

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 130 ACR 103/23

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

Judgment on the papers.

Submissions: C Tatley for the Appellant
 J Castle for the Respondent

Date of Judgment: 7 August 2023

**JUDGMENT OF JUDGE P R SPILLER
[Late filing of an appeal to the District Court –
s 151, Accident Compensation Act 2001]**

Introduction

[1] Mr Lawrence's appeal was accepted by the Registry on 6 June 2023. The appeal is from the decision of a Reviewer dated 4 May 2023. The Reviewer dismissed an application for review of the Corporation's decision of 12 January 2021 declining Mr Lawrence entitlements to treatment and support for migraine syndrome on the basis that there was no causal link between the syndrome and his injury in 2010.

[2] On 13 June 2023, Judge McGuire issued an Initial Minute which directed that Mr Lawrence formally apply for leave to file the appeal out of time and set out the reasons why the appeal was filed late.

[3] On 18 July 2023, Mr Tatley, for Mr Lawrence, submitted that the appeal was filed late because: (1) he was not aware that the review hearing had taken place and a decision issued until 14 May 2023; (2) because of his injuries, he is not able to think clearly and coherently; and (3) he filed an appeal in time, but the filing was initially not accepted because the copy of the review decision which he submitted was not signed (this unsigned copy was sent to his advocate on 6 May 2023, and Mr Lawrence received this on 14 May 2023). The application for late filing was supported by an affidavit from Mr Lawrence dated 18 July 2023, with annexures.

[4] On 26 July 2023, Mr Castle for the Corporation submitted that Mr Lawrence's notice of appeal was effectively lodged in time and the Corporation did not oppose the grant of leave to appeal.

[5] Section 151 of the Accident Compensation Act 2001 (the Act) provides:

- (1) An appellant brings an appeal by sending a notice of appeal to, or filing a notice of appeal in, a specified registry.

...

- (3) The notice must be received by the specified registry—
 - (a) within 28 days after the date on which the reviewer gives a copy of the review decision to the appellant; or
 - (b) ...
 - (c) within any longer time allowed by the District Court.

[6] In this case there are reasons to support Mr Lawrence having filed his appeal in time. It appears from Mr Lawrence's evidence that he received an unsigned copy of the review decision on 14 May 2023, and he filed a notice of appeal with this copy of the review decision on 1 June 2023. Regulation 6(1)(b) requires that a notice of appeal must "have attached to it a copy of the decision appealed against". It is arguable that Mr Lawrence met this requirement on 1 June 2023 and that his notice of appeal was received in time.

[7] In any event, this Court finds that Mr Lawrence has established that the interests of justice require the exercise of the Court's discretion to sustain his application for leave to file his appeal out of time, which is accordingly granted.

[8] There are no issues 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