

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 76

ACR 111/22

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

Hearing: 11 May 2023

Held at: Wellington by AVL

Appearances: The Appellant is self represented
T Gee for the Accident Compensation Corporation

Judgment: 16 May 2023

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claims process – s 161(1), Accident Compensation Act 2001 (“the Act”)]

Introduction

[1] This is an appeal from the decision of a Reviewer dated 20 June 2022. The Reviewer dismissed an application for review of the Corporation’s decision dated 14 February 2022 setting out Mr Staniland’s entitlement to weekly compensation at \$640.00 gross.

Background

[2] Mr Staniland was previously employed by Boden Pipe Limited.

[3] On 30 April 2002, Mr Staniland suffered an accident. He was granted cover for “open wound of wrist with tendon involvement”, among other injuries.

[4] From 7 May 2002 until 24 August 2005, Mr Staniland was paid weekly compensation. His long-term rate of \$601 per week gross was calculated based on the three months he had been employed by Boden Pipe Limited.

[5] In 2005, Mr Staniland moved to Australia, and, on 24 August 2005, the Corporation issued a non-compliance decision.

[6] In 2012, Mr Staniland returned to New Zealand and requested that the Corporation reinstate his weekly compensation.

[7] Weekly compensation was initially declined but was reinstated in 2018. Mr Staniland’s weekly compensation was reinstated at the previously paid rate up to 2005.

[8] On 12 July 2021 Mr Staniland reported to the Corporation that his car had been stolen. Mr Staniland noted that it was a 2011 Audi A6 (C7) with an insured value of \$25,000.

[9] On 14 February 2022, the Corporation issued a payment letter to Mr Staniland setting out his long-term entitlement to weekly compensation at \$640.00 gross, being 80% of the then minimum wage of \$800 per week (an indexed increase on his previous compensation).

[10] On 8 March 2022, Mr Staniland sent an email to the Corporation to request a review. On 10 March 2022, the Corporation sent Mr Staniland an email setting out a break-down of his weekly compensation payments since 2002.

[11] On 10 June 2022, review proceedings were held, and were not attended by either party. On 20 June 2022, the Reviewer dismissed the review, on the basis that he was unable to conclude that the Corporation had incorrectly calculated the rate of Mr Staniland’s weekly compensation based on the information provided.

[12] On 29 June 2022, a Notice of Appeal was lodged.

[13] In October 2022, Mr Staniland made a request for further information as to the basis of calculation of his weekly compensation. On 22 November 2022, the Corporation provided its response, explaining how Mr Staniland's weekly compensation was calculated, including the process of indexation under the Act and the figures applied to that process.

[14] In October 2022, the Corporation also re-examined its calculations of Mr Staniland's weekly compensation. That re-examination resulted in the Corporation concluding that Mr Staniland's pre-accident earnings should be recalculated on the basis that the relevant number of weeks' earnings was 13.71, not 14 as had been used in the original calculations in 2002, pursuant to the decision of the District Court in *Ryan*.¹

[15] The above recalculation resulted in the Corporation issuing the following decision letters and consequent payments:

- (a) Letter dated 9 December 2022, providing revised weekly compensation calculations for the period 7 May 2002 to 4 March 2020: additional sum of \$7,573.85 (in addition to the sum of \$267,024.34 already paid).
- (b) Letter dated 20 December 2022: interest of \$2,503.63 for late payment in relation to the additional payment above.
- (c) Letter dated 20 December 2022, providing revised (increased) weekly compensation calculations for the period 6 March 2020 to 30 June 2021: additional sum of \$404.06.
- (d) Letter dated 19 January 2023: interest of \$21.74 for late payment in relation to the additional payment above.
- (e) Letter dated 2 March 2023, providing corrected weekly compensation calculations for the period 7 May 2002 to 4 March 2020: additional sum of \$3,771.13 in addition to the sum stated in (a) above.

¹ *Ryan v Accident Compensation Corporation* [2005] NZACC 199, at [50].

- (f) Letter date 1 March 2023: interest of \$1,713.39 for late payment in relation to the additional payment above.

[16] On 3 February 2023, Mr Staniland stated in his written submissions that he “must accept the current amounts as lawful and in line with current rulings”.

Relevant law

[17] Section 134 of the Act provides:

- (1) A claimant may apply to the Corporation for review of -
- (a) any of its decisions on the claim;
 - (b) any delay in processing the claim for entitlement that the claimant believes is an unreasonable delay;
 - (c) any of its decisions under the Code on a complaint by the claimant.

[18] Section 149 provides:

- (1) A claimant may appeal to the District Court against—
- (a) a review decision; or
 - (b) a decision as to an award of costs and expenses under section 148.

[19] Section 161(1) of the Act provides:

The court must determine an appeal by—

- (a) dismissing the appeal; or
- (b) modifying the review decision; or
- (c) quashing the review decision.

[20] In *Rasmussen*,² Judge Beattie stated:

[7] This Court in a number of its decisions has clearly identified that the extent of its jurisdiction in appeals lodged pursuant to Section 152 of the Act, or pursuant to the comparable provisions of its predecessor and successor, can only be a jurisdiction to consider the correctness of the decision which was first made by the respondent, and it is only the scope of the primary decision which can be the subject of review and then appeal.

² *Rasmussen v Accident Compensation Corporation* [2004] NZACC 340.

[8] In the present case, the respondent had not made any primary decision relating to the appellant's 1984 injury and whether or not any entitlements could or did flow to her from that injury and I rule that it is not open to this Court pursuant to the jurisdiction granted to it by Section 149 of the Act to expand its area of inquiry and come to a finding on any matter which was not the subject of a finding or decision by the respondent in the first instance.

[9] That does not mean to say that the District Court, in the course of its decision, cannot make an observation where it considers that evidence does disclose that there may be other avenues open to a claimant in relation to her entitlements, but it can do no more than make such an observation. It certainly cannot make a decision which would be binding on the respondent about which the respondent itself had not previously given consideration and made its own decision.

Discussion

[21] The issue in this case is whether the Reviewer on 20 June 2022 correctly confirmed the Corporation's decision on 14 February 2022 that Mr Staniland's entitlement to weekly compensation was \$640.00 gross.

[22] Mr Staniland accepts that the Reviewer correctly confirmed the Corporation's decision of 14 February 2022 that his entitlement to weekly compensation was \$640.00 gross. Mr Staniland also accepts that the question of whether the Corporation's use of the figure of 13.71, as the number of weeks' pre-accident earnings, does not affect the correctness of the Corporation's decision which was confirmed by the Reviewer.

[23] However, Mr Staniland considers that the Reviewer's reasoning leading to the decision to confirm the Corporation's decision was based on incorrect information at the time of the review decision. Mr Staniland also submits that the Corporation is responsible for the fact that his car was uninsured when it was stolen in July 2021, because the Corporation had underpaid him weekly compensation, causing him to be unable to afford to insure his car. Mr Staniland therefore considers that the Corporation is responsible for the fact that he was unable to replace his car when it was stolen. Mr Staniland further submits that the Corporation continues to make serious errors in respect of his payments, which have resulted in them dropping this year despite the rate rising, and that these errors have had serious financial and health impacts on him. Mr Staniland also needs assistance and training from the Corporation so that he may return to meaningful work and financial independence.

[24] This Court records its appreciation to Mr Staniland for the honest and ethical approach that he has taken in respect of his appeal. The Court also records its view that Mr Staniland has had good cause to be frustrated about certain aspects of the Corporation's performance in relation to him, as evidenced for example by the need to issue recalculations as to his weekly compensation payments.

[25] However, the extent of this Court's jurisdiction is restricted to considering the correctness of the decision which was made by the Corporation, and it is only the correctness of that decision which can be the subject of review and then appeal. It is not open to this Court to expand its area of inquiry and come to a finding on any matter which was not the subject of a finding or decision by the Corporation in the first instance.³

[26] Further, this Court is restricted in terms of the orders that it can make following an appeal hearing. Section 161(1) of the Act provides that the Court must determine an appeal by dismissing the appeal, or modifying the review decision, or quashing the review decision. In view of the fact that Mr Staniland has confirmed that the review decision was correct, this Court has no grounds to modify or quash the review decision in his case, and so the Court is obliged to dismiss this appeal.

Conclusion

[27] In light of the above considerations, this Court finds that Mr Staniland has not established that the Corporation, in its decision of 14 February 2022, incorrectly calculated his entitlement to weekly compensation at \$640.00 gross, based on the information available. The decision of the Reviewer dated 20 June 2022 is therefore upheld. This appeal is dismissed.

[28] I make no order as to costs.

[29] This Court notes, however, its finding that Mr Staniland has had good cause to be frustrated about certain aspects of the Corporation's performance in relation to him, as evidenced for example by the need to issue recalculations as to his weekly compensation payments. The Court considers it appropriate that the Corporation

address Mr Staniland's grievances through mediation or other conciliation process, and the Court hopes that Mr Staniland will avail himself of any such process if offered.

A handwritten signature in cursive script, appearing to read "P R Spiller".

P R Spiller
District Court Judge

³ See *Rasmussen*, above n 2, at [7]-[8].