

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2023] NZACC 037      ACR 33/20**

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

Hearing:      On the papers

Appearances:    J Browne as amicus curiae  
                      T Gee for the Respondent

Judgment:      13 March 2023

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**RESERVED JUDGMENT OF JUDGE P R SPILLER  
[Claims process, Accident Compensation Act 2001 (“the Act”)]**

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**Introduction**

[1] This appeal relates to an appeal lodged by Mr Hetherington on 19 February 2020. The appeal is against the decision of a Reviewer dated 7 February 2020. The Reviewer dismissed Mr Hetherington’s review applications, for want of jurisdiction.

**Background**

[2] On 28 November 1979 Mr Hetherington injured his back. Following a review application in 1981, on 31 May 1982, a Reviewer held that Mr Hetherington suffered personal injury by accident on 28 November 1979 when he aggravated a pre-existing condition, and therefore had cover for the back injury suffered.

[3] On 10 November 1980, Mr Hetherington underwent a myelogram to investigate the condition of his spine.

[4] On 22 June 1988, the Corporation advised Mr Hetherington that he was entitled to a payment of \$7,000. In July 1988, through his then lawyers, Mr Hetherington lodged a review application. On 7 February 1989, the review application was dismissed. Mr Hetherington did not appeal against this review decision.

[5] On 2 August 1988, the Corporation advised Mr Hetherington that he was entitled to receive the maximum payment under section 120 of the Accident Compensation Act 1974.

[6] On 19 April 1989, the Corporation issued a decision advising Mr Hetherington that a further sum was payable for urological and bowel problems related to his injury of 28 November 1979.

[7] On 9 August 2007, the Corporation issued a decision declining to accept Mr Hetherington's claim for cover for chemical exposure as a work-related personal injury.

[8] On 27 June 2011, Mr Hetherington's then advocate lodged a late application to review the Corporation's decision of 9 August 2007. On 8 July 2011, the Corporation wrote to Mr Hetherington's advocate requesting further information as to the reasons for the lateness of the review. The Corporation did not receive a response. On 12 August 2011, the Corporation declined to accept the late review application. On 2 December 2011, a review of the Corporation's decision was dismissed. Mr Hetherington appealed against the reviewer's decision. On 7 May 2012, Mr Hetherington, having not appeared, the Court dismissed the appeal. Judge Joyce commented that Mr Hetherington had "avoided and obfuscated" in relation to a proposed court hearing date, and his failure to appear was without reasonable excuse.<sup>1</sup>

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<sup>1</sup> *Hetherington v Accident Compensation Corporation* [2012] NZACC 160, at [39].

[9] On 23 April 2015, the Corporation issued a decision declining to accept Mr Hetherington's claim for a treatment injury.

[10] On 21 October 2019, Mr Hetherington filed review applications in relation to the Corporation's decisions of: (i) 22 June 1988; (ii) 2 August 1988; (iii) 19 April 1989; (iv) 9 August 2007; and (v) 23 April 2015. The Corporation asked Mr Hetherington why the review applications were lodged outside the statutory time limits, and he responded that he could not afford a lawyer.

[11] On 26 November 2019, the Corporation issued a decision declining to accept Mr Hetherington's review applications in view of their lateness and the lack of extenuating circumstances. Mr Hetherington did not challenge this decision but proceeded with his review applications.

[12] On 17 December 2019, at a case conference in relation to the review applications, the Reviewer stated that, before the substantive matters could be considered, Mr Hetherington needed to lodge an application for review of the Corporation's decision of 26 November 2019 declining to accept his late applications. This was not done.

[13] On 7 February 2020, a Reviewer dismissed, for want of jurisdiction, Mr Hetherington's review applications, as Mr Hetherington did not lodge an application for review of the Corporation's decision of 26 November 2019. On 19 February 2020, a Notice of Appeal was lodged against the Reviewer's decision.

[14] During 2020 and 2021, efforts were made by the Court to progress Mr Hetherington's appeal. On 29 April 2021, Judge McGuire informed Mr Hetherington that he should complete a review application form seeking to review the Corporation's decision of 26 November 2019. On 9 June 2021, Mr Hetherington lodged an application to review this decision, stating that he had never received legal advice to explain the process to him.

[15] On 24 June 2021, the Corporation declined to accept Mr Hetherington's application to review the 26 November 2019 decision, on the grounds that there were

no extenuating circumstances affecting his ability to file that review application in time. Mr Hetherington did not lodge an application to review this decision of 24 June 2021.

[16] On 11 November 2021, a Reviewer decided that she did not have jurisdiction to consider the correctness of the Corporation's decision of 26 November 2019, as Mr Hetherington had not lodged an application for review of this decision.

[17] On 10 February 2022, Judge McGuire issued a Minute noting that Mr Hetherington was unable to understand the procedural requirements of the Act. Accordingly, Judge McGuire found that it was necessary to appoint an *amicus curiae* to assist in this case in order that it may be progressed to a conclusion. The Court duly appointed Mr Browne as counsel assisting the Court.

[18] On 25 May 2022, Judge McGuire issued a Minute noting that, given the Corporation's decision of 24 June 2021 declining to accept Mr Hetherington's late application to review the 26 November 2019 decision, the Reviewer's finding that she had no jurisdiction to consider the 26 November 2019 decision was inevitable. Judge McGuire further stated that any late application by Mr Hetherington to review the subsequent 24 June 2021 decision must, as a matter of logic, have the same result.

## **Discussion**

[19] The issue in this case is whether the Reviewer, on 7 February 2020, correctly dismissed, for want of jurisdiction, Mr Hetherington's review applications of five decisions of the Corporation (see above paragraph [10]). The Court has had the benefit of submissions from Mr Gee of the Corporation and from Mr Browne, appointed as *amicus curiae*.

[20] Mr Hetherington's review applications relating to all five of the Corporation's decisions were lodged outside the relevant statutory time limits for lodging the applications. It is well established that an applicant is required to apply for and obtain leave to file a late application for review, for a Reviewer to have jurisdiction

to consider a review of the Corporation's decision.<sup>2</sup> Only if an applicant is granted leave to file a review late can the applicant have the decision of the Corporation reconsidered at review and appeal.<sup>3</sup>

[21] In Mr Hetherington's case, on 26 November 2019, the Corporation declined to accept his late review application regarding the five Corporation decisions. By the time of the hearing for Mr Hetherington's review applications regarding the five decisions, Mr Hetherington had not applied to review the Corporation's late review decision. It follows that the Reviewer did not have jurisdiction to consider a review of the five Corporation decisions. The Reviewer's decision on 7 February 2020 to decline jurisdiction was therefore correct.

[22] The Court notes for completeness that, on 2 June 2021 (that is, subsequent to the Reviewer's decision), Mr Hetherington applied to review the Corporation's late review decision of 26 November 2019, but this application was declined by the Corporation on 11 November 2021.

### **Conclusion**

[23] In light of the above considerations, the Court finds that the Reviewer, on 7 February 2020, correctly dismissed, for want of jurisdiction, Mr Hetherington's review applications of five decisions of the Corporation. The decision of the Reviewer is therefore upheld. This appeal is dismissed.

[24] I make no order as to costs.



P R Spiller  
District Court Judge

Solicitors for amicus curiae: Henderson Reeves.  
Solicitor for the Respondent: Legal Services, Justice Centre, Wellington.

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<sup>2</sup> *Heatherbell v Accident Compensation Corporation* [2012] NZACC 162, at [13].

<sup>3</sup> *Lattimore v Accident Compensation Corporation* [2012] NZACC 252, at [10.5] and [11].