IN THE DISTRICT COURT
AT WELLINGTON

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

[2022] NZACC 96 **ACR 009/20**

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

Hearing: 12 and 13 June 2023

Held at: Hamilton/Kirikirioa

Appearances: Ms K Koloni for the Appellant
S Churstain for the Respondent

Judgment: 20 June 2023

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Revocation of cover - s 65; mental injury – s 26,
suspension of entitlements – s 117, Accident Compensation Act 2001 ("the Act")]

Introduction

[1] This is an appeal from the decision of a Reviewer dated 12 December 2019. The Reviewer dismissed applications for review of the Corporation's decisions of 24 December 2018, revoking cover for injuries, declining mental injury cover, and suspending entitlements.

Background

[2] Ms Rankin was born in 1963. She initially worked as an accounting/ bookkeeping clerk, but more recently she worked as a retail assistant at a pool and spa warehouse.

[3] On 15 August 2013, Ms Rankin injured her lower back while lifting chemicals at work and received cover for a lumbar sprain and sacroiliac ligament sprain.

[4] On 9 February 2015, while attempting to lift bags of salt, Ms Rankin was again injured and received cover for a sprain of her shoulder and upper arm.

[5] On 13 April 2015, Ms Rankin sustained a lumbar sprain injury while lifting/ moving a spa pool at her place of work.

[6] On 21 April 2015, Ms Rankin saw Dr Patrick Ney, GP. An injury claim form was lodged for a lumbar sprain, when "lifting heavy object", and Ms Rankin was certified as unfit for 14 days from 20 April 2015. The Corporation granted Ms Rankin cover for her claimed injury.

[7] On 24 April 2015, a lumbar spine x-ray was performed. Dr Matt Turei, Radiologist, recorded no acute lumbosacral spinal abnormality.

[8] On 1 May 2015, Ms Rankin saw Dr Jun Camero, GP, who noted "severe low back pain, barely able to mobilise, no light duties available". Dr Camero assessed Ms Rankin as having a lumbar sprain and certified her as fully unfit from 1 May 2015 to 30 May 2015.

[9] On 29 May 2015, Ms Rankin again saw Dr Camero, who noted "ongoing low back pain, restricted mobility, difficulty with sitting, coughing and lifting". Dr Camero again assessed Ms Rankin as having a lumbar sprain, and certified her as fully unfit from 31 May 2015 to 14 July 2015.

[10] On 1 July 2015, Ms Rankin was assessed by Ms Karel Chivers, Orthopaedic Surgeon, after a referral from Ms Rankin's physiotherapist, Mr Dan Bevins.

Dr Chivers noted that Ms Rankin was suffering mainly from mechanical-sounding back pain, but she had a degree of L5 weakness and described radicular left leg symptoms. Ms Chivers confirmed that the x-ray had shown no abnormalities, and arranged that an MRI be obtained.

[11] On 6 July 2015, Mr Johann Schutte, Psychologist, provided the following clinic note following an assessment of Ms Rankin:

> On enquiry as to what she considers to be the possible reasons for this, she states that she was recently dismissed from her job in April 2015 at a local firm, where she had worked for the past eight years. She goes on to explain that money was missing from the till and that she and her colleague who were thought to be guilty of taking the money, were fired.
>
> She made an attempt to address the situation with her previous employer, and is still in the process of having the personal grievance heard.
>
> She has applied for several positions, but has been turned down, ostensibly because of having attracted the status of being dismissed from her previous employment.
>
> On further enquiry, Mrs Rankin states that she has been suffering depression for the past four years. She has been on antidepressants over this time. She suffered her first bout of depression following her son, Shane's experiments with P which ultimate culminated in hospitalisation for psychiatric disorder at the local hospital, following a suicide attempt. Prior to this Shane, who shared residence with his mother was abusive towards her, to the point of physical assault. Fortunately he desisted from this specific drug following hospitalisation, currently only uses marijuana, which she says has no antisocial effects.
>
> Mrs Rankin injured her back (possibly a slipped disc), and continues to struggle with both pain and functionality. She tells me she has good and bad days, and uses a patch for pain.
>
> I made specific enquiry with regards to the presence of neurovegetative signs of depression, given aspects of her presentation, and elements of the general practitioner's referral. She reports her appetite as being good. She struggles to fall asleep, as she is inundated with negative thoughts and preoccupations, particularly related to her loss of job, the shame and embarrassment this has caused. Indeed, negative self-esteem elements were evident throughout our discussion. It is clear that she finds the dismissal to be highly invalidating and insulting. Some of her recreational interests, like reading books have fallen to the wayside. She tells me that she struggles to concentrate and becomes easily distracted.

[12] On 27 July 2015, Dr Camero certified Ms Rankin as fully unfit from 15 July 2015 to 28 August 2015.

[13] On 28 July 2015, Dr Andrew Dunkley, Radiologist, reported on a lumbar spine MRI performed on Ms Rankin. Dr Dunkley noted no significant central canal stenosis, nerve root compression, or alternative cause for left leg radicular symptoms, but recorded as follows:

> - L3/4 - mild disc desiccation, and a shallow left foraminal disc protrusion associated with an annular fissure, and narrowing of the left L4 exit fora men but without nerve root compression.
> - L4/5 - mild disc desiccation, shallow left foraminal disc protrusion, associated with an annular fissure. Narrowing of the left LS exit foramen but without nerve root compression.
> - L5/S1 - mild loss of disc height, a broad-based central disc protrusion indenting the thecal sac. The disc contacted the S1 nerve roots on both sides.

[14] On 26 August 2015, Dr Nick Wright, GP, noted "no suitable light duties at work, slow progress with healing", and certified Ms Rankin as fully unfit from 26 August 2015 to 30 September 2015.

[15] On 10 September 2015, Ms Kitty Sceats, Physiotherapist, sent the Corporation an ACC32 Treatment Extension Request to extend cover to include a diagnosis of lumbar disc prolapse with radiculopathy.

[16] The above request was not acknowledged by the Corporation and the statutory timeframe for issuing a cover decision lapsed. Therefore, on or about 1 October 2015, cover for lumbar disc prolapse with radiculopathy was deemed to exist.

[17] On 24 September 2015, Ms Chivers certified Ms Rankin as fit for some work from 24 September 2015 to 22 October 2015 with "light duties, no prolonged sitting", and declared her "fit to return to work on 22 October 2015".

[18] On 29 September 2015, following further assessment of Ms Rankin, Ms Chivers reported,:

> Her lumbar spine MRI has failed to show any significant spine pathology that would account for her ongoing proximal leg symptoms.

> Although she has small disc protrusions and disc dehiscence over the lower aspect of her lumbar spine, there is no significant cause for any nerve root entrapment or cord stenosis.

[19] On 6 October 2015, the Corporation issued a decision ceasing payment of weekly compensation.

[20] On 19 October 2015, Ms Chivers stated in a letter that Ms Rankin indicated "a psychological overlay with dismissal from her previous workplace".

[21] On 13 February 2016, a further lumbar spine MRI was performed. Dr Daniel Cornfeld, Consultant Radiologist, reported no change from the prior scan in July 2015. He determined that the disc protrusions at L3/L4, L4/L5 and L5/S1 were stable.

[22] On 29 March 2016, Dr Padmakumar Prabhakaran, Psychiatrist, reported on a psychiatric assessment of Ms Rankin, and diagnosed a moderate depression in the context of social stressors. Dr Prabhakaran noted that Ms Rankin had a history of depression and anxiety for the last two years and a family history of anxiety and panic attacks, and added:

> She presented to her GP after several situational stressors. She was fired from her job ten months ago. She describes that she was in the job for nine years as admin/salesperson during this time. She spoke about refusing to modify the bills and records which led to her firing. The court case is pending. She believes it may be from an ACC claim. She spoke about injuring her back at work and was asked by her boss not to tell the doctor. Her other stressor is end of her relationship of six years with Michael Meads, who is a client of mental health services as he was being unfaithful. This led to an incident of verbal abuse a month ago, when police were involved and he was removed from the property. This has led to financial stressors as partner is not supporting her financially. She also has a son ... (another client) who lives with her. She describes trying to support him, but that he was verbally abusive and physically assaulted her yesterday. She described shouting at him to off the lights, speaking about bills she needed to pay which prompted him to shove her and push her down on the floor. She showed us the bruise on her lower back which was about 10 cm to 7 cm and blue in colour. She also spoke about her ex-partner, putting stuff on Facebook regarding her and that she was a "nutter" as well as being tormented by his current girlfriend ...

[23] On 5 April 2016, Dr Prabhakaran reported again, noting:

> She has a lot of stressors recently including marriage breakup, will become homeless, financial stressors and worries about her relationship as she feels cheated (he was having an affair for at least three months and kept denying it).
>
> Her main worries were regarding her relationship, which she is tearful about. She spoke about not being able to go to WINZ as he works there as a security guard and unable to access any other office.
>
> She has back problems as a result of trauma. She is allergic to Tramadol. She has an appointment in Wellington, with a spinal specialist, arranged through ACC. She has had an appointment with Dr Chivers recently as well.

[24] Also on 5 April 2016, Ms Chivers reported on her further assessment of Ms Rankin:

> Melissa's up-to-date MRI of her lumbar spine has failed to show any significant progression of disease. She has known multi-level disc dehiscence and protrusions but without any nerve root compromise.
>
> I have reiterated to her again today that the mainstay of her treatment is core strengthening and to avoid further injuries to her lumbar spine, and discharged her back to the care of her GP.

[25] On 27 April 2016, Mr Peter Welsh, Orthopaedic Surgeon, reported on his assessment of Ms Rankin:

> Ms Rankin incurred a severe sprain injury to her back in lifting spa pools at work on 13 April 2015. Continuing chronic pain experience sees her in requirement of support in an activated rehabilitation programme with a pain management focus and appropriate psychologic counselling so that she may go forth positively in a new work opportunity.
>
> In reviewing the history here, in the course of manoeuvring the spa pools from the building after the flood, Melissa can be seen to have oversprained her back. In the background there have been odd sprain episodes before that weren't an issue. In the background the MRI scan reveals that like most of us, we are subject to an element of disc degeneration and wear, in many ways hers to a lesser degree than many, but that doesn't mean the pain level is any less to she who experiences it.
>
> It is this pain that is being evoked by the sprain accident, which is perpetuated structurally from this focus in the low back, but that focus is not one of an accident caused problem. The pain arising as a result of the accident along with the loss of her job and anxiety issues sees Melissa in the throes of a chronic pain disorder - regional back pain syndrome.
>
> The ongoing pain relates to the provocation of pain associated with a sprain injury to the back. Such is perpetuated by background wear and tear and degenerative features in the lower lumbar spine.

[26] On 12 May 2016, Dr Moazzam Zaidi, ACC Branch Medical Advisor, recommended that cover be extended to "chronic pain" on the basis of Mr Welsh's report.

[27] On 12 May 2016, "pain in lumbar spine" was added as further cover for Ms Rankin.

[28] On 1 June 2016, medical certificates from Dr Ney recorded that Ms Rankin was unfit to work from 22 October 2015 to 17 July 2016.

[29] On 13 June 2016, the Corporation reinstated and backdated Ms Rankin's weekly compensation payments. On 4 July 2023, the Corporation advised that interest would be paid on the backdated payments.

[30] On 23 June 2016, Dr Alan Farnell, Pain and Palliative Care Specialist, reported as follows:

> I am sure Melissa had an annular tear relating to lifting a spa pool. This set off an inflammatory change which has affected the left L5 nerve root. There is no entrapment. MRI confirms widespread discopathy and loss of disc height at L5-S1. Central disc protrusions at this level indents the thecal sac, touches the descending S1 nerve root bilaterally. This is the probable site of the annular tear although L4-5 is not much better. In particular, at L4-5 there is left L5 exit foramina without nerve compression, this is enough to be symptomatic. Hence, I am sure the medical diagnosis is significant in terms of being annular tear of the disc. I appreciate these annular tears can occur spontaneously, but the temporal associations with this lady who was physically so active, and since 10 May she hasn't been, is difficult to ignore.

[31] On 8 July 2016, a medical certificate from Dr Moira Cunningham, GP, recorded that Ms Rankin was unfit to work from 8 July 2016 to 5 October 2016.

[32] On 24 August 2016, Ms Corbett provided a psychological assessment which concluded that Ms Rankin presented with a high level of ongoing pain since the workplace injury in April 2015.

[33] On 2 September 2016, Dr Neville Berry, Occupational Physician, reported as follows:

> Melissa has MRI evidence of a disc injury at L5/S1 but examination today did not indicate any significant nerve root compression continuing. She does have symptoms and signs consistent with central sensitised pain contributing to her level of symptoms. She is also depressed with a level of anxiety at least partially due to uncertainty about her injury and lack of clear rehabilitation focus.

[34] On 22 September 2016, Dr Rashmi Srivastava, Psychiatrist, reported:

> She had been maintaining relatively well. She identified a few stressors recently due to which her anxiety had increased. About two weeks ago, her son who had been abusing illicit drugs had assaulted her and she had to get him arrested. She has taken a protection order against him. She is also worried about a court date soon, 5 October 2016, regarding her case with her ex-boss at work. She knows that she is not guilty (of theft for which she has been charged. Facing them in court has been overwhelming for her. Her son goes to court on the 28th September. She is worried about the protection order against her expartner for which she has to go to the courts at the beginning of 2016.
>
> She said that she has been unable to do a lot of activities due to her back issues for which her ACC claim has been through, and her physic treatment will start soon.
>
> Exacerbation of her depressive and anxiety symptoms due to ongoing stress (of her difficulties with her ex-partner), court case with her ex-boss, recent assault by her son and son is due to appear in court).

[35] On 4 October 2016, a medical certificate from Dr Cunningham recorded that Ms Rankin was unfit to work from 4 October 2016 to 1 January 2017.

[36] On 15 November 2016, Dr Ben Cheesman, Occupational Physician, diagnosed mechanical low back pain with left leg radicular symptoms. Dr Cheesman considered that there were some neuropathic elements to the pain described. with radiation into the left lower limb, with some signs demonstrated objectively on assessment.

[37] On 23 December 2016, a medical certificate from Dr Camero recorded that Ms Rankin was unfit to work from 2 January 2017 to 1 April 2017.

[38] On 17 February 2017, Dr Berry noted that Ms Rankin still had no signs indicating nerve root compression as the source of her symptoms. Dr Berry assessed

that Ms Rankin's symptoms were likely due to central sensitisation magnifying mild mechanical aggravation of her back pain.

[39] On 20 March 2017, a medical certificate from Dr Hiria Nielsen, GP, recorded that Ms Rankin was unfit to work from 2 April 2017 to 30 June 2017.

[40] On 11 May 2017, a medical certificate from Dr Simon Spenceley, GP, recorded that Ms Rankin was unfit to work from 11 May 2017 to 8 August 2017.

[41] On 30 May 2017, the Corporation issued a decision letter, on the basis of Dr Zaidi's panel recommendation of 12 May 2016, to extend Ms Rankin's cover to include Complex Regional Pain Syndrome (CRPS). The letter also acknowledged Ms Rankin's cover for "pain in lumbar spine".

[42] On 30 May 2017, Ms Yvonne van den Worm, Psychologist, diagnosed an Adjustment Disorder with mixed anxiety and depression.

[43] On 26 July 2017, a medical certificate from Dr Nielsen recorded that Ms Rankin was unfit to work from 9 August 2017 to 31 October 2017.

[44] On 29 August 2017, Dr Robin Griffiths, Senior Medical Advisor, reported as follows:

> Ms Rankin appears to have sustained a disc prolapse, which may have caused initial back pain and radiculopathy, but has ongoing pain which demonstrates more of a central sensitisation pattern than a nerve root irritation pattern, although mechanical back pain has also been postulated. She certainly has a chronic pain disorder, associated with significant psychological distress and adjustment disorder. It is possible that she has a somatic symptom disorder, and while she doesn't meet the criteria for CRPS currently, she may well develop further changes as described in the Budapest criteria.

[45] Also on 29 August 2017, Dr Griffiths recorded in an email to the Corporation that "we need to think carefully about taking [Ms Rankin] off the CRPS diagnosis", "so it's not adding to her catastrophisation". He added that he "would be a bit worried that if we tinker with the diagnosis she will get very distressed that ACC is out to get her again".

[46] On 14 September 2017, the Corporation confirmed for Ms Rankin that she did not have cover for CRPS.

[47] On 15 October 2017, Dr Rajib Ghosh, Occupational Physician, assessed that Ms Rankin's pain was likely neuropathic in nature.

[48] On 30 October 2017, a medical certificate from Dr Lara Manson, GP, recorded that Ms Rankin was fit to work with restrictions from 30 October 2017 to 27 January 2018.

[49] On 25 January 2018, a medical certificate from Dr Cunningham recorded that Ms Rankin was fit to work with restrictions from 25 January 2018 to 23 April 2018.

[50] On 13 March 2018, in a mental injury assessment report, Dr John Collier, Psychiatrist and Psychotherapist, diagnosed chronic anxiety, recurrent depression (both predating injury), lumbar sprain and degeneration with degeneration-associated pain. In regard to the relationship between the physical injury and mental injury, Dr Collier advised:

> I note, and I have stressed this during the review of documents, that the psychological symptoms predate her injury and there is not, in my opinion, any association between the physical injuring event and the mental injury. She does not have PTSD. She does not have an adjustment reaction. She does not have anxiety or depression secondary to the injury; these all predated the injury and have been aggravated by her experiences with pain and not being able to work. They have also been aggravated by other non-covered factors.
>
> She does not have CRPS, CRPS Type II. She has chronic pain (pain lasting more than six months) associated with a well-recognised and diagnosed degenerative back condition

[51] On 16 April 2018, a medical certificate from Dr Ney recorded that Ms Rankin was unfit to work from 24 April 2018 to 22 July 2018.

[52] On 15 May 2018, Ms J Clarkson, Psychology Advisor, recommended that the Corporation decline cover for mental injury, on the basis of Dr Collier's report. Ms Clarkson noted that there was no evidence that Ms Rankin's index accident and associated physical injury had led to a specific mental injury.

[53] On 19 July 2018, a medical certificate from Dr Georgia Richmond, GP, recorded that Ms Rankin was unfit to work from 23 July 2018 to 20 October 2018.

[54] On 1 October 2018, Dr Griffiths provided an updated opinion, concluding:

- Any effect from a lumbar sprain would be expected to have resolved within 13 weeks of the injury, and current incapacity seems to be unrelated to the initial injury. This should be a covered injury of historical relevance and there should be no ongoing entitlements related to it.

- Lumbar disc prolapse with radiculopathy. While there is referred pain, there is no indication of structural disorder, either degenerative or injury related, that would justify a diagnosis of a radiculopathy. The MRI changes were of broad-based disc bulge that would be unlikely to cause a radiculopathy. There is no evidence in Mr Welsh's report supporting that diagnosis. Recommended revoking cover for a disc prolapse with radiculopathy as the evidence did not support that diagnosis, even though symptoms would suggest it.

- Pain in lumbar spine. Any lumbar spine pain would be due to mechanical back pain which was rendered apparent by her initial back sprain and there was no evidence to suggest that condition would be related to the accident event. Supported revocation of any pain cover.

- Complex regional pain syndrome. Ms Rankin had chronic pain but she did not have regional pain syndrome and that diagnosis was made in error. It is likely that Ms Rankin's persistent pain arises from a combination of mechanical back pain and an affective disorder, neither of which are covered injuries. The only valid diagnosis of a covered injury is that of a lumbar sprain, which has then rendered apparent a predisposition towards chronic pain, arising from a number of yellow, blue, black and orange flags, but unrelated to her physical injury, the effects of which should be long passed.

[55] On 16 October 2018, a medical certificate from Dr Ney recorded that Ms Rankin was unfit to work from 21 October 2018 to 18 January 2019.

[56] On 24 December 2018, the Corporation issued a set of decisions which:

(a) revoked cover for complex regional pain syndrome (type 1), pain in lumbar spine, and disc prolapse with radiculopathy: the Corporation referred to Dr Griffiths' opinion to the effect that the only injury sustained was a lumbar sprain, which would have reasonably been expected to have resolved within 13 weeks of the injury in 2015.

(b) declined cover for mental injury due to physical injury: the Corporation referred to Dr Collier's opinion that Ms Rankin's pre-existing anxiety had been exacerbated, but not caused, by her injury pain and coping with this. The Corporation advised that there was no evidence that Ms Rankin's index accident of 13 April 2015 and associated physical injury had led to a specific mental injury.

(c) suspended entitlements to weekly compensation, compensation and treatment: this was on the basis that Ms Rankin's current condition was no longer the result of her covered personal injury of 13 April 2015, but was attributable to non-accidental mechanical back pain due to underlying structural changes.

[57] On 7 January 2019, review applications were lodged on behalf of Ms Rankin.

[58] On 10 January 2019, a medical certificate from Dr Nielsen recorded that Ms Rankin was unfit to work from 19 January 2019 to 18 April 2019.

[59] On 13 August 2019, Dr Davin Tan, Psychiatrist, diagnosed major depressive disorder and an anxiety disorder, and reported:

> Her family doctor [prior to the accident event] prescribed antidepressants for depressive (low mood) and anxiousness which Melissa believed was in reaction to stress due to specific life events and personal problems ie: grief following her parents' deaths, son's substance problems, her expartners infidelity, employer accusing her of stealing. Those symptoms did not cause major impairment in social or occupational functioning.
>
> The data indicates that Melissa certainly suffers from back pain and the consequent social/occupational impairments, depression and anxiety. The mechanism of injury is not controversial ie: she injured her back during a work day, moving heavy spas with her boss.
>
> Prior to this, Melissa had only experienced brief episodes of minor back pain that did not impair her functioning. Pre-injury Melissa experienced intermittent symptoms of depression and anxiety in context of personal stress that did not cause significant social or occupational impairment.
>
> Since the index injury however her present back pain has persisted and has reduced her work and social capacity. In my view, this has increased her vulnerability to persistent depression and anxiety. Following the index injury, several stressful life events took place, but subsequently resolved but still,

> Melissa remains depressed and anxious – the most salient perpetuating factor being her back pain and attendant impairments.
>
> Therefore, on the balance of probabilities, her diagnoses do have more than a minimal causal contribution from the index physical injury.
>
> Melissa's pain and the associated limitations maintain her present condition. In my view, non-injury factors do not wholly contribute to her condition.
>
> Presently, in my view, the non-injury factors that seem salient are the financial difficulties and shame associated with her occupational limitations. But these are issues that indirectly caused the injury. Therefore, I do not believe there are non-injury factors that substantially contribute to her condition.
>
> In my view, the cause of psychological symptoms that predated her physical injuring event are not the same as that causing her present psychological symptoms given the severity and chronic nature of the symptoms - but also the impact that these have had on several domains of functioning (not of which were impaired prior to the injuring event). The prior depression and anxiety symptoms were episodic, rather than being a disorder as it is now.
>
> Melissa's present depression and anxiety emerged in response to her work injury (not before); in the context of pain and major occupational and social limitations following th index injury.

[60] On 27 August 2019, Dr Chris Dowling, ACC Psychology Advisor, provided an opinion on the reports of Drs Collier and Tan. Dr Dowling stated:

> Dr Tan noted pre-injury psychiatric difficulties, but felt that the physical injury and resulting pain made "more than minimal causal contribution" to the identified psychiatric conditions. A formulation is not provided, and as such, some of Dr Tan's clinical rationale is unclear. … unless the decision to decline cover for a physical injury causing current pain is overturned, the question of cover for a mental injury caused by physical injury is irrelevant, as Dr Tan noted that pain contributed to the development of psychiatric symptoms. … neither of the assessments on file appear to satisfy the criteria for MICPI.

[61] On 15 October 2019, Dr Shaun Xiong, Rehabilitation Physician, having assessed Ms Rankin, agreed that Ms Rankin did not have CRPS, and diagnosed a chronic back pain syndrome. He advised as follows:

> Assessing her today my medical opinion is that she has suffered from physical injury to her lumbar spine in terms of disc protrusions/annular tears particularly L4/5 and L5/S1 levels that are the basis of her chronic mechanical back pain.
>
> Although she does have risk factors for chronic pain syndrome, the injury to the lumbar spine specifically the discs are the material cause of her back pain condition while other factors are risk factors.
>
> My medical opinion is that she suffered from structural injuries to the lumbar spine specifically the disc protrusions with annular tears involving particularly

> L5/S1 and L4/5. I noted the same opinions have been expressed by Peter Welsh, orthopaedic surgeon back in 2016; as well as pain specialist Alan Farnell.
>
> In other words, her injury should have been correctly recognised as disc protrusion other than simple "back sprain" that was only used as a preliminary diagnosis before confirmation of the diagnosis that was subsequently made by an MRI scan.
>
> Although it is possible to have disc degenerative changes including annular tears present before the injury, her case is balanced on clinical probability it is highly likely that the physical injuries had resulted in further damage to the disc contributing to the annular tears and disc protrusion.
>
> Retrospectively speaking ACC should have correctly accepted "regional pain syndrome" or simply "chronic pain syndrome" as part of her claim rather than complex regional pain syndrome.

[62] On 28 November 2019, review proceedings were held. On 12 December 2019, the Reviewer dismissed the reviews, on the basis that the Corporation's decisions of 24 December 2018, revoking cover for injuries, declining mental injury cover and suspending entitlements, were correct.

[63] On 9 January 2020, a Notice of Appeal was lodged.

[64] On 18 September 2020, Ms Rankin underwent a lumbar spine MRI scan. Dr Lindi Engelbrecht, Consultant Radiologist, reported disc protrusions at the L4/5 and L5/S1 levels, with marked loss of disc space height at L5/S1, consistent with previous medical evidence.

Revocation of cover for physical injuries

Relevant law

[65] Section 20(2)(a) of the Act provides that a person has cover for a personal injury which is caused by an accident. Section 26(2) states that "personal injury" does not include personal injury caused wholly or substantially by a gradual process, disease, or infection (unless it is personal injury of a kind specifically described in section 20(2)(e) to (h)). Section 25(1)(a)(i) provides that "accident" means a specific event or a series of events, other than a gradual process, that involves the application of a force (including gravity), or resistance, external to the human body. Section

25(3) notes that the fact that a person has suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident.

[66] Section 65 of the Act provides:

> (1) If the Corporation considers it made a decision in error, it may revise the decision at any time, whatever the reason for the error.
>
> (2) The Corporation may revise a decision deemed by section 58 to have been made in respect of any claim for cover, but may not recover from the claimant any payments made by it, in respect of the claim, before the date of the revision unless the claimant has made statements or provided information to the Corporation that are, in the opinion of the Corporation, intentionally misleading.
>
> (3) A revision may—
>
> (a) amend the original decision; or
>
> (b) revoke the original decision and substitute a new decision.

[67] In *Johnston*,[1] France J stated:

> [11] It is common ground that, but for the accident, there is no reason to consider that Mr Johnston's underlying disc degeneration would have manifested itself. Or at least not for many years.
>
> [12] However, in a passage that has been cited and applied on numerous occasions, Panckhurst J in *McDonald v ARCIC* held:[2]
>
> > "If medical evidence establishes there are pre-existing degenerative changes which are brought to light or which become symptomatic as a consequence of an event which constitutes an accident, it can only be the injury caused by the accident and not the injury that is the continuing effects of the pre-existing degenerative condition that can be covered. The fact that it is the event of an accident which renders symptomatic that which previously was asymptomatic does not alter that basic principle. The accident did not cause the degenerative changes, it just caused the effects of those changes to become apparent ..."
>
> [13] It is this passage which has governed the outcome of this case to date. Although properly other authorities have been referred to, the reality is that the preceding decision makers have concluded that Mr Johnston's incapacity through back pain is due to his pre-existing degeneration and not to any injury caused by the accident.
>
> [14] … I consider it important to note the careful wording in the McDonald passage. The issue is not whether an accident caused the incapacity. The issue is whether the accident caused a physical injury that is presently causing or contributing to the incapacity.

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1 *Johnston v Accident Compensation Corporation* [2010] NZAR 673.
2 *McDonald v ARCIC* [2002] NZAR 970, at [26].

[68] In *Ambros*,[3] the Court of Appeal envisaged the Court taking, if necessary, a robust and generous view of the evidence as to causation:

> [65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense …
>
> [67] The different methodology used under the legal method means that a court's assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty -- see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture … Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence …

[69] In *Bartels*,[4] Gendall and Ronald Young JJ stated, in relation to the Injury Prevention, Rehabilitation, and Compensation Act 2001, section 390 (equivalent to section 65(1) above):

> [28] … the process under s 390 requires the Corporation to examine the earlier decision. It is after all, in the words of s 390, for the Corporation to establish "that the decision was made in error". We are satisfied, however, that it is entitled to do so using material not available to it at the time of the original decision but which has become available since. We stress, however, that material must clearly establish that the original decision was made "in error" before it can invoke s 390. …
>
> [31] ... We are satisfied that all Parliament meant was that the Corporation can today, with the factual and other material it now has, look back at the decision previously made and decide if it was "made in error". A simple example will illustrate the position. A claim is made for a broken arm. An x-ray is inspected which confirms the break and thus cover accepted. Later it is discovered that either the x-ray has been misread or someone else's x-ray has been read and that the x-ray of the claimant reveals no break. This is "new evidence" and would be highly relevant to a decision under s 390 to revoke the original decision as made "in error". …
>
> [33] Finally, we agree with the Corporation's submissions … that where decisions previously made are clearly made in error that those decisions should not be left to advantage or disadvantage either claimants or the Corporation. This is a publicly funded insurance scheme for those who suffer personal injury

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3 *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

4 *Accident Compensation Corporation v Bartels* [2006] NZAR 680.

> by accident. Those who suffer personal injury by accident should have cover under the Act and those who do not should not get cover when none is due.

[70] The Court has, on several occasions, accepted that the Corporation was entitled to revisit and revoke an earlier decision that it had made.[5]

[71] In *Atapattu-Weerasinghe*,[6] Williams J held:

> [22] … it seems clear that s 65(1) and (2) cover two different situations. The first, where a decision has been made and is now felt to be erroneous; the second, where no decision has been made, cover is deemed to be granted, and the Corporation wishes to revisit that. *Bartels* does not speak to the second situation.
>
> [23] … The reverse onus, as provided for in *Bartels*, only makes sense because an actual error has been identified by the Corporation in the earlier decision. It seems entirely fair that, in that situation, the Corporation should be required to justify the change. But in the absence of such error, reversal of the onus makes no particular sense. …

[72] In *Singh*,[7] Walker DCJ stated:

> [112] As stated in the written submissions of Counsel for the Corporation, as a result of the decision being made pursuant to s 65(2) (rather than, as had been stated, under s 65(1)) the High Court decision of *ACC v Bartels* has no application and the onus of proof remains with the appellant.

[73] In *Studman*,[8] Ellis J confirmed the need to identify separately an underlying physical injury in considering issues of causation and pain:

> [26] I agree with Mr Tuiqereqere that this requirement for "bodily harm" means that neither "pain" nor "stiffness" by and of itself constitutes a physical injury. Although both pain and stiffness may well be symptomatic of an underlying (and potentially qualifying) physical injury, that is not necessarily so. Most obviously, I suppose, pain could just as easily be caused by disease, for which (in general terms) coverage is not extended. It is for that reason that it is, in my view, necessary separately to identify the underlying physical injury with some precision."

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5 *Stowers v Accident Compensation Corporation* DC Christchurch 167/2009, 5 October 2009; *Paku v Accident Compensation Corporation* [2017] NZACC 143; *Crosswell v Accident Compensation Corporation* [2019] NZACC 37; *Garing v Accident Compensation Corporation* [2019] NZACC 63; and *Herbst v Accident Compensation Corporation* [2020] NZACC 109.

6 *Atapattu-Weerasinghe v Accident Compensation Corporation* [2017] NZHC 142.

7 *Singh v Accident Compensation Corporation* [2019] NZACC 102.

8 *Accident Compensation Corporation v Studman* [2013] NZAR 1347.

Discussion

[74] On 13 April 2015, Ms Rankin sustained a lumbar sprain injury, and she was granted cover for this injury. On or about 1 October 2015, Ms Rankin received deemed cover for lumbar disc prolapse with radiculopathy. On 12 May 2016, pain in the lumbar spine was added as further cover for Ms Rankin. On 30 May 2017, the Corporation provided Ms Rankin additional cover for complex regional pain syndrome (CRPS) type 1, and acknowledged cover for pain in the lumbar spine. The issue here is whether the Corporation's decision of 24 December 2018, revoking cover for CRPS (type 1) and pain in the lumbar spine, and deemed cover for disc prolapse with radiculopathy, is correct. The Corporation referred to Dr Griffiths' opinion to the effect that the only injury sustained was a lumbar sprain, which would have reasonably been expected to have resolved within 13 weeks of the injury in 2015.

[75] Section 65(1) of the Act provides that, if the Corporation considers it made a decision in error, it may revise the decision at any time, whatever the reason for the error. The onus is on the Corporation to establish clearly that the original decisions revoking cover for CRPS (type 1) and pain in the lumbar spine were made in error, and that the Corporation has a sufficient basis to revoke cover. New evidence, not available at the time of the original decision, will be relevant in deciding whether errors have occurred. Where decisions previously made were clearly made in error, the decisions should not be left to advantage or disadvantage either claimants or the Corporation.[9] Section 65(2) of the Act provides that the Corporation may revise a decision deemed to have been made in respect of any claim for cover. In relation to deemed cover for disc prolapse with radiculopathy, the onus rests with Ms Rankin to establish that she is entitled to this cover.[10]

[76] Ms Rankin's representative at the review hearing accepted that the Corporation had a reasonable basis to revoke cover for the CRPS and pain in the lumbar spine, but submitted that the Corporation was incorrect in declining cover for lumbar disc prolapse. The Reviewer agreed that cover for CRPS and pain in the lumbar spine was correctly revoked. The Reviewer noted that Ms Rankin's own specialist agreed

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9 *Bartels*, above note 4, at [28], [31] and [33].

that CRPS was incorrectly presented as a diagnosis, and that pain is not of itself a personal injury. The Reviewer also found that the Corporation correctly revoked deemed cover for disc prolapse with radiculopathy.

[77] Ms Koloni, for Ms Rankin, submits as follows. There should be reinstatement of cover for Ms Rankin's physical injuries, on the basis that she has been diagnosed with CRPS and pain in the lumbar spine, and has deemed cover for lumbar disc prolapse with radiculopathy. Dr Griffiths warned the Corporation to think carefully about taking Ms Rankin off the CRPS diagnosis and about not adding to her "catastrophisation", and that he would be "a bit worried that if we tinker with the diagnosis". The Corporation is in breach of its obligations under the Code, and in particular the honest handling of Ms Rankin's claim, ignoring the accuracy and completeness of the information provided to assessors. The Corporation revoked cover because Ms Rankin's claims became too expensive. Ms Rankin's physical injuries were consequential on her accident, and the deterioration in her condition was post-traumatic and not pre-existing degeneration. The "egg shell skull" principle should apply, as, but for Ms Rankin's accident, there would not have been her physical injuries.

CRPS (type 1)

[78] This Court acknowledges that, on 27 April 2016, Mr Welsh, Orthopaedic Surgeon, noted that Ms Rankin had sprained her back and assessed that her ongoing pain related to the sprain, against a background of disc degeneration in the lower lumbar spine. The Court also notes that, on 12 May 2016, Dr Zaidi, the Corporation's Branch Medical Advisor, referred to Mr Welsh's report and recommended cover be extended to "chronic pain" on the basis of Mr Welsh's report. On 30 May 2017, the Corporation issued a decision, on the basis of Dr Zaidi's panel recommendation of 12 May 2016, to extend Ms Rankin's cover to include CRPS.

[79] However, the Court notes that, before the Corporation's decision of 30 May 2017, Dr Berry, Occupational Physician, in his reports of 2 September 2016 and 17 February 2017, had advised that Ms Rankin's symptoms were mostly due to central

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[10] *Atapattu-Weerasinghe*, above note 6, at [23]; and *Singh*, above note 7, at [112].

sensitisation, magnifying mild mechanical aggravation of back pain. Further, the Court notes that, subsequent to the Corporation's decision of 30 May 2017:

(a) On 29 August 2017, Dr Griffiths, Senior Medical Advisor, advised that the Budapest criteria for diagnosis of CRPS were not met, and a more appropriate diagnosis was chronic pain due to central sensitisation (in line with Dr Berry's advice) or a somatic symptom disorder.

(b) On 1 October 2018, Dr Griffiths further advised that Ms Rankin had chronic pain but she did not have regional pain syndrome, and the Corporation's previous diagnosis was made in error. Dr Griffiths assessed that it was likely that Ms Rankin's persistent pain arose from a combination of mechanical back pain and an affective disorder, neither of which was a covered injury. It was on the basis of Dr Griffiths' report that the Corporation, on 24 December 2018, revoked cover for CRPS type 1.

(c) On 15 October 2019 (after the Corporation's decision of 24 December 2018), Dr Xiong, Rehabilitation Physician, advised that the Corporation should have accepted regional pain syndrome or simply chronic pain syndrome as part of Ms Rankin's claim, rather than CRPS.

[80] In light of the above medical evidence, this Court is satisfied that the Corporation has established clearly that the original decision granting cover for CRPS was made in error, and that the Corporation had a sufficient basis to revoke cover for this condition.

Pain in the lumbar spine

[81] The Court acknowledges that, on 27 April 2016, Mr Welsh, Orthopaedic Surgeon, assessed that Ms Rankin had ongoing pain related to the provocation of pain associated with a sprain injury to the back; and, on 12 May 2016, Dr Zaidi, ACC Branch Medical Advisor, recommended that cover be extended to "chronic pain" on the basis of Mr Welsh's report. On 12 May 2016, the Corporation added pain in the lumbar spine as further cover for Ms Rankin, and, on 30 May 2017, the Corporation confirmed this cover.

[82] However, this Court notes the following medical evidence available prior to the Corporation's decision of 12 May 2016 extending cover for "chronic pain":

(a) On 1 July 2015, Ms Chivers, Orthopaedic Surgeon, noted that Ms Rankin was suffering from mainly mechanical-sounding back pain, and confirmed that the x-ray had shown no abnormalities.

(b) On 29 September 2015, Ms Chivers advised that Ms Rankin's lumbar spine MRI had failed to show any significant spine pathology that would account for her ongoing proximal leg symptoms and there was no significant cause for any nerve root entrapment or cord stenosis.

(c) On 27 April 2016, Mr Welsh reported that the "evoking" or "provocation" of Ms Rankin's pain associated with her sprain injury was "perpetuated by background wear and tear and degenerative features in the lower lumbar spine". Mr Welsh noted that the focus in the low back "is not one of an accident caused problem".

[83] This Court notes the following further medical evidence prior to the Corporation's confirmation on 30 May 2017 of cover for pain in the lumbar spine:

(a) On 2 September 2016, Dr Berry, Occupational Physician, reported that Ms Rankin had MRI evidence of a disc injury at L5/S1 but examination that day did not indicate any significant nerve root compression continuing. Dr Berry advised that she had symptoms and signs consistent with central sensitised pain contributing to her level of symptoms.

(b) On 17 February 2017, Dr Berry assessed that Ms Rankin's symptoms were likely due to central sensitisation magnifying mild mechanical aggravation of her back pain.

[84] This Court further notes that, on 1 October 2018, subsequent to the Corporation's decision confirming cover for pain in the lumbar spine, Dr Griffiths, Senior Medical Advisor, advised that Ms Rankin's lumbar spine pain was not part of any covered injury. Dr Griffiths thought it likely that this pain was due to

mechanical back pain which was rendered apparent by her initial back sprain. Dr Griffiths noted that there was no evidence to suggest that Ms Rankin's lumbar spine pain was causally related to the lifting. Dr Griffiths therefore recommended revocation of pain cover.

[85] The High Court has established that "pain" does not, by and of itself, constitute a physical injury, as pain can just as easily be caused by other factors such as disease, for which (in general terms) cover is not granted.[11] The present Court is satisfied, from cogent medical evidence, available prior to and after the Corporation granting Ms Rankin cover for pain in the lumbar spine, that the Corporation has established clearly that the original decision granting cover for pain in the lumbar spine was made in error, and that the Corporation had a sufficient basis to revoke cover for this condition.

Lumbar disc prolapse with radiculopathy

[86] The Court acknowledges that, on 10 September 2015, the Corporation received a Treatment Extension Request to extend cover for the injury on 13 April 2015, to include lumbar disc prolapse; and that the Corporation did not acknowledge this request, the timeframe for issuing a cover decision lapsed, and there was therefore deemed cover extended on or about 1 October 2015. The Court also acknowledges that, on 23 June 2016, Dr Farnell, Anaesthetist and Pain Specialist, advised that Ms Rankin's condition was disabling back pain, "clearly mechanical in nature", which was caused by the accident event. Further, on 15 October 2019, Dr Xiong, Rehabilitation Physician, advised that Ms Rankin's disc protrusions/annular tears at two levels were accident related. The Court does, however, note that neither Dr Farnell nor Dr Xiong are Orthopaedic Specialists, and that Dr Farnell's assessment was over 14 months after the accident event and Dr Xiong's assessment was four-and-a-half years after the accident. Further, as noted below (paragraph [71](e)), Dr Xiong's report contained an important error in his assessment.

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11 *Studman*, above note 8, at [26].

[87] The Court also notes the following further evidence:

(a) On 24 April 2015 (11 days after the accident), a lumbar spine x-ray was performed, and Dr Turei, Radiologist, observed no acute lumbosacral spinal abnormality.

(b) On 1 July 2015, Ms Chivers, Orthopaedic Surgeon, noted that Ms Rankin had mechanical back pain and some left leg radicular symptoms.

(c) On 28 July 2015, an MRI was performed, and Dr Dunkley, Radiologist, observed disc protrusions at L3/4, L4/5, and L5/S1, but no significant central canal stenosis, nerve root compression, or alternative cause of left leg radicular symptoms.

(d) On 29 September 2015, Ms Chivers noted that the lumbar spine MRI failed to show any significant pathology that would account for Ms Rankin's proximal leg symptoms, and there was no significant cause of any nerve entrapment or cord stenosis.

(e) On 27 April 2016, Mr Welsh, Orthopaedic Surgeon, noted that the MRI revealed that Ms Rankin was subject to an element of disc degeneration and wear. Mr Welsh advised that Ms Rankin did not have an accident-caused problem evoking pain, rather, she had regional back pain syndrome. (Note, Dr Xiong incorrectly noted in his opinion that Mr Welsh assessed that Ms Rankin suffered from structural injuries to the lumbar spine, specifically the disc protrusions).

(f) On 17 February 2017, Dr Berry, Occupational Physician, noted that Ms Rankin still had no signs indicating nerve root compression as the source of her symptoms. Dr Berry assessed that Ms Rankin's symptoms were likely due to central sensitisation magnifying mild mechanical aggravation of her back pain.

(g) On 29 August 2017, Dr Griffiths advised that, while Ms Rankin appeared to have sustained a disc prolapse, her ongoing pain demonstrated more of a central sensitisation pattern than a nerve root irritation pattern. Dr

Griffiths diagnosed a chronic pain disorder associated with psychological distress and an adjustment disorder.

(h) On 1 October 2018, Dr Griffiths advised that there was no indication of structural disorder, either degenerative or injury-related, that would justify a diagnosis of radiculopathy. Dr Griffiths noted that the MRI changes were of broad-based disc bulge that would be unlikely to cause a radiculopathy. Dr Griffiths recommended revoking cover for a disc prolapse with radiculopathy, as the evidence did not support that diagnosis, even though symptoms suggested it.

[88] This Court finds that the above evidence outweighs the evidence of Dr Farnell and Dr Xiong. The Court concludes that Ms Rankin has not established that she is entitled to cover for disc prolapse with radiculopathy.

Cover for mental injury

Relevant law

[89] Section 26 of the Act provides that "personal injury" includes "mental injury suffered by a person because of physical injuries suffered by the person". Section 27 states that "mental injury" means a clinically significant behavioural, cognitive, or psychological dysfunction.

[90] In *Hornby*,[12] it was held:

> [28] In terms of the approach to the law, Dobson J considered that this Court's decision in *Accident Compensation Corporation v Ambros* [2008] 1 NZLR 340 did not alter the requirement as set out in *Harrild v Director of Proceedings* [2003] 3 NZLR 289 (CA) for a "degree of connection" that shows the mental injury results from the preceding physical injury: at [22]. His Honour adopted the phrase "results from" as used in *Harrild* as the appropriate means of establishing the connection. …
>
> [37]… Essentially, the appellant does not get cover because her depression has nothing to do with the injury. This is not a case of susceptibility or eggshell skull but, rather, one where the appellant has a condition which was not brought on by the accident. Even on the approach taken by the appellant's doctor, Dr Mackenzie, the break to her arm has made her symptoms worse but has not caused her depression.

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12 *Hornby v Accident Compensation Corporation* [2009] NZCA 576.

[91] In *Ghosh*,[13] Judge MacLean stated:

> [57] The key issue is that there must be a direct causal link and in that context the severity of the physical injury needs close scrutiny…
>
> [59] Also as explained in *Hornby v Accident Compensation Corporation* where a physical injury simply triggers a pre-existing mental condition so as to exacerbate the condition or cause it to be symptomatic that is not enough.
>
> [60] It is important to focus therefore on the actual injury and not the surrounding circumstances or reaction to it.

[92] In *W*,[14] Collins J stated:

> [65] The present case illustrates how, in complex cases, there may be multiple contributing causes to a claimant's mental injury. In such cases it may be helpful to assess the extent to which a claimant's mental injury has been suffered because of their physical injuries. The physical injuries do not have to be the sole cause of the mental injury. It is sufficient that the physical injury materially contributes to causing the mental injury. This means that to satisfy s 26(1)(c) of the Act, the physical injury must be the cause of the mental injury in some genuine or meaningful way, rather than just in a trivial or minor way. …
>
> [76] In summary, the answer to the first question posed in [5] is that the ambit and meaning of the words "because of" in s 26(1)(c) of the Act depends on the context in which the claim for cover is made. In most cases, s 26(1)(c) of the Act will require that the claimant's physical injuries are both a factual and legal cause of his or her mental injuries. These requirements will usually be satisfied where two tests are met. First, subject to the possible exceptions outlined in [63], the "but for" test must be satisfied. Second, the physical injury must "materially contribute" to the claimant's mental injury.

[93] In *Comerford-Parker*,[15] Gendall J discussed the need for a direct causal connection between a physical injury and a mental injury in the context of a post-traumatic stress disorder:

> [21] … it is clear from the legislative history that Parliament has intended there to be some initial physical injury to that person which results, in addition, to a consequent mental injury. …
>
> [25] Whether "perpetuating causes" are outcomes from a physical injury so as to lead to mental injury, may well depend upon the type of mental injury, and type of physical injury under consideration. For example, causes of depression may be continuing perpetuating occurrences. But PTSD is, by definition, caused by the life threatening event and once it exists, later symptoms will be effects which result from it. That is the condition. But Mr Miller's argument

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13 *Ghosh v Accident Compensation Corporation* [2015] NZCA 208.

14 *W v Accident Compensation Corporation* [2018] NZAR 829.

15 *Comerford-Parker v Accident Compensation Corporation* (HC) Wellington, 26/5/2011 [2011] NZAR 481.

> appears to be based on the proposition that the effects of injury (pain, and prompting of memory) lead to the resulting mental injury. This may fail to distinguish between "results" of an injury and "effects" of it. The physical effects of the physical injury result from it. But conversely the mental injury, already present, does not result from those physical effects. Results are not necessarily the same as "effects". There will be a causal connection between the physical injury and the alleged outcome (the PTSD) if as a matter of fact, medical and other evidence, there is a resulting, consequential logical connection between the PTSD and the physical injury.
>
> …
>
> [35] … It will be a question of fact in every case whether the ultimate condition (the mental injury) is in fact an outcome or result of physical injury, and whether the "perpetuating cause" is but an effect of the physical injury, rather than something that results in a mental injury …

Discussion

[94] The issue here is whether the Corporation's decision of 24 December 2018, which declined cover for mental injury due to physical injury, is correct. In terms of section 26(1)(c) of the Act, Ms Rankin must establish that she suffered mental injury because of a physical injury. This means that, in principle, she must establish that, but for her lumbar sprain, she would not have her mental injury of major depressive and anxiety disorders, and that her physical injury materially contributed to her disorder in a genuine or meaningful way.[16]

[95] Ms Kolini, for Ms Rankin, submits as follows. Ms Rankin's additional mental stress and anxiety is a direct result of dealing with the effects of her chronic back pain and her poor treatment by the Corporation, and this mental stress still continues several years later. On 13 August 2019, Dr Tan, Psychiatrist, reported that Ms Rankin's present depression and anxiety emerged in response to her work injury, not before, in the context of back pain and major occupational and social limitations following the index injury. These factors had more than a minimal causal contribution from the index physical injury, and non-injury factors did not wholly contribute to her condition.

[96] This Court notes the above submissions and evidence. However, the Court notes that Dr Tan's report was done well over four years after Ms Rankin's accident, and that he linked Ms Rankin's mental condition to her back pain symptoms

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16 *W*, *above* note 14, at [65] and [76].

generally, rather than having been caused by her covered lumbar sprain. Further, the Court points to the following considerations.

[97] First, the Court notes that Ms Rankin's covered physical injury of April 2015 was a lumbar sprain, and did not extend to back pain symptoms generally.

[98] Second, on 6 July 2015 (three months after the accident), Mr Schutte, Psychologist, assessed Ms Rankin and recorded that she had been suffering depression for the past four years and been on antidepressants over this time. Mr Schutte noted Ms Rankin's back injury and resultant pain and functional issues. Mr Schutte assessed that Ms Rankin's negative self-esteem elements were evident throughout the discussion, and it was clear that she found her dismissal from her job in April 2015 to be highly invalidating and insulting.

[99] Third, on 29 March and 5 April 2016, Dr Prabhakaran, Psychiatrist, reported after a psychiatric assessment of Ms Rankin. Dr Prabhakaran diagnosed moderate depression in the context of social stressors. Dr Prabhakaran noted that Ms Rankin had a history of depression and anxiety during the previous two years and a family history of anxiety and panic attacks. Dr Prabhakaran also noted that Ms Rankin had presented to her GP after several situational stressors, including being fired from her job ten months before, injuring her back at work, domestic verbal and physical abuse, financial issues, worries about becoming homeless, and her relationship breakup (producing her main worries).

[100] Fourth, on 22 September 2016, Dr Srivastava, Psychiatrist, reported on Ms Rankin's exacerbation of her depressive and anxiety symptoms due to ongoing stress caused by her difficulties with her ex-partner, the court case with her ex-boss, a recent assault by her son, and the son being due to appear in court.

[101] Fifth, on 13 March 2018, Dr Collier, Psychiatrist and Psychotherapist, diagnosed chronic anxiety, recurrent depression (both predating injury), lumbar sprain and degeneration with degeneration-associated pain. In regard to the relationship between the physical injury and mental injury, Dr Collier advised that Ms Rankin's anxiety or depression were not secondary to her injury, as these

predated the injury and had been aggravated by her experiences with pain and not being able to work, and by other non-covered factors.

[102] Sixth, on 15 May 2018, Ms Clarkson, ACC Psychology Advisor, recommended that the Corporation decline cover for mental injury, on the basis of Dr Collier's report. Ms Clarkson noted that there was no evidence that Ms Rankin's index accident and associated physical injury had led to a specific mental injury.

[103] Seventh, on 27 August 2019, Dr Dowling, ACC Psychology Advisor, reviewed the available evidence and commented that Dr Tan's clinical rationale was unclear. Dr Dowling concluded that the criteria for a mental injury caused by a physical injury were not met.

[104] Overall, this Court finds that the weight of medical evidence does not establish that Ms Rankin's physical injury of April 2015 materially contributed to her major depressive and anxiety disorders in a genuine or meaningful way.

Suspension of entitlements

Relevant law

[105] Section 67 of the Act provides:

> A claimant who has suffered a personal injury is entitled to 1 or more entitlements if he or she –
>
> (a) Has cover for the personal injury; and
>
> (b) Is eligible under this Act for the entitlement or entitlements in respect of the personal injury

[106] Section 117(1) of the Act provides:

> The Corporation may suspend or cancel an entitlement if it is not satisfied, on the basis of the information in its possession, that a claimant is entitled to continue to receive the entitlement.

[107] In *Ellwood,*[17] Mallon J stated that, before entitlements can be suspended, the Corporation must show that it had a sufficient basis on which entitlements should be suspended.

[108] In *Furst,*[18] Judge Barber stated:

> [13] ACC must have a "*sufficient basis before it is not satisfied that a claimant is entitled to continue to receive the entitlement*". If the position is uncertain, "*then there is not a sufficient basis*" *The "not satisfied" test is not met in these circumstances*". *Ellwood v the Corporation* [2007] NZAR 205. The "*not satisfied*" test requires a positive decision … equivalent to being satisfied that there is no right to entitlements. This test would not be met where the evidence was in the balance or unclear: *Milner v the Corporation* (187/2007).

[109] In *Newton,*[19] Judge Powell endorsed the decision of Judge Ongley in *Medwed*[20] in these terms:

> [23]… While I have no information before me as to the reasons that cover for the Lake Hayes incident was declined it would be extraordinary and in my view quite inconsistent with s 67 of the Act if Mrs Newton could rely upon an injury for which cover has been declined as a ground to obtain entitlements in respect of a different covered injury.
>
> [24] As both Mr Sara and Mr Hunt noted the attempt to rely upon the Lake Hayes incident gives rise to a situation very similar to that which was considered by His Honour Judge Ongley in *Medwed v Accident Compensation Corporation*. The appellant in that case attempted to rely upon an injury that allegedly occurred in 1994 (and which was subsequently declined by the Corporation) to support an application for surgery made in respect of a 2007 covered injury. Of relevance to the present case Judge Ongley concluded:
>
> > [26] The deciding point is however the status of cover under the Act. No cover had been obtained for the 1994 injury. The best medical opinion for the appellant was that the sole cause was the 1994 injury, and that it was unlikely that the later covered injuries were causative of the condition requiring surgery. I have rejected the argument that a treatment entitlement could be obtained without first obtaining cover for the specified injury. I find that even if the condition resulted from personal injury caused by accident in 1994, there is no entitlement without cover for that injury…
>
> [25] In the hearing before me Mr Sara suggested it was perhaps time for *Medwed* to be revisited. Given the conclusions I have reached in respect of the scheme of the Act I disagree, and instead consider that Judge Ongley quite

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17 *Ellwood v Accident Compensation Corporation* [2007] NZAR 205.

18 *Furst v Accident Compensation Corporation* [2011] NZACC 379. See also *Ellwood v Accident Compensation Corporation* [2012] NZHC 2887; and *Booker v Accident Compensation Corporation* DC Huntly 205/00, 17 August 2000.

19 *Newton v Accident Compensation Corporation* [2015] NZACC 22.

20 *Medwed v Accident Compensation Corporation* [2009] NZACC 87.

> correctly set out the law as it stands, and in my view there can be no basis for any different conclusion.

[110] In *Popoalii*,[21] Judge Henare stated:

> "[24] … before the medical evidence adduced by both parties after the Corporation's decision can be considered, this Court must first be satisfied that the Corporation had a sufficient basis to be not satisfied that Mr Popoalii had a right to continue to receive entitlements at the time the decision to suspend was made. Only if this can be established does the Court then consider whether there remains a sufficient basis to be not satisfied having regard to all the evidence now before the Court.
>
> [25] … for the Corporation to be satisfied as to whether a claimant remains entitled to an entitlement, the starting point is clearly s 67 of the Act…
>
> [26] … entitlements can only be suspended under s 117(1) if either of the two requirements in s 67 are not, or are no longer, met.
>
> [27] With regard to the requirement under s 67(a) this is most often manifested when the covered injury is recorded as a sprain or a strain and the entitlement sought is for a more specific injury such as a rotator cuff tear or lumbar disc prolapse. In such situations, a causal inquiry is necessary to determine whether the tear or prolapse was indeed related to the injury for which cover was granted or whether the injury for which the entitlement is required occurred independently of the covered injury. Likewise, it is well established that a claimant cannot rely upon a non-covered injury to support a claim for entitlements, and in the absence of cover no entitlements can therefore flow.

Discussion

[111] The issue here is whether the Corporation's decision of 24 December 2018, which suspended entitlements on the basis that Ms Rankin's current condition was no longer the result of her personal injury of 13 April 2015, is correct. The Corporation is entitled to suspend Ms Rankin's entitlements if it is not satisfied, on the basis of the information in its possession, that she is entitled to continue to receive them.[22] Where the available evidence is in the balance or unclear, the "not satisfied" test is not met.[23]

[112] Ms Koloni, for Ms Rankin, submits as follows. Ms Rankin has never been certified as fit to work. In terms of the *Ellwood* test, the Corporation could not have had a sufficient basis to be not satisfied that Ms Rankin was entitled to continue to

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21 *Popoalii v Accident Compensation Corporation* [2018] NZACC 123.
22 Section 117(1) of the Act.
23 See *Furst*, note 18, at [13].

receive weekly compensation and access to treatment, and there was at least uncertainty. Ms Rankin's persistent pain is directly related to her covered injury, and any degeneration or deterioration in her condition is post-traumatic. There should therefore be reinstatement of her weekly compensation and access to treatment.

[113] The Court acknowledges the above submissions. However, the Court also notes the following evidence.

(a) On 29 September 2015, Ms Chivers, Orthopaedic Surgeon, noted that Ms Rankin's lumbar spine MRI had failed to show any significant spine pathology that would account for her ongoing proximal leg symptoms. In April 2016, Ms Chivers noted that an up-to-date MRI of Ms Rankin's lumbar spine had multi-level disc dehiscence and protrusions but without any nerve root compromise.

(b) On 27 April 2016, Mr Welsh, Orthopaedic Surgeon, noted that the perpetuation of Ms Rankin's pain was not one of an accident-caused problem, but was due to background wear and tear and degenerative features in the lower lumbar spine.

(c) On 29 August 2017, Dr Griffiths, Senior Medical Advisor, stated that Ms Rankin's apparent disc prolapse may have caused initial back pain and radiculopathy, but her ongoing pain demonstrated more of a central sensitisation pattern than a nerve root irritation pattern, although mechanical back pain had also been postulated.

(d) On 1 October 2018, Dr Griffiths assessed that any effect from a lumbar sprain would be expected to have resolved within 13 weeks of the injury, and Ms Rankin's current incapacity seemed to be unrelated to the initial injury in April 2015. Dr Griffiths added that this should be a covered injury of historical relevance, and there should be no ongoing entitlements related to it. Dr Griffiths reiterated that it was likely that Ms Rankin's persistent pain arose from a combination of mechanical back pain and an affective disorder, neither of which was a covered

injury. The Corporation's decision followed the receipt of this assessment by Dr Griffiths.

[114] In light of the above evidence, this Court concludes that the Corporation was entitled to suspend Ms Rankin's entitlements because it was not satisfied, on the basis of the information in its possession, that she was entitled to continue to receive them. There is substantial medical evidence that the effects from her covered lumbar sprain had long resolved, and that her current incapacity is unrelated to her initial injury in April 2015.

Conclusion

[115] This Court acknowledges that Ms Rankin has suffered very unfortunate health setbacks with negative consequences for her personal and working life, and that she continues to suffer from chronic pain resulting in loss of quality of life. However, this Court is required to make a decision based on the provisions of the Act as interpreted by the Courts, and on the weight of medical evidence available. In light of these considerations, the Court finds that the Corporation's decisions of 24 December 2018, revoking cover for injuries, declining mental injury cover, and suspending entitlements, were correct.

[116] The decision of the Reviewer dated 12 December 2019 is therefore upheld. This appeal is dismissed.

[117] I make no order as to costs.

P R Spiller
District Court Judge

Solicitors for the Respondent: Ford Sumner.