basis that there was insufficient evidence available to show they had been caused by the appellant's accident.

[42] On 19 July 2022, Dr Walls, Occupational Medicine Specialist, provided a report on the appellant following a consultation. Under the heading "Diagnosis" he said this:

Carl has had widespread spinal pain since an accident in 2013.

As far as I can determine, the 2013 accident probably led to a T7/8 disc protrusion. Although it has settled, it may have caused considerable embarrassment (pathological and clinical) around the time of the accident.

He continues to suffer low back pain in his bi-level disc disease capable of causing such pain, predominantly at the L5/S1 level.

As far as I can determine, the event in June 2018 was of sufficient force to cause a lumbar disc injury and Carl was reporting low back and left lower limb pain and an MRI scan of 18 August 2019 confirms bi-level lumbar disc pathology, particularly at the L5/S1 level compatible with Carl's symptoms of which the left lower limb radicular symptoms were relieved by Dr Cleary's L5/S1 TFI or facet joint injection.

I am unsure that the event in October 2021 led to a further injury or, as Dr Ruttenberg says, aggravated the existing injury, but nevertheless it would seem bizarre he has not acquired ACC cover, given his descriptions of the accidents/work events in 2018.

[43] Referring to the accident of 31 October 2021, Dr Walls said:

If there is no additional pathology, then, in my opinion, the event of 31 October 2021 aggravated the pathologies arising from the event of 13 June 2018 which had been significantly relieved by Dr Cleary's treatment and now needs further evaluation.

Either way, he suffered a significant aggravation or new injury on 31 October 2021 and is deserving of ACC cover/investigation and treatment.

[44] At the end of his report, Dr Walls said this:

With respect to your specific questions:

1. What is your response to the decision that Carl was not incapacitated to work due to his 31 October 2021 accident?
 - A I would consider, from his description today, that Carl was incapacitated by 31 October 2021 accident.
2. If he was incapacitated due to his injury, how long was he incapacitated for?
 - A Carl describes to me being incapacitated four months before requiring further work and I have no information to dispute this assessment.

3. If he was not incapacitated due to that injury, was he incapacitated due to another injury after 31 October 2021?

A ...

If there is no additional pathology, then, in my opinion, the event of 31 October 2021 aggravated the pathologies arising from the event of 13 June 2018, which had been significantly relieved by Dr Cleary's treatment, but now needs further evaluation.

Either way, he suffered a significant aggravation or new injury on 31 October 2021 and is deserving of ACC cover/investigation and treatment.

[45] On 11 August 2022, the appellant's GP generated two medical certificates requesting that ACC add the following diagnoses to his claims:

- (a) In respect of his 2013 accident, a diagnosis of "intervertebral disc disorders"; and
- (b) In respect of his 2018 accident, a diagnosis of "lumbar disc displacement".

[46] By separate letters dated 8 March 2023, ACC responded that it was unable to approve cover for either injury based on the information that was available.

Appellant's Submissions

[47] In his written submissions, Mr Hinchcliff notes that in order to receive weekly compensation, the appellant must prove that he was incapacitated due to a covered injury, as provided for in ss 100 and 103.

[48] Mr Hinchcliff notes that at review, it was Well NZ's position on behalf of Pan Pac that it was an earlier injury that was aggravated by the October 2021 accident and that "the employer's decision is only limited to the claim and covered injury, as previous claims are under ACC's management, so any consideration of weekly compensation on the earlier claim would need to be made by ACC.

[49] Mr Hinchcliff says that as the claim has been transferred to ACC, that argument is no longer appropriate.

[50] Mr Hinchcliff is critical of Dr Ruttenberg's report in that he refers only to discal symptoms and does not discuss the thoracic spine injuries, nor the lumbar spine sprain.

[51] Mr Hinchcliff refers to the injury of 31 October 2021 in which the appellant twisted his back while using a six foot crowbar.

[52] Mr Hinchcliff refers to the MRI report of 20 March 2014, some five months after the 2013 accident. The report finds that a short distance below the left PSIS (post superior iliac spine), there is a mild to moderate degree of subcutaneous oedema. There is also at L5/S1 disc a small broadbased bulge. The radiologists impression is that there is disc disease at L5/S1.

[53] Mr Hinchcliff refers to a further MRI taken on 5 August 2019 after the accidents of 13 June 2018 and 4 May 2019. He submits that this is a new disc injury that was not in evidence when the MRI of March 2014 was undertaken.

[54] Mr Hinchcliff refers to the report of musculoskeletal doctor Cleary who documents persistent lumbar spinal and leg pain since the 2013 accident.

[55] Dr Cleary concludes his report of 6 November 2019 by saying:

Unlike the L5/S1 disc, there is no L4/5 imaging to indicate that Carl had pre-existing changes in this disc prior to the 2018 accident. I do not know if this decision took into account the MRI changes at the L4/5 disc. If it did not, it needs to be reviewed.

[56] Mr Hinchcliff draws attention to the fact that the symptoms of radiculopathy occurred after the 2018 accident and he says that this is strong evidence that the 2018 accident materially contributed to this presentation.

[57] He refers to Dr Ruttenberg's conclusion in his report of 9 February 2022 that:

I firmly believe he has aggravated a previous work injury. When he was seen by Dr Antoniadis, there was no clinical findings to suggest nerve root irritation or compression on the left side.

[58] Mr Hinchcliff refers to Dr Walls' report of 19 July 2022 and in particular that the event of June 2018 was of sufficient force to cause a lumbar disc injury and also that an MRI scan of August 2019 confirmed bi-level lumbar pathology:

Particularly at the L5/S1 level compatible with Carl's symptoms, of which the left lower limb radicular symptoms were relieved by Dr Cleary's L5/S1 TFI or facet joint injection.

[59] Mr Hinchcliff also draws attention to Dr Walls' comment:

It would seem bizarre that he (the appellant) has not acquired ACC cover, given his descriptions of the accident/work events in 2018.

[60] In summary, Mr Hinchcliff submits that the accident of 11 October 2013 caused an initial disc injury and Drs Walls and Cleary are of the view that the 2018 accident caused the L4/5 disc injury.

Respondent's Submissions

[61] Mr Marten submits that there is insufficient evidence for the Court to conclude that Pan Pac's (ACC's) decisions of 3 March 2022 and 11 July 2022 are wrong.

[62] He refers to the fact that in his report of 19 July 2022, Dr Walls says:

I am unsure that the event October 2021 led to a further injury, or, as Dr Ruttenberg says, aggravated the existing injury ...

[63] In his written submissions, at paragraph 63, he notes that specialist opinions have been divided on what has caused Mr Hart's incapacity. He summarises these opinions as follows:

- (a) In 2014, Dr Floyd noted the diagnosis was not clear cut, but suggested left sacroiliac joint inflammation secondary to injury was possible. He also highlighted changes in the L5/S1 disc that he described as relevant.
- (b) In 2019, Dr Antoniadis thought Mr Hart was suffering mechanical low back pain, likely discogenic in origin and plausibly associated with the L5/S1 level. He thought this was related to age related degeneration, pre-dating the 2013 accident.
- (c) Dr Cleary (in 2019) thought lumbar discogenic pain from the L4/5 disc and L5/S1 discs explained his pain.
- (d) In May 2020, Mr Rao thought it might be an issue with the attachment of the rhomboids (a collective group of muscles involved with stability of shoulder girdle and scapular) to the spinus process, or the spinus process itself.
- (e) In July 2020, Mr Rao refined his opinion to a central disc extrusion at T7/8, but also noted "significant disc abnormalities generally up and down and above these

levels”. Later that month, he also noted the pain may be due to “other discs in his lumbar spine which are also not healthy”.

- (f) In 2021, Mr Enright thought the central disc extrusion at T7/8 as well as disc dehydration at L4/5 and a disc protrusion at L5/S1 accounted for the symptoms, although he could not explain the lower limb symptoms.
- (g) In 2022, Dr Ruttenberg considered the long standing disc disease was the potential cause of Mr Hart’s ongoing pain, and that while this had been aggravated on several occasions, there was no new injury that accounted for the ongoing symptomology.
- (h) Dr Walls also linked Mr Hart’s pain variously to the T7/8 disc protrusion and two level disc disease prominently at the L5/S1 level.

[64] Mr Marten does concede that it is entirely appropriate for further cover to be investigated against the 2013 and 2018 accidents.

[65] He refers to *Johnson v ACC*¹ where the Court said:

... ongoing ACC coverage for incapacity depends upon the present incapacity being linked to an injury caused by the accident. Miller J’s comments (in *Cochrane* are premised on there being such an injury. Panckhurst J (in *McDonald*) is addressing a situation where either the accident has not caused an injury, or if it did, its effects have expired, leaving only the pre-existing condition as the source of incapacity.

[66] Mr Marten therefore submits that the appellant’s presently covered injuries are not the cause of his incapacity. He submits that the proper channel for any change would be via the investigation and decision making process currently underway within ACC.

Decision

[67] The appellant’s first accident for our purposes occurred on 11 October 2013, when a large scaffolding pole fell on to his back, neck and skull, causing pain and numbness in his hands and shoulders.

¹ *Johnson v ACC* [2010] NZAR 673 at paragraph 20

[68] The common bundle includes photographs of the location of the accident, which was in a massive concrete reservoir. An upright scaffold pole probably of the order of eight metres in length, that in the appellant's words:

Losing its support came falling down and struck me across the lower back, shoulder, neck, head as I was bent over trying to pick up a fallen workmate out of the water by his harness. So my back was also under strain from lifting the weight when I got struck ... so unfortunately the pole struck me with the full falling momentum as I was struck at the end of the falling pole.

[69] At the time, the appellant was 37 years old.

[70] The accident claim form described the accident as:

Large scaffolding pole fell onto back, neck, and skull. At the time the claim form was completed on 21 October 2013, the appellant still has pain and numbness in his hand and shoulder.

[71] On 12 November 2013, over a month after the accident, the doctors notes record:

Carl is still in pain with his cervical thoracic spine, but also his lumbar sacral spine. This all happened when he was hit over the back of the head, shoulders and low back with falling scaffolding. Particularly when he reached down to save a man who was also hit. As has already been referred to, an MRI scan was taken on 20 March 2014.

[72] The reported noted:

A short distance below the left PSIS (post superior iliac spine), there is a mild to moderate degree of subcutaneous oedema.

[73] It is noteworthy that this recording of mild to moderate degree of subcutaneous oedema was present some five months and nine days after the accident.

[74] Given that elsewhere in the reports there is reference to soft tissue injuries resolving within six months, the finding in the MRI report again serves to underline that the accident causing the appellant's injury on 11 October 2013 was indeed a serious one.

[75] This report also revealed a small broad-based bulge at the L5/S1 level.

[76] The appellant's next covered accident was on 13 June 2018.

[77] In the ACC claim form, the accident is described as “unblocking fuel blockage, jumped down onto walkway and jarred back”.

[78] Again, there are photographs and commentary on what occurred on this occasion. The appellant gives this description:

Waiting for the blow back to clear, but it got to the stage where the smoke was too much to handle, I couldn't see and was having difficulty breathing due to the amount of smoke, so I jumped from my position in the far corner over the beam and onto the walkway below. This caused my back injury from 2013 to reaggravate. It was on a nightshift before a break, so I spent my break trying to recover and come right before going back to work. I filled out an accident report at security on my way out after work.

[79] On 4 May 2019, the appellant had a further accident. The description of it was that he was bent over to get a stuck log and felt sudden pain into his lower back, radiating into his left leg. For ACC purposes, this was described as a lumbar sprain.

[80] On 5 August 2019, the appellant had a further MRI.

[81] The report noted the following:

At L4/5: disc dehydration, with central disc protrusion and annular fissure that indents the thecal sack, without any evidence of compression.

At L5/S1: disc dehydration, left paracentral disc protrusion and annular fissure that indents the thecal sack. This extends laterally to cause narrowing of the left L5 exit foramen, with no evidence of compression of existing nerve root.

[82] The appellant had a further accident on 31 October 2021.

[83] The description in the ACC injury claim form is as follows:

Using six foot crowbar and twisted back 31/10/2021.

[84] Since then, he has experienced increased lower back and upper back pain, with numbness and burning into his left foot.

[85] By 20 January 2022, the appellant was having problems with his return to work, finding it less and less sustainable.

[86] Since then, the appellant has had a number of detailed medical assessments. What has proven a challenge to those who have assessed him is whether or not his current presentation is causally linked to his covered accidents.

[87] In fairness to the doctors involved, separating out what is age related degeneration of his spine and what is causally related to the accidents is inherently difficult.

[88] The task is not made any easier due to the fact that with the exception of his 2013 accident, which was plainly traumatic and serious, the three accidents since then have been less so.

[89] It is fair to say that the appellant presents as hard working and conscientious. This is borne out by his efforts to help a fellow workmate when he was struck with the scaffolding pole in the 2013 accident. The other three accidents in 2018, 2019 and 2020 speak of a person who was proactively undertaking tasks to solve problems on the job as they arose, rather than to cease the activity.

[90] Mr Hinchcliff refers to Dr Cleary in his report of 6 November 2019 stating that the appellant had no back pain prior to 2013 and that the 2013 injury has been aggravated by the more recent accidents. He also points out that the MRI in 2019 revealed a tear in L4/5 not indicated in the MRI taken in 2014.

[91] Dr Walls says in his report of 19 July 2022:

Carl has had widespread spinal pain since an accident in 2013.

As far as I can determine, the 2013 accident probably led to a T7/8 disc protrusion, although it has settled and may have caused considerable embarrassment (pathological and clinical) around the time of the accident.

He continues to suffer low back pain and has bi-level disc disease capable of causing such pain, predominantly at the L5/S1 level.

As far as I can determine, the event in June 2018 was of sufficient force to cause a lumbar disc injury and Carl was reporting low back and left lower limb pain and an MRI scan of August 2019 confirmed bi-level lumbar disc pathology, particularly at the L5/S1 level compatible with Carl's symptoms of which the left lower limb radicular symptoms were relieved by Dr Cleary's L5/S1 TFI or facet joint injection.

[92] Also relied upon by the appellant is Spine Surgeon, Mr Enright's report of 12 August 2021, where he says under the heading "Specific Diagnosis":

There are a number of factors in this man's case. I would think it likely he suffered a T7/8 disc injury in 2013. Whether there is any cord effect at that time is difficult to know, but at this time, by both exam and imaging, there is no current effect. It would localise well in his lower thoracic spine pain. I do not believe there is any reliable intervention to be offered to either treat or assess this pathology.

[93] In his report of 6 November 2019, Musculoskeletal Medicine Dr Cleary notes that the appellant has had persistent lumbar spinal and leg pain since the 2013 accident. He also notes that it was aggravated with an accident in June 2018, together with further aggravations as the appellant was being rehabilitated at work.

[94] Dr Cleary went on:

Unlike the L5/S1 disc, there is no L4/5 imaging to indicate that Carl had pre-existing changes in this disk prior to the 2018 accident.

[95] Unusually for a medical specialist like Dr Cleary, he then uses bold type for his next statement, which is:

I do not know if this decision (ie. the decision of Well NZ to attribute his symptoms to a pre-existing condition at the L5/S1 disc) took into account the MRI changes at the L4/5 disc. If it did not, it needs to be reviewed.

[96] Occupational medicine specialist, Dr Ruttenberg, is of the opinion that unfortunately, the long standing disc disease is likely the substantial cause of the appellant's ongoing back pain. Dr Ruttenberg does acknowledge however that this has been aggravated on several occasions. He also acknowledges the contributions that the accidents of 2018 and 2021 have made to his current presentation.

[97] Therefore, taking an *Ambros* approach to the assessment of causation in this case, and relying on the preponderance of both medical and lay evidence in this case, I conclude on the balance of probabilities that the accidents the appellant has suffered in 2013, 2018, 2019 and 2021 have materially contributed to the present state of the appellant's spine. Therefore, Well NZ's decision of 11 July 2022 declining cover for neck sprain and thoracic sprain is reversed. Likewise, I find that Well NZ's decision of 3 March 2022, finding that the appellant's

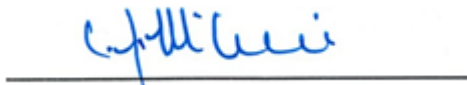
incapacity was not caused by the covered injury of 31 October 2021 is also wrong and is reversed.

[98] In the case of each decision, it might plausibly be argued that the work accident of 31 October 2021 did not cause a neck sprain or thoracic sprain or cause the appellant's current medical incapacity. However, in the appellant's case, the immediate response is that to ignore the other accidents traversed in this judgment, whilst the appellant was at work, is completely at odds with the generous and unrigidly approach that is required in this jurisdiction.

[99] The undoubted injuries to the appellant's spine from the accidents in 2013, 2018, 2019 and 2021 have in a material way cumulatively rendered this proactively hard working appellant incapacitated for work. In this regard, I do not understand the respondent to be arguing against the fact of the appellant's incapacity, rather that as recorded in the decision of Well NZ, that the incapacity is not the result of the covered injury of 31 October 2021.

[100] Accordingly, the appeal is allowed.

[101] Costs are reserved.



CJ McGuire
District Court Judge

Solicitors: ACC and Employment Law, Ellerslie
Izard Weston Lawyers, Wellington