

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2023] NZACC 117      ACR 142/22**

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

Hearing: 18 July 2023  
Held at: Auckland/Tāmaki Makaurau

Appearances: The Appellant is self-represented  
F Becroft for the Accident Compensation Corporation (“the  
Corporation”)

Judgment: 25 July 2023

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**RESERVED JUDGMENT OF JUDGE P R SPILLER**  
**[Claim for backdated weekly compensation - s 103(2) and Schedule 1, clause 32,**  
**Accident Compensation Act 2001 (“the Act”)]**

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**Introduction**

[1] This is an appeal from the decision of a Reviewer dated 29 July 2022. The Reviewer dismissed an application for review of the Corporation’s decision dated 20 November 2017 declining a claim for payment of backdated weekly compensation for the period from 28 May 1990 to 23 May 2008.

## Background

[2] Mr Jones was born in 1952. In June 1976, he sustained injuries to his nose in an assault, and he was granted cover and weekly compensation for a period of time. At the date of injury, he was working as a Sheet Metal Worker.

[3] In 1979, Mr Jones took up diving and suffered acute sinusitis requiring surgery. In 1986, the Corporation funded this surgery. In 1989 and 1990, he was admitted to hospital five times.

[4] On 28 May 1993, the Corporation granted Mr Jones cover for sinusitis related to his 1976 accident. It was accepted that he had suffered a deviated septum in the assault and this meant that his sinuses could not aerate properly, leading to recurrent infections. He went to Japan where he stayed for two years.

[5] In June 1995, on Mr Jones' return from Japan, he submitted a claim for weekly compensation on the basis that he was unfit to work arising from his nasal injury. The Corporation granted him weekly compensation commencing 28 June 1995, and this continued until April 1997 when he was certified by his GP as being fit to return to work.

[6] On 30 November 1998, the Corporation revoked its earlier decision granting weekly compensation on the basis that he was not an earner or in receipt of earnings immediately prior to his incapacity in June 1995 (having been employed in Japan). On 17 March 2000, Judge Beattie upheld the Corporation's decision that Mr Jones was not entitled to weekly compensation from 28 June 1995 to 15 April 1997.<sup>1</sup> Then followed an extensive period of time during which the Corporation did not receive any claim from Mr Jones.

[7] In 2017, Mr Jones wrote to his general practitioner asking for medical certification for historic periods of incapacity. The claim spanned various discrete periods between 2 July 1995 and 20 September 2007. Mr Jones explained:

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<sup>1</sup> *Jones v Accident Compensation Corporation* [2000] NZACC 40.

Rationale: Each admission for sinusitis conservatively would have been the result of 2 weeks of incapacity prior to admission and 2 weeks post admission. Surgical admissions would require 4 weeks of recuperation.

The hospital notes are indicative of serious and continual poor health due to sinus disease which has been accepted by ACC as Personal Injury by Accident. Given this fact, the dates claimed are very conservative.

[8] On 28 February 2017, Dr Neil Hefford certified Mr Jones unfit to work for a total of 280 days from 2 July 1995 over 22 years, on the basis of sinusitis.

[9] The Corporation obtained advice from Dr David Scott, Branch Medical Advisor, and Ms Ana Floreskova, Technical Specialist Manager. It was noted that the dates of incapacity claimed by Mr Jones were supported by only a brief summary and not by chronological medical notes or hospital reports. However, it was agreed that, since sinusitis as a consequence of Mr Jones' facial injuries had been assumed for many years, the best approach was to take a client-centred view and consider the information received as sufficient to reflect incapacity due to sinusitis. The Corporation agreed that he was incapacitated during five discreet periods, for which he might (subject to satisfying all of the statutory criteria) be entitled to weekly compensation. These periods were:

- (1) 16 June to 18 August 1998;
- (2) 2 to 29 July 1999;
- (3) 5 April to 2 May 2004;
- (4) 11 August to 8 September 2004; and
- (5) 3 August to 20 September 2007.

[10] Having accepted incapacity for the periods above, the Corporation determined whether Mr Jones was an earner at the relevant times. The Corporation found that he was in employment only during the period of subsequent incapacity beginning 3 August 2007. He was therefore not entitled to weekly compensation for the other four periods.

[11] On 31 August 2017, a Claimant Payment Report recorded that abated weekly compensation was paid for the period in August/September 2007. On 1 September

2017, the Corporation wrote to Mr Jones attaching a Weekly Compensation Assessment table explaining the amount of weekly compensation paid.

[12] On 11 September 2017, Mr Jones applied for weekly compensation. Dr Hefford provided a medical certificate certifying Mr Jones unfit to work for 6570 days from 28 May 1990 to 23 May 2008. The basis for the certification was chronic sinusitis. The certificate listed in the “complication” section: “ERC for gaps between WINZ and ACC”.

[13] On 12 September 2017, the Corporation’s internal Weekly Compensation Panel decided that the Corporation was prejudiced in determining whether there had been a loss of Mr Jones’ learning capacity due to a covered injury and what level of entitlement might be payable. The Panel recommended rejecting the claim due to prejudice, but noted that it could be considered again if Mr Jones were to provide further financial and contemporaneous medical information. The Corporation sought further information from Mr Jones but did not receive any.

[14] On 20 November 2017, the Corporation wrote to Mr Jones declining his application for weekly compensation. The Corporation noted that, if the requested information was provided, then the Corporation might be able to reassess backdated weekly compensation.

[15] On 1 December 2017, Dr Hefford wrote to the Corporation providing medical information regarding Mr Jones’ treatment for his sinusitis, but advising that only limited assistance could be provided, given the scope of the claim.

[16] On 13 December 2017, Mr Jones filed a review application against the November 2017 decision. For an extended period during the review process, the parties liaised in order to try to obtain further information to support the claim.

[17] On 10 December 2018, Mr Jones’ advocate, Mr Darke, stated as follows:

Mr Jones was seeking weekly compensation for the full 6000+ days, less any previously paid periods or times he was in full-time employment.

He was incapacitated by severe sinus problems including severe infections, as well as associated treatments such as surgery and antibiotics that caused other health issues such as gastrointestinal problems.

He had suffered an assault in 1976 which had caused a deviated septum which stopped his sinuses from aerating properly.

He had received earnings-related compensation previously in relation to his pre-injury work for PrintPac.

The injury affected his ability to work because the ongoing malaise from constant infections, headaches, and the psychological problems associated with a chronic ongoing illness as a result of the serious assault he suffered in 1976 which essentially was a head injury which has its own issues meant that his ability to work in any capacity was severely compromised. In the workplace specifically, he could not handle interpersonal relationships in the workplace, made errors and mistakes, and was often too sick to work. Chronic illness made him irritable and depressed and this is well documented both by ACC and in medical notes. He could not consistently work effectively in any capacity. There is no evidence of [any] such pre injury issues.

[18] On 18 December 2018, Ms Abigail Pearce, solicitor for the Corporation, wrote to Mr Darke. The letter detailed the evidential gaps relating to the claimed periods, both in terms of medical and employment records. A timeline was provided which specified the kind of information needed to support the claim.

[19] On 12 March 2019, Mr Darke provided an email which (according to records from the Ministry of Social Development) listed the periods between 28 May 1990 and 16 May 20011 that Mr Jones was on an unemployment or sickness benefit and the medical conditions associated with that entitlement.

[20] On 29 March 2021, the Corporation confirmed that it acknowledged deemed cover for sinusitis effective from 28 March 2017.

[21] On 3 April 2019, Mr Jones emailed that his changing careers over the years suggested a “soldiering on” mentality associated with attempts to work despite his injuries.

[22] On 4 January 2020, Mr Jones provided an affidavit stating, in relation to his claim, that:

This certificate was issued on the basis of medical evidence supplied by myself to Dr Hefford which supported my assertion that I was unable to work for

lengthy periods and when I attempted to work especially at jobs I was not particularly suited for that I was unable to perform tasks to the satisfaction of the employers which lead to dismissal or my leaving because of the problems at work exacerbated by sinus problems from the assault in June 1976 and other accident related factors at the time...

I was unable to work because of longterm malaise from constant recurrent sinus infections at the time and when I did attempt to work found the work environment difficult and stressful because of my accident related health issues and this was further exacerbated by failure to have my accident related problems properly investigated by the Corporation and financial strain from being underemployed or on WINZ benefits.

In addition to the primary effects of the accident related sinus problems, there were secondary effects from the treatment such as recovery from General Anaesthetics and recovering from IV antibiotic therapy administered once for a period of 10 days and often around a week. This resulted in gastro-intestinal problems such as ongoing colic and diarrhoea and concurrent malaise and weakness beyond the period of hospitalisation. ...

Apart from the medical attention I required for my sinus problems I also required psychological counselling to address such issues as repeated episodes of choking from large bolus of sinus discharge obstructing my airways at night the sensation of a foreign object in the back of my throat for lengthy periods of time that made me anxious to the point of panic and the effect on constant sickness from sinus infections and recovering from multiple surgeries. My behaviour at the time as a result of stress and anxiety alienated me from the medical profession and there is plenty of evidence to support this. This further compromised my ability to access timely and appropriate treatment for the sinus related issues such as repeated infections and I tended to put off seeking medical help until it was absolutely necessary. Times when I have been on WINZ sickness benefit were because I was physically unable to work due to accident related factors, the predominant being constant recurrently sinus infections that have already been covered by ERC payments made more recently by ACC in respect of this claim.

There has also been a period where I was on Unemployment Benefit because of difficulties in obtaining employment due to lengthy periods of no employment, difficulties in persuading GPs at the time of the true severity of my sinus problems, and also because of financial problems due to the lack of ACC support with respect to this accepted claim and a hope that I might be able to work. This is not to say that my sinus issues had miraculously gone away during this period as is evident in the medical evidence available.

[23] The parties subsequently agreed to a referral to a specialist in occupational medicine to comment on the periods of claimed incapacity. At the same time, the Corporation considered whether Mr Jones had any entitlement to cover for mental consequences or injury.

[24] On 1 June 2021, Mr Darke provided documents from 1976 which confirmed Mr Jones' employment at the time as a Sheet Metal Worker.

[25] On 20 July 2021, the Corporation granted cover for phobic disorders on the 1976 claim. Mr Jones has subsequently pursued cover for further mental injury, which has not as yet been concluded. (Any resulting decision by the Corporation will carry review and appeal rights).

[26] On 2 September 2021, Mr Jones sent an email describing his pre-injury work as a Sheet Metal Worker:

The tasks would have included the measuring and cutting of sheetmetal such as galvanized plate to plans for the fabrication of various items. Machinery would have been used for folding the material. Some welding would have been involved and I was hospitalized for zinc poisoning while welding in a confined area. The dusty and polluted workplace would certainly not have been a good environment for someone with sinus problems. There would have been some heavy lifting involved as the sheets of metal are quite heavy.

[27] On 2 September 2021, Dr Sarah Rance, General Practitioner, completed a Mental Injury Report seeking cover on the assault claim for:

Intermittent episodes of anxiety/claustrophobia/flashbacks assoc. w/ enclosed spaces as well as nocturnal anxiety/sensations of drowning.

[28] In December 2021, in the course of another review proceeding, Mr Jones confirmed that he did not wish to await the outcome of the further mental injury claim, before proceeding with the referral to the occupational medicine specialist.

[29] On 28 February 2022, Dr Andrew Hilliard, Specialist Occupational Physician, having assessed Mr Jones in person, provided a report. Dr Hilliard concluded that the only times that Mr Jones would have been unable to work during the long period in question would have been during brief admissions to hospital and for a few days after discharge whilst convalescing:

Although Mr Jones has provided a signed affidavit that he was not fit for work between 28 May 1990 up to 23 May 2008, this is clearly not the case.

Over that period of time, he was at different times able to sustain work in several different roles, albeit on a part-time basis.

Chronic sinusitis with acute exacerbations is a common occurrence in the general population, a large proportion of us experiencing at least 1 episode of sinusitis during our lifetime.

It is accepted that chronic sinusitis can impact on an individual's lifestyle with reduced enjoyment of life.

Individuals with chronic sinusitis are generally able to undertake and sustain work activities, except during periods of acute sinusitis when symptoms are at higher levels.

Mr Bartley on 21 September 1999 noted that most of his patients with chronic sinusitis were able to cope with their limitations, including socially.

I entirely agree with that comment, chronic sinusitis not usually resulting in a complete inability to undertake work activities; a reduced ability for enjoyment in life not precluding the ability to undertake work.

There is no indication in the available GP and ENT record that Mr Jones was unable to undertake work for most of that period of time, other than during acute admissions to hospital for intravenous antibiotics or for surgery, and for short periods of convalescence after discharge from hospital.

The documented pattern of symptoms in the ENT record from the 1990's was that of variable symptomology with an acute and chronic picture, worse over the winter months, intersperse with periods when symptoms were much improved.

It is possible that he may have been unable to undertake work for a few days at the peak of acute episodes of the acute sinusitis when not admitted to hospital.

In the absence of the contemporaneous GP records, it is then just not plausible to determine those occasions and when he may have needed to take a few days off work, when acute sinusitis was at its most troublesome. ...

Notwithstanding those last comments, I have not been able to find any evidence in the available specialist or primary care record that bowel side effects from causes of antibiotics, etc have prevented him from returning to or sustaining work.

Mr Jones has indicated that malaise was a feature of his sinus disease, that issue having preventing him from undertaking work.

However, there is no mention in any of the contemporaneous medical record, including the ENT and GP records of any significant malaise, fatigue or tiredness that could potentially have prevented him from undertaking work. ...

In general terms, sinus problems are most commonly aggravated by infection, smoking and allergic substances flowing through the airways into his sinuses rather than dusty environments.

I am not aware of any evidence to support the view that individuals with acute or chronic sinus disease cannot undertake welding activities.

I do not believe that dust during his work as a Sheetmetal Worker would have prevented him from returning to that role, there being no reason as to why could not [sic] have used an appropriate mask for selected work tasks, including dusty tasks and/or when undertaking welding.



[30] Dr Hilliard also commented specifically on the specific periods governed by sequential legislation:

*28 May 1990 to 30 June 1992*

From the perspective of sinus disease/sinusitis, there is no indication on file that he would not have been able to undertake work between 28 May 1990 and 30 June 1992, except for the periods when he was admitted to hospital, for a short period of convalescence afterwards and possibly a few hours on occasions when he was required to attend specialist appointments.

There is no mention of any psychological issues in the medical reporting between May 1990 and 30 June 1992 that would have prevented him from working. ...

In conclusion, there is no evidence on file to support the view that he would not have had the capacity to work in the following roles [during the relevant period], except during periods of admission to hospital. ...

*1 July 1992 to 30 June 1999*

In conclusion, there is no objective evidence on file to support the view that he would not have been able to undertake full-time work as in his pre-injury role (as a Sheetmetal Worker) from 1 July 1992 to 30 June 1999, other than for short periods of time during admissions to hospital and for a short period of convalescence afterwards.

Periods of time off work appear to have been predominately due to non-injury mental health issues. ...

*1 July 1999 to 31 March 2002*

... In conclusion, there is no objective evidence on file to support the view that he would not have been able to undertake full-time work in his pre-injury role (as a Sheet Metal Worker) from 1 July 1999 and 31 March 2002, with no admissions to hospital for intravenous antibiotics during this period of time,

From the perspective of covered injuries on this claim, the evidence on file indicates that he would have been able to sustain his pre-injury role during that period of time on a full-time basis, without any need for specific restrictions/modifications.

*1 April 2002 to 23 September 2008*

... As mentioned previously, phobia symptoms appear to have formed a relatively small and discreet part of the totality of his previous mental health issues; with no evidence on file that issue has ever significantly impacted on work and non-work function.

From the perspective of his chronic sinus disease, there appears to have been no incapacity for work, with no hospital admissions and no need for intravenous antibiotics.

In conclusion, there is no evidence on file to support the view that he would not have been able to undertake full-time work in his pre-injury role from 1 April 2002 and 23 September 2008, with no admissions to hospital for intravenous antibiotics during that period of time.

From the perspective of covered injuries on this claim, the evidence on file indicates that he would have been able to sustain his pre-injury role (as a Sheet Metal Worker) during that period of time on a full-time basis, without any need for specific restrictions and/or modifications.

[31] On 28 March 2022, Mr Jones submitted a document which critiqued Dr Hilliard's report. However, as Dr Hilliard's conclusion supported the decision already made, no new decision was issued.

[32] On 1 and 28 July 2022, review proceedings were held, at which the Reviewer reviewed written submissions and heard oral submissions from Mr Jones and his advocate, Mr Darke. On 29 July 2022, the Reviewer dismissed the review, on the basis that the evidence did not support that Mr Jones was incapacitated from 28 May 1990 to 23 May 2008 and that he could not return to his preinjury role as a sheet metal worker because of his injuries.

[33] On 10 August 2022, a Notice of Appeal was lodged.

[34] On 8 September 2022, Dr Liz McDonald, Impairment and Disability Assessor, provided an impairment assessment report, which arrived at a 31% whole person impairment for injuries after 2004 for lump sum payment.

### **Relevant law**

[35] The Accident Compensation Act 1982 (which applied up to 30 June 1992) provided that a claimant for earnings related compensation needed to need to show that he or she suffered a loss of earning capacity.<sup>2</sup>

[36] The Accident Rehabilitation and Compensation Insurance Act 1992, the Accident Insurance Act 1998 and the current Act 2001 have had almost identical

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<sup>2</sup> See sections 52 and following.

provisions governing claims for weekly compensation.<sup>3</sup> Section 103 of the current Act provides:

- (1) The Corporation must determine under this section the incapacity of—
  - (a) a claimant who was an earner at the time he or she suffered the personal injury:
  - (b) a claimant who was on unpaid parental leave at the time he or she suffered the personal injury:
  - (c) a claimant who was within a payment period under the Compensation for Live Organ Donors Act 2016 at the time he or she suffered the personal injury.
- (2) The question that the Corporation must determine is whether the claimant is unable, because of his or her personal injury, to engage in employment in which he or she was employed when he or she suffered the personal injury.

[37] Section 104 of the Act provides that, if the Corporation determines that the claimant is not incapacitated for employment, he or she is not entitled to weekly compensation.

[38] Schedule 1, Part 2, Clause 32 of the Act provides:

The Corporation is liable to pay weekly compensation for loss of earnings to a claimant who-

- (a) has an incapacity resulting from a personal injury for which he or she has cover; and
- (b) was an earner immediately before his or her incapacity commenced.

[39] In *Jamieson*,<sup>4</sup> Judge Cadenhead stated:

[30] ... [i] It is upon the appellant to show on a balance of probability that at the date of the alleged incapacity, because of the injury for which he had cover, he was incapacitated within the terms of the statute.

[ii] Retrospective certification of incapacity will be acceptable in certain circumstances. However, the onus is on the claimant to produce evidence establishing a clear picture, or strong and supporting evidence other than contemporary medical certificates, of a continuing incapacity over the period in question. ...

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<sup>3</sup> See the Accident Rehabilitation and Compensation Insurance Act 1992, s 37, and the Accident Insurance Act 1998, s 85(2). See also *Crothers v Accident Compensation Corporation* [2017] NZHC 259 at [40]-[42].

<sup>4</sup> *Jamieson v Accident Compensation Corporation* [2004] NZHC 80.

[46] I am of the view having regard to all the circumstances of this case, that the appellant cannot meet the criteria of showing that there was an unbroken chain of causation between his original injury which gave rise to cover, and the fact that the symptoms of that original injury pertained over the period of his unemployment as has been discussed.

[40] In *Scott*,<sup>5</sup> Judge Ongley stated:

[16] If the claim had been made at the time of leaving Braemar Hospital, the appellant would have been medically assessed for loss of earning capacity under the Accident Compensation Act 1982.

[17] ... The personal affirmation of a claimant concerning her past incapacity to work is not sufficient evidence as a basis for a retrospective claim. Ongoing claims of incapacity are always tested by medical examination and certification. A retrospective claim cannot reasonably be admitted by a lesser standard of verification. ...

[23] ... A backdated claim is necessarily presented without the process of certification and review that attends an ongoing claim for weekly compensation. Except in cases where the continued incapacity is self obvious, it is well established that such a case cannot be accepted without supporting medical evidence or opinion that is reasonably persuasive and drawn from acceptable sources.

[41] In *Bell*,<sup>6</sup> Judge Beattie stated:

[19] This Court has stated in a number of decisions that retrospective medical certificates will be treated with caution, and in those situations will require supporting evidence establishing a clear basis for the retrospective aspect.

[42] In *Tonner*,<sup>7</sup> Justice Muir stated:

[42] This case exemplifies the difficulties often associated with retrospective claims under s 103. ...

[43] For this reason, the authorities have consistently identified that the onus is on such claimants to establish a clear picture of incapacity over the relevant period and that, in such context, retrospective medical certificates will be treated with caution.

[44] A defining feature of many claims in this category is the absence of contemporaneous medical evidence confirming incapacitating injury or condition. Often there will be an attempt to infill that lacuna with retrospective medical assessments and/or an applicant's personal affirmation of incapacity. It is the frequent refrain of applicants that they are effectively penalised for stoicism in the face of incapacitating injury or condition and for 'soldiering on' in their employment despite disability.

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<sup>5</sup> *Scott v Accident Compensation Corporation* [2008] NZACC 174.

<sup>6</sup> *Bell v Accident Compensation Corporation* [2011] NZACC 22.

<sup>7</sup> *Tonner v Accident Compensation Corporation* [2019] NZHC 1400.

[52] ... the position [in regard to a lack of evidence of incapacity] was then fortified by the absence of reference to an incapacitating mental illness in any of the GP reports from the early 2000s.

## **Discussion**

[43] The issue in this case is whether the Corporation's decision dated 20 November 2017, declining Mr Jones payment of backdated weekly compensation for the period 28 May 1990 to 23 May 2008, is correct.

[44] In order to be entitled to weekly compensation, Mr Jones must show that his covered injuries prevented him from undertaking his employment. In respect to the period up to 30 June 1992, the Accident Compensation Act 1982 required Mr Jones to show that he suffered a loss of earning capacity.<sup>8</sup> For the period after 1 July 1992, legislation has required Mr Jones to show that he was unable to undertake his pre-injury employment due to his covered injuries.<sup>9</sup>

[45] Because Mr Jones' claim is for retrospective weekly compensation, the onus is on him to establish a clear picture, with strong and supporting medical evidence, of continuing incapacity over the relevant period.<sup>10</sup> Retrospective medical certificates, Mr Jones' personal affirmation of incapacity, and his claim of stoicism ("soldiering on") in the face of his condition, will be treated with caution.<sup>11</sup>

[46] Mr Jones submits as follows. Contemporaneous evidence shows a combination of serious adverse health outcomes from the covered "sinusitis", including the mental health effects of those outcomes. There is the letter of Dr Gibson (Hong) on file, for which the Corporation paid psychological counselling at the time. There is the WPI report of Dr Liz McDonald. The health outcomes made it all but impossible to maintain any employment, let alone pre-injury employment. Dr Hilliard barely mentioned the pre-injury employment in his report, perhaps a comment on wearing a dust mask. He certainly did not take into account the dangers of operating machinery while compromised by chronic illness and medications to control that

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<sup>8</sup> See above, note 2.

<sup>9</sup> See above note 3, and section 103(2) of the current Act.

<sup>10</sup> *Jamieson*, above note 4, at [30].

<sup>11</sup> *Tonner*, above note 7, at [43]-[44].

illness. The medications included codeine for sinus pain and antihistamines to control sinus symptoms. At that time there were no “nonsedating” antihistamines.

[47] Mr Jones further submits as follows. There is the concurrent issue of the misdiagnosis and subsequent mismanagement of Mr Jones’ latent LGL syndrome which caused extreme distress at the time. Evidence of pre-injury employment and post-injury employment (employment after the relatively successful “Lathrops Sinus Procedure”) needs to be taken into account. That would suggest a stable work history prior to the injury, and after the injury had been controlled as well as could be expected. Many specialists have noted that sinusitis would be a lifetime problem.

[48] This Court acknowledges Mr Jones’ submissions. However, the Court points to the following considerations.

[49] First, Mr Jones’ retrospective claim for backdated weekly compensation covers an extraordinarily long period of time, being 6,570 days over an 18-year period (1990-2008). When, in September 2017, he claimed weekly compensation for this period, the accompanying medical certificate referred to physical assaults and related sinusitis which dated back over 41 years. The requirement for Mr Jones to establish a clear picture, with strong and supporting medical evidence of continuing incapacity over the extensive historical period he is claiming, is inevitably difficult to meet. The Court also notes that, in the years since Mr Jones lodged his claim, considerable time and latitude have been afforded to Mr Jones by the Corporation to provide evidence in support of his claim. In particular, on 17 February 2020, the Corporation agreed to receive further information and then obtain an occupational medicine report from a specialist agreed to by Mr Jones.

[50] Second, the Court has at hand the report of Dr Hilliard, Specialist Occupational Physician, dated 28 February 2022. This 48-page report follows Dr Hilliard’s 91 minute in-person assessment of Mr Jones on 1 February 2022, and Dr Hilliard’s examination of all documents provided by Mr Jones. Dr Hilliard advised that, contrary to Mr Jones’ assertion, it was “clearly not the case” that he was unfit to work between 20 May 1990 and 23 May 2008, as he was at different times able to sustain work in several different roles. Dr Hilliard noted, in summary, that there was

essentially no information on file to support the view that Mr Jones was incapacitated for all work activities in the relevant period due to his covered injuries, apart from periods of admission to hospital and for a few days after discharge from hospital whilst convalescing. In relation to specific periods governed by sequential legislation, Dr Hilliard concluded as follows:

- (a) Period 28 May 1990 to 30 June 1992: there is no evidence on file to support the view that Mr Jones would not have had the capacity to work in relevant roles, except during periods of admission to hospital;
- (b) Period 1 July 1992 to 30 June 1999: there is no objective evidence on file to support the view that Mr Jones would not have been able to undertake full-time work as in his pre-injury role, other than for short periods of time during admissions to hospital and for a short period of convalescence afterwards;
- (c) Periods 1 July 1999 to 23 September 2008: there is no objective evidence on file to support the view that Mr Jones would not have been able to undertake full-time work in his pre-injury role, with no admissions to hospital for intravenous antibiotics during that period of time.

[51] Further details of Dr Hilliard's report are provided in paragraphs [29]-[30] above. This Court notes that Dr Hillard's specialist occupational medical report has not been contradicted by any subsequent medical report.

[52] Third, the Corporation accepted that Mr Jones was incapacitated during five periods during the period of his claim (1990-2008).<sup>12</sup> The Corporation then established that Mr Jones was in employment only during the period of capacity for the fifth period (3 August to 20 September 2007), and the Corporation duly paid abated weekly compensation for this period. Mr Jones has not provided any convincing evidence to challenge the Corporation's findings in this regard.

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<sup>12</sup> See para [9] above.

**Conclusion**

[53] This Court accepts that Mr Jones has had to deal with health issues for a considerable period of time. However, this Court is required to assess Mr Jones' claim for weekly compensation for an extensive historical period in light of the law and the medical and other evidence available.

[54] In light of these considerations, the Court finds that Mr Jones has not, on a balance of probabilities, established his claim for payment of backdated weekly compensation for the period 28 May 1990 to 23 May 2008; and that the Corporation correctly declined his claim for this payment.

[55] The decision of the Reviewer dated 29 July 2022 is therefore upheld.

[56] This appeal is dismissed.

[57] I make no order as to costs.

A handwritten signature in black ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller  
District Court Judge

Solicitors for the Respondent: Medico Law.