

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 97

ACR 89/21

UNDER THE ACCIDENT COMPENSATION ACT 2001

IN THE MATTER OF AN APPEAL UNDER SECTION 162 OF THE
ACCIDENT COMPENSATION ACT

BETWEEN ANGELINA RAPATINI
Appellant

AND ACCIDENT COMPENSATION CORPORATION
Respondent

Hearing: On the papers

Appearances: The Appellant in person
Ms Becroft for the Respondent

Judgment: 19 June 2023

**RESERVED JUDGMENT OF JUDGE C J MCGUIRE
[Leave to appeal to the High Court
S 162 Accident Compensation Act 2001]**

[1] The appellant seeks leave to appeal to the High Court against a judgment of Judge P R Spiller dated 6 April 2023.

[2] Section 162 of the Accident Compensation Act provides that a party to an appeal who is dissatisfied with the decision of the District Court as being wrong in law may, with the leave of the District Court, appeal to the High Court.

[3] In her submissions filed in support of her application, Ms Rapatini refers to her GP lodging an ACC 45 injury claim form for work related gradual process injury.

[4] She also refers to s 28 which deals with work related personal injury and to s 30 to personal injury caused by work related gradual process.

[5] She says that Judge Henare and Judge Spiller “overruling her classification and cover status of her work-related gradual process as lodged and overruling the legislation of jurisdiction that she is seeking cover under.”

[6] She refers to s 54 which deals with the responsibility of the Corporation to make reasonable decisions in a timely manner.

[7] She refers to s 55 relating to the responsibilities of the claimant to assist in the establishment of cover and entitlements. She also refers to s 56 which deals with the steps the Corporation takes to action claims for cover.

[8] She also refers to s 58 dealing with the effect of failure to meet time limits.

[9] She submits that ACC, the Review Authority and the District Court are deliberately overruling her work-related gradual process injury claim.

[10] The applicant goes on to refer to a number of what she describes as incorrect details including that it was in 2020 rather than 2017 when Dr Bahri lodged the ACC 45 form for Postural Scoliosis.

[11] She also says that she does not have a diagnosis for back sprain and did not present the back sprain in 2017 to Dr Bahri.

[12] She goes through a number of what she describes as incorrect details in the history of her dealings with ACC.

[13] In further submissions in support of her application for leave to appeal, she repeats the history of her claim and what she believes are ACC’s failures to process it.

[14] She provides a timeline of when things occurred in the course of her dealings with ACC. She records her own efforts to obtain specialist medical advice.

[15] In all, the applicant’s submission is 68 pages together with annexures.

Respondent's submission

[16] In her written submissions of 1 May 2023, Ms Becroft notes that the principles relevant to the exercise of the discretion to grant leave are discussed in *O'Neill*¹ where Judge Cadenhead DCJ held:

- [24] The Courts have emphasised that for leave to be granted:
- i The issue must arise squarely from “the decision challenged” e.g. *Jackson v ACC* unreported, HC Auckland, Priestley J, 14 February 2002, AP 404-9601; *Kenyon v ACC* [2002] NZAR 385. Leave cannot for instance properly be granted in respect of obiter comment in a judgment: *Albert v ARCIC* unreported, France J, HC Wellington, AP 287/01, 15 October 2002;
 - ii The contented point of law must be “capable of bona fide and serious argument” to qualify for the grant of leave: e.g. *Impact Manufacturing* unreported, Doogue J, HC Wellington, AP 266/00, 6 July 2001;
 - iii Care must be taken to avoid allowing issues of fact to be dressed up as questions of law; appeals on the former being proscribed: e.g. *Northland Cooperative Dairy Co. Ltd v Rapana* [1999] 1ERNZ 361, 363 (CA);
 - iv Where an appeal is limited to questions of law, a mixed question of law in fact is a matter of law: *CIR v Walker* [1963] NZLR 339, 354;
 - v A decision-maker's treatment of facts can amount to an error of law. There will be an error of law where there is no evidence to support the decision, the evidence is inconsistent with, and contradictory of, the decision, or the true and only reasonable conclusion on the evidence contradicts the decision: *Edwards v Bairstow* [1995] 3 All ER 48, 57;
 - vi Whether or not a statutory provision has been properly construed or interpreted and applied to the facts is a question of law: *Commissioner of Inland Revenue v Walker* [1963] NZLR 339, 353-354 (CA); *Edwards v Bairstow* [1995] 3 All ER 48, 57;
- [25] Even if the qualifying criteria are made out, the Court has an extensive discretion in the grant or refusal of leave so as to ensure proper use of scarce judicial resources. Leave is not to be granted as a matter of course. One factor in the grant of leave is the wider importance of any contended point of law: e.g. *Jackson* and *Kenyon* above.

[17] Ms Becroft notes that in dismissing the appeal, Judge Spiller recorded two areas where the Corporation's conduct appeared to have fallen short namely:

¹ *O'Neill v Accident Compensation Corporation* [2008] NZACC 250.

- a. The inadequate follow up after July 2020 in relation to the work-related gradual process claim; and
- b. The lack of further investigation between July and November 2020.

[18] She notes that the Court expressed the hope that the applicant would cooperate with the process to investigate the work-related gradual process claim by way of a medical case review.

[19] Ms Becroft refers to a number of assertions that the applicant makes in her submission and says:

- 2.30 The crux of the application is a belief that there has been systemic and wide spread collusion to deny the applicant the right to cover for a work-related gradual process injury.

[20] Ms Becroft submits that the applicant's claims are not supported by fact but more importantly not directly relevant to the leave application.

[21] She says that the issue of cover for a work-related gradual process or any investigation relating to that claim is not before the Court.

[22] She submits that the applicant does not identify any error of law in the District Court's decision.

[23] She submits that in the absence of any seriously arguable question of law, it is submitted that the leave application ought to be declined.

Decision

[17] Section 162(1) of the Accident Compensation Act 2001 provides:

A party to an appeal who is dissatisfied with the decision of the District Court as being wrong in law may, with the leave of the District Court, appeal to the High Court.

[24] In her submissions filed in support of this application, Ms Rapatini has diligently gone through the provisions in the Act that relate to injury and more particularly a work-related gradual process injury. It is clear in her submissions that she is most dissatisfied with ACC in

respect of how her claim for cover for work-related gradual process injury, in particular, has been handled.

[25] However, for the purposes of s 162, the Judge has to be satisfied on the balance of probabilities that the issue brought on appeal must arise squarely from the decision challenged; and/or that the contended point of law must be capable of bona fide and serious argument; and/or that the Judge's treatment of facts amounts to an error of law; and/or whether or not a statutory provision has been properly construed or interpreted and applied to the facts by the Judge.

[26] I am unable to identify any of these grounds in the applicant's submissions. She identifies no part of Judge Spiller as being wrong in law. Accordingly, I must dismiss her application for leave to appeal given the narrowness of the ground on which as she may appeal as provided in s 162.

[27] What is very clear from Ms Rapatini's submissions is that for her, ACC's failure to progress cover for her work-related gradual process injury, concerns her most.

[28] Judge Spiller was very mindful of this when he said at the end of his judgment:

[51] In making the above decision, this Court records its sympathy for Ms Rapatini's sense of frustration in relation to her dealings with the Corporation. This Court notes that there are two areas where the Corporation's conduct appears to have fallen short:

- (a) There appears to have been inadequate follow up on the Corporation's technical specialist's recommendation on 20 July 2020 that it was appropriate to confirm the basis of Ms Rapatini's claim as it appeared that she considered it to be a work-related gradual process injury claim; and that conciliation might assist with this and agreed next steps.
- (b) In the month preceding the Corporation's decision of 4 November 2020, the Corporation did not complete a medical case review or receive clinical comment on the claim; it appeared that the Corporation believed that it had requested further information from Ms Rapatini, however, in error, it had not.

[52] This Court notes that the Corporation has advised Ms Rapatini that it intends to arrange a medical review of her work-related gradual process injury claim, and, once it has completed its investigation, will decide whether it needs to issue a new decision. This Court observes that, should the Corporation make a decision on whether Ms Rapatini has cover for a work-related gradual process injury, this decision would attract and appeal rights. It is to be hoped that Ms Rapatini will cooperate with this process, in spite of her justifiable disappointment with the Corporation's handling of her case, so that her claim can be properly addressed and brought to a conclusion.

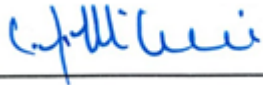
[29] Counsel for the respondent, Ms Becroft has understandably confined her arguments to the matter of issue namely whether the decision of the District Court is wrong in law. She does however acknowledge what Judge Spiller said at paragraphs [51] and [52] of his judgment when he recorded the Court's sympathy for Ms Rapatini's sense of frustration in relation to her dealings with the Corporation.

[30] Given the narrowness of the grounds for leave to appeal set out in s 162, I am left with no alternative but to decline Ms Rapatini's application for leave to appeal.

[31] However, I can only concur with Judge Spiller's comments at paragraphs [51] and [52] of his judgment that there needs to be engagement by ACC with the appellant to resolve the issue that is obviously extremely important to her, namely the issue of a work-related gradual process injury.

[32] For the forgoing reasons, I must decline her application for leave to appeal.

[33] Costs are reserved.



CJ McGuire
District Court Judge

Solicitors: Medico Law Limited, Grey Lynn