

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 48

ACR 175/21

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

Hearing: 22 March 2023
Heard at: Auckland/Tāmaki Makaurau
Appearances: The Appellant in person
Mr F Becroft for the Respondent
Judgment: 23 March 2023

**JUDGMENT OF JUDGE C J MCGUIRE
[Weekly Compensation, Schedule 1, Part 2, Accident Compensation Act 2001]**

[1] This is an appeal against a decision of the Accident Compensation Corporation dated 8 May 2020 calculating the appellant's weekly compensation rate.

[2] On 13 February 2023, the Corporation revoked its 8 May 2020 decision and reassessed the appellant's weekly compensation rate at a higher level.

[3] In its decision of 8 May 2020, the respondent had assessed the appellant's weekly compensation under s 15 of the Act as being \$23,040 per annum.

[4] In its decision of 3 February 2023, it reassessed weekly compensation based on a shareholder's salary of the appellant of \$33,181 per year for the relevant 2017 tax year.

[5] The respondent's recalculation of the appellant's salary for the relevant year was based on the analysis of its technical accounting specialist, Ms Kwa. In doing so, Ms Kwa had regard to the High Court decision in *Hamilton*.¹

[6] Ms Becroft advises that when Ms Kwa calculated the original shareholder salary of the appellant at \$23,040 for the 2017 tax year, she did not have available to her the *Hamilton* decision.

[7] Ms Holdaway came prepared to argue the appeal today and voiced her frustration at what had occurred.

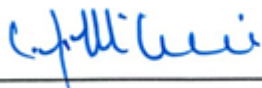
[8] In this case, I find that what ACC has done to recalculate the appellant's shareholder salary for the relevant year has appropriate and proper.

[9] If the appellant's concerns remain, she has the ability to seek review of the respondent's 3 February 2023 decision, and if dissatisfied by the outcome of the review, to appeal against the review decision to this Court.

[10] Given what has occurred, I must find that ACC's decision of 3 February 2023 has rendered the present appeal moot.

[11] As the appellant has fresh review and appeal rights relating to the new decision of ACC, the appropriate course is that the present appeal, now being redundant, is struck out.

[12] The appellant is seeking costs. She is to file her memorandum as to costs within 21 days. The respondent has 14 days following that to reply.



CJ McGuire
District Court Judge

Solicitors: Medico Law Limited, Grey Lynne

¹ *Hamilton v Accident Compensation Corporation* [2019] NZHC 3109