IN THE DISTRICT COURT
AT WELLINGTON

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

[2023] NZACC 002 ACR 313/18

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

Hearing:	19 December 2022
Held at:	Ōtepoti/Dunedin
Appearances:	The Appellant in Person Mr H Evans for the Respondent
Judgment:	20 February 2023

RESERVED JUDGMENT OF JUDGE C J MCGUIRE
[Suspension of Entitlement s 72 and s 117(3) Accident Compensation Act 2001]

---

[1] The issue for determination is whether ACC was correct in its decision of 23 March 2018 when it declined Mr Williamson's entitlement to weekly compensation on the basis that he had unreasonably failed or refused to undergo an initial medical assessment.

Background

[2] On 2 March 2017, the appellant suffered a concussion as a result of being struck in the left temple region by a tine whilst raking hay on his brother's farm. Although he did not lose consciousness, the injury was significant. Following a visit to his GP several days later, he was referred to a concussion service.

[3] By letter of 5 May 2017, ACC confirmed that they had added mild traumatic brain injury as additional cover for Mr Williamson. This was based on receipt of a report dated 1 May 2017 from Dr John McVicar, a specialist in musculoskeletal pain medicine.

[4] Mr Williamson was assessed by Doctor Hegarty, consultant clinical psychologist, on 24 August 2017. Under the heading "Neuropsychological Summary", he recorded:

> Mr Williamson suffered what appeared to be a concussion during an accident on 2 March 2017. He reported no, or possibly, a very brief period of altered consciousness, and no identifiable post traumatic amnesia. Based on his reports, it appears at most he would have suffered concussion or a mild traumatic brain injury. I understand that this has been the medical opinion to date.

[5] Due to his slow recovery, he was referred for an MRI on 25 August 2017, which identified "no significant intracranial abnormality. Facial sinus disease, but this is more on the right side rather than the left".

[6] On 13 September 2017, Dr Robb carried out a medical case review. Under the heading "Current Diagnosis", Dr Robb concluded that the appellant's main problem was:

> … Variable persisting headaches affecting the left temporal region, the site of the laceration that occurred on 2 March 2017. An MRI investigation has been normal, and there is no tenderness over the area. Owen has now persisting constant unremitting pain in this region for over six months. It is disproportionate, given the absence of clinical or radiological abnormalities and his pain condition therefore meets the criteria for diagnosis of chronic regional pain condition.
>
> He also has long standing chronic fatigue syndrome (CFS), which appears to have been exacerbated by the incident of 2 March 2017, but which was pre-existing, and he has been diagnosed with irritable bowel syndrome.

[7] Dr Robb concluded Mr Williamson's chronic regional pain was directly related to the accident of 2 March 2017. He noted that his chronic variable fatigue was pre-existing for around 30 years, and although it appeared to have been exacerbated by the event of 2 March 2017, it was not caused by it. He concluded that Mr Williamson was unable to work in his pre-injury part time job as a firewood contractor and that he would benefit from referral to a pain specialist for better management.

[8] Mr Williamson was assessed by Dr Johnson, neurosurgeon, on 15 January 2018. In his assessment, Dr Johnson summarised his situation:

> The overall impression therefore is that the headaches are due to the head injury that he has had, and has developed some chronic pain issues …
>
> My recommendation is that he stays within the pain service for control of his headaches.

[9] Dr Anderson, pain specialist, reported on 29 January 2018. In his summary he said:

> Owen has a persistent (chronic) pain problem. Specifically, he has regional pain syndrome predominantly involving the frontal and left parietal regions of his head, with the main pain feeling as if it is located in behind his left eye.

[10] Doctor Anderson made the following recommendations:

- Medication trials to be managed by Owen's GP – Doctor Vern Smith, eg. slow release Ibuprofen and perhaps low dose of tricyclic analgesic.
- Physiotherapy to "gently mobile his cervical spine" using manual therapy and myofascial release.
- Encouragement to return to an aerobic exercise regime.
- Start his usual work activities, but start slow, and build up, ie. pace himself.

[11] On 22 January 2018, Dave Attwell, occupational assessor, completed an initial occupational assessment report (complex). Mr Attwell noted:

> Owen's interview was held at the CODC rooms in Ranfurly. Owen forgot the appointment, but attended promptly when phoned. The interview was 1.5 hours duration and Owen was helpful and cooperative throughout the assessment.

[12] In the course of the assessment, Mr Williamson acknowledged that he could undertake a number of the work types discussed.

[13] On 1 February 2018, ACC wrote to Mr Williamson and advised him that it had arranged for him to have an initial medical assessment with Dr Keith Murray on 2 March 2018.

[14] Mr Williamson replied by letter dated 7 February 2018 and advised that he declined to attend the initial medical assessment with Dr Murray. He advised that this was because of recent assessments from Drs Anderson and Johnson, which indicated that he had ongoing

failure to control his pain and other symptoms and he thought that an assessment would be "premature and inappropriate".

[15] ACC replied by email on 7 February 2018, saying that he was at risk of losing payment of his weekly compensation if he refused to attend the initial medical assessment.

[16] Mr Williamson responded by letter on 9 February 2018 saying:

> …
>
> Please note that my email dated 7/2/18 was not a refusal, but contained a request for postponement due to the timing.
>
> *Quote from letter: ("I confirm my intention to decline by way of postponement, the occupational assessment scheduled with a Keith Innes Murray for 2 March 2018"*
>
> *"The primary reason for this being that recent assessments by Doctor Michael Anderson (specialist physician in occupational medicine) and Doctor Rueben Johnson (neurosurgeon) demonstrate ongoing failure to control head pain and other factors, which mean an assessment at this time would be premature and inappropriate.")*
>
> I note that the proposed new appointment is earmarked for the much later dated of 20/3/18. As that is some five weeks away (in which time there could foreseeably be a significant improvement), I suggest you touch base with me early March to establish if the position described above has altered or not.

[17] ACC wrote to Mr Williamson again on 15 February 2018. The letter included the following:

> ACC is responsible to progress your rehabilitation to help you restore your health, independence and participation to the maximum extent possible (section 70 of the AC Act 2001). ACC have made a reasonable request to arrange these vocational assessments to help assess your ongoing rehabilitation needs, and assess what types of work may be sustainable for you in the future, fully considering the effects of your injury. It remains unclear if and when you will be able to resume your pre-injury employment role, hence we need further assessments to plan ongoing rehabilitation.
>
> If a client unreasonably refuses or fails to comply with the reasonable request, ACC can decline to provide any entitlement which the client is otherwise eligible, unless they do comply.

[18] Mr Williamson wrote to ACC again and requested a meeting to "clear the air and discuss any and all plans, matters and protocols going forward". Further discussions took place and it was agreed that a further meeting would be scheduled for 12 April 2018.

[19] On 12 March 2018, Mr Williamson again wrote to the case manager. The letter included the following:

> Proposed Meeting with ACC
>
> In regard to the proposed meeting between myself and ACC (yourself as case manager and a manager), I note that this meeting was not able to occur due to the inability of the office to commit to any of the proposed dates offered.
>
> As a follow up to this, I advise that I still wish this meeting to go ahead and advise for you to allow for an additional person (Cathy from the Brain Injury Association), who will attend in an advocacy/overview role.

[20] Mr Williamson's letter went on:

> Vocational Medical Assessment
>
> Of a more pressing matter, I draw your attention to the proposed assessment scheduled to occur with Doctor Martin Robb for 20 March 2018.
>
> I note that I have already cooperated with an initial phase of a vocational skills assessment, and that the above planned assessment is a vocational medical assessment meeting as part of the overall vocational independence process.
>
> I draw your attention to the ACC Act which provides for such an assessment to only occur when the rehabilitation plan is complete, and where vocational independence is "likely".
>
> I also draw your attention to the Supreme Court case of *McGrath v ACC*[1] where the Supreme Court decision of *McGrath v ACC* under section 110(3) of the Act 2001 clarified the Act as follows …
>
> "ACC must not require a claimant to participate in a vocational independence assessment unless the claimant is likely to achieve vocational independence, and not before the claimant has completed any vocational rehabilitation plan."
>
> …
>
> Accordingly, I assert that the commencement of the vocational independence process is inappropriate due to the above conditions not being satisfied.
>
> Furthermore, it would appear that the continuation of this process at this time would render you (ACC) liable as complicit to a breach of the Act, as clarified by the Supreme Court.
>
> Accordingly, I request that the proposed assessment be deferred until such time as the requirements of due process have been met.

[21] On 15 March 2018 the ACC case manager responded by email to Cathy Matthews, Mr Williamson's support person with the Brain Injury Association of Otago:

---

[1] *McGrath v Accident Compensation Corporation* SC 127/2010, [2011] NZSC 77.

Hi Cathy

Thanks for your email. I am glad that I was able to explain some things. I have booked a room for one hour on 12/04/2018, and I will talk to Claudine about another team manager to sit in on the meeting in her absence.

On his definitely NOT had an IMA yet. If he had, we would certainly not ask him to do another one. I have listed the assessments that he has had in date order below

…

I know it may seem like Owen has seen a lot of different people now, but this is due to the complexity of his injury, and the need to have several different experts involved for the concussion programme and then the pain management programme. Each person he has seen to date has a different expertise.

The IMA (initial medical assessment) as explained yesterday, is completely different from anything we have done to date. It will specifically look at what jobs identified in the initial occupational assessment are likely to be medically sustainable in the future following a period of rehab, and what type of rehab ACC need to put in place for Owen to be able to achieve this. This could be further hands-on treatment such as physio, and it could also include upskilling type of vocational rehab.

If we are unable to get the IMA underway, then it makes it very difficult to be able to move forward with rehab, and therefore we really do need Owen to attend the IMA on 20/03/18 with Doctor Martin Robb. I assure you that the IMA is only the start of the vocational independence process, and we wouldn't move any further until we are sure that ALL rehab has been completed after that.

[22] Ms Matthews responded by email the same day as follows:

Good morning Danielle

A very thorough explanation much appreciated. I will contact Owen later in the day in regards to the IMA.

[23] ACC's case manager followed up with an email to Mr Williamson the following day, Friday 16 March 2018:

…

In response to your letter dated 15/03/2018, if I have not explained it as well as I could have, then I apologise, however I do not see a contradiction in my statements, or certainly this was not my intention. If there is, I am simply trying to explain the process to you as best I can. The IOA and the IMA are the first steps of the vocational independence process. As per my earlier emails, you would then complete a period of vocational rehab before moving any further within the process.

Owen, you are correct – the IOA and IMA are part of the vocational independence process, and I have never (or at least not intentionally) tried to imply otherwise. The IOA and IMA are the first steps of this process, but any decision regarding your vocational independence cannot and would not be made until all of your rehab has been completed, and then you complete further testing following your rehab.

[24] ACC's case manager followed up with a further email to Mr Williamson and Ms Matthews on 16 March 2018:

> Dear Owen and Cathy
>
> Cathy, thank you for your earlier phone call and correspondence with regards to the IMA planned for 20/03/2018 with Doctor Martin Robb in Dunedin. I have had a chance to discuss this with my team manager, Claudine, and we believe that ACC's request for Owen to attend an initial medical assessment at this time is reasonable, and therefore we ask if Owen please attend this appointment on 20/03/2018 as initially planned.
>
> For the OIA and IMA, as per my previous email and explanations, has been put in place to help identify potential job options, based on Owen's transferrable skills, work history, qualifications and medical abilities. It will also identify what rehab ACC needs to put in place to turn a potential job into a reality. Without this assessment, we are unable to move forward and help Owen, and therefore it is a really important part of his rehab and responsibility while receiving ACC's assistance.

[25] Ms Matthews responded by email the same day, saying:

> The VIA role is about trying to improve communication and understanding and improve on the relationship between claimant and ACC.
>
> Because of previous interactions with ACC, Owen has developed a distrust of ACC. This is one of the reasons for the meeting on 12 April is to get clarity about the rehabilitation plan and future assessments, so Owen is not surprised and you, as ACC representative, are able to work through the process you need to.
>
> …
>
> While you provided an excellent explanation about the difference with the earlier one being a medical review, while the next is an IMA, that is not what Owen understood he was attending. After seeing the letter that Owen supplied last night, I can certainly understand his confusion about this initial medical assessment. The letter from ACC dated 8/9/17 clearly stated it was an independent medical assessment, it did not say a medical review. Can you please provide BIA with the report Doctor Robb has previously done.
>
> Because of this confusion, I request the assessment that is set for 20/3 with Doctor Robb is deferred until after the meeting planned for 12th April. This will allow all issues to be discussed properly and an agreed plan forward. I think this would be a good way of avoiding unnecessary litigation. Please advise ASAP if this is a possibility.

[26] Mr Williamson telephoned ACC the same day. ACC's report of that phone call is as follows:

> Client advised that he was required to attend an IMA this coming Tuesday. Client advised he was seeking to review this requirement, client was advised that this was not a decision, hence did not carry the right of review. Client was seeking how to extract a

> review decision from this. He advised that in the court case *ACC v McGrath* it was displayed that ACC could not request a client to enter into the VI process unless it is clear they could be vocationally independent, he believed in this case at this time he wasn't in that position. However this may change. Hence, ACC were in breach of the law and a Supreme Court ruling. Client accused me of not assisting him and being obstructive and quoted the code to me, he advised that he may take this to resolutions …

[27] On Monday, 19 March 2018, Mr Williamson again emailed the case manager raising a variety of matters, including the issue of travel costs to attend the appointment on 20 March 2018. This was responded to by Ms Hesson, team manager at ACC. Her response included the following:

> As we have discussed previously, you have completed the initial occupational assessment, and now we have arranged an initial medical assessment for tomorrow (that Danielle has arranged an emergency payment of advance travel funding for you to attend). This has been agreed after changing the provider at your request.
>
> These initial assessments form part of the vocational rehabilitation process, helping us understand what rehabilitation is needed for your covered injury to help your recovery, and to fulfil our obligations to provide sufficient rehabilitation to help you either back to your pre-injury employment type, or an alternate employment role, that suits your prior work experience and skills.
>
> You have referenced the *McGrath* case – this does not apply at this initial stage of vocational rehabilitation. Tomorrow's assessment is just part of the initial assessment phase of what is needed for your rehabilitation. Once the assessments are complete, we meet and discuss your options for suitable ongoing rehabilitation and agree on your rehabilitation plan moving forward. (I note your meeting scheduled for 12 April – but we are able to do this sooner if you prefer. We have sent a draft rehabilitation plan to be fully discussed and agreed on at our meeting, which can be amended, and added to depending on the rehabilitation needs that are assessed – I am happy that you defer signing this until we meet in person.)
>
> When your vocational rehabilitation has been completed, you would meet again with ACC and discuss that and discuss the final vocational independence assessment process (this is what the *McGrath* case relates to). We are not at this stage yet, and would fully discuss this at that point.

[28] Mr Williamson and Ms Matthews attended at Dr Robb's surgery in Dunedin at 9.00am on 20 March 2018. Mr Williamson presented the following document to Dr Robb and asked him to sign it. Ms Matthews' recollection is that the appellant said to Dr Robb "before you start, I have a letter of awareness to give you and if you can sign that would be great".

[29] The document read as follows:

NOTICE

Before you proceed with this assessment I have a moral obligation, if not a legal duty, to disclose the following to you.

It is my view that proceeding with this assessment breaches the Supreme Court ruling as set out below.

On the basis that is correct, I provide you with awareness to the possibility that continuing with the assessment may make you complicit in an illegal act.

It is not essential that you sign this statement as read (as I have personally provided it to you in front of the abovenamed witness, but signing it as read, would be appreciated, for my own records.

The following excerpts from correspondence to ACC capture the concerns well …

(a) (Concern number 1) I record that you have been referred to the Supreme Court clarification ruling addressing ACC procedure and requirements, that outline the requirements to be met before ACC initiate a vocational assessment procedure (*McGrath v ACC*). The two main requirements determined by the Supreme Court are that vocational independence must be "likely", and that the "rehabilitation plan" is complete.

(b) It is noted that your response to this concern (that you believe "independence is likely") has no basis in fact. Indeed, even simple pain control remains elusive.

(c) I note that the Supreme Court, in making its ruling, apparently referred to the complete process of initiating vocational assessment, not just the final vocational assessment, but I would be happy to be convinced otherwise if clarification from the Supreme Court provided a contrary view.

(d) It is noted that we agree that an "initial independent medical assessment" (IMA) is indeed part of the vocational independence process. This fact acknowledged by you, adds weight to the likely contempt of court should the assessment proceed on the scheduled date.

(e) (Concern number 2). I record that you have been reminded (in writing) that the execution of my rehabilitation plan is not completed, and that the completion of the rehabilitation plan is one of the pre-requisites that the Supreme Court clarified as necessary to initiate the vocational independence process.

I note you have completely failed to respond to this concern.

(f) You have also failed to indicate that you have followed due process by failing to take such action (as for example) seeking and providing legal, or Court opinion to satisfy the above two concerns surrounding the Supreme Court ruling.

(g) I must assume therefore you must either be in agreement with me to the meaning of the Supreme Court ruling, or have simply overlooked due process. I record that you have simply not responded to this concern.

(h) Accordingly, I repeat my request that these matters be addressed prior to the scheduled 20th March assessment, or

(i) In the absence of the comprehensive addressing of these concerns prior to the meeting occurring, I repeat my request that the purposed assessment scheduled for 20th March be postponed until they are addressed, in accordance with the ACC Code of Conduct and the Code of ACC Claimants Rights.

(j) I should have no need to remind you that flippantly breaching a ruling of the Supreme Court is a very serious matter that has the potential to bring ACC into disrepute.

I advise that response from ACC can be condensed to the following two points …

(1) That the rehabilitation plan that we have been working under these past weeks and is almost complete, is in fact not a rehabilitation plan (because it is not signed by me). Therefore the rehabilitation plan is complete, because the previous rehabilitation plan is complete.

(2) That the Supreme Court ruling does not apply to an IMA even though ACC has confirmed it is the first step in vocational independence process (refer to "C" above).

Read by Doctor Martin Robb

20 March 2018 …

Signed …

Signature witnessed Cathy Matthews …

Signed …

OR

Witnessed as served to Doctor Martin Robb …

Signed …

Date …

Time …

[30] Ms Matthews' statement of evidence goes on to say:

The Doctor had a brief look at the letter, said he wasn't going to sign anything that looked legal. He was a doctor there to help people, not a lawyer. The Doctor then asked BIA [Brain Injury Association] if they would sign and they also declined, advising that they had to get advice before signing anything potentially legal. Doctor made some comment about the previous assessment he had done being good and Mr Williamson agreed in part it was.

Owen accepted this, saying something along the lines of no worries, it doesn't need signed and said he was happy to proceed with the assessment

…

> Following that, Mr Williamson said very clearly again that he was happy to proceed with the assessment. Doctor replied that he wasn't prepared to continue with the assessment and indicated the appointment was finished, so we left.

[31] In his statement of evidence dated 10 October 2022, Dr Robb said:

> Mr Williamson and Ms Matthews arrived on time. Before any assessment could commence, Mr Williamson handed me a document that had the word "notice". He asked me to sign this two page legal document before the IMA assessment started. I could tell he had written the document himself.
>
> I read through it and it made reference to the IMA being illegal and that he might sue me for being complicit with some illegal activity.
>
> I explained to him that I was not willing to sign the document or to go ahead with the assessment. I explained to him that I am a doctor who helps people get better. I said I was not a lawyer and I did not feel comfortable in completing the assessment in the circumstances.
>
> My impression was that Cathy Matthews was not very happy with Mr Williamson.

[32] On 23 March 2018, ACC wrote to Mr Williamson confirming that his entitlements to weekly compensation would be suspended. The letter included the following:

> We advised you that we may stop providing entitlements on your claim if you did not attend your initial medical assessment (IMA) with Doctor Martin Robb on 20/03/2018 and you did not give a reasonable explanation for this. Doctor Robb was unable to complete the IMA with you and we consider your communication with him prior to the assessment was unreasonable …

[33] Further emails were exchanged. Mr Williamson responded to contend that he did not consider the notice to be unreasonable and that it was simply a "letter of awareness". He confirmed that it was Dr Robb who decided not to proceed with the meeting.

[34] Ms Matthews also confirmed with ACC that it was Dr Robb who made the decision not to proceed and that Mr Williamson should not be penalised.

[35] At the hearing of this appeal, at the appellant's request, extracts from a 2012 TV3 documentary programme on ACC were played. The portions played highlighted the allegation that ACC chose medical assessors to get the reports that they were looking for at the expense of the claimant. The excerpts also included portions of interviews with an ACC representative and a lawyer, Mr Schmidt, who practiced in the ACC jurisdiction and who was of the view that ACC "stacked" their assessors to get the reports that they were looking for.

[36] Following the playing of these excerpts, the appellant submitted that after that programme had been aired, Dr Robb had been identified as one who wrote reports favourable to ACC.

[37] Cathy Matthews from the Brain Injury Association of Otago, who attended the hearing with the appellant, provided a full statement of her dealings with the appellant, including her attendance with the appellant at the meeting with Dr Robb on 20 March 2018. She confirmed what occurred at the doctor's surgery and ultimately Mr Williamson said that he was happy to proceed with the assessment, but that Dr Robb was not prepared to continue with the assessment.

[38] It is clear that Ms Matthews and the Brain Injury Association of Otago have provided a great deal of support and assistance to the appellant, including acting as intermediary between the appellant and ACC. They are to be commended for this.

Appellant's Submissions

[39] Mr Williamson prepared for the hearing a document entitled "Verbal Court Statement Brief of Appellant Owen Donald Williamson". It details the circumstances of his accident and deficiencies in the care and treatment he received after the accident and the difficulties that he describes in dealing with ACC, which included an unsuccessful complaint on his part of bullying. He speaks of his treatment being truncated.

[40] He argues strongly that he did not decline to be examined by Dr Robb, and in closing he says that from his perspective, his entire rehabilitation was "wrongly stolen under cover of "process"". He concludes saying:

> I find the view that a triple accident victim, who was already compromised, can be allowed to become a multiple victim of a powerful State entity that can't seem to adhere to its own Act and ideals, to be untenable.

[41] The appellant finds fault with the case manager's letters of intention to suspend entitlements. He refers to section 117(2) which provides that the Corporation must give the claimant written notice of a proposed suspension within a reasonable time before the proposed starting date.

[42] He says:

> Having no knowledge of case management's alleged letter of intention to suspend, I requested a copy and received a historic letter warning of non-attendance.

[43] He says a compliant letter of intention to suspend has not been shown to exist. He notes that there was only three days between the appointment with Doctor Robb and the suspension.

[44] He submits that ACC's claim that he had "not participated" failed to reach the standard necessary under section 117 in order to invoke suspension.

[45] He says that it was not that the case manager did not have a remedy available to her, namely if she believed that he had breached the Act, she could have officially revoked the suspension acquired by "the untrue claim" and began to follow the suspension process as set out in section 117 by sending a fresh letter of intention to suspend and starting the suspension process over again.

[46] He submits that Dr Robb misrepresented the notice that he had presented to him at the appointment.

[47] Mr Williamson concludes:

> I find the view that a triple accident victim, who is already compromised, can be allowed to become a multiple victim of a powerful State entity that can't seem to adhere to its own Act and ideals, to be untenable.

Respondent's Submissions

[48] Mr Evans starts with pain specialist Dr Mike Anderson's report of 29 January 2018.

[49] The doctor acknowledged that the appellant had a persistent (chronic) pain problem and had a regional pain syndrome. Doctor Anderson made the following recommendations:

- Medication trials to be managed by the appellant's GP – Doctor Vern Smith.
- Physiotherapy to "gently mobilise his cervical spine".
- Encouragement to return to an aerobic exercise regime.
- Start his usual work activities, but start slow, and build up, ie. pace himself.

[50] Mr Evans submits that all of ACC's emails were courteous and that the reviewer found that ACC had said everything it could in terms of what needed to be done.

[51] Mr Evans submits that the misunderstanding was on the appellant's part, who thought that this was the end of the vocational independence process.

[52] Mr Evans said he does not doubt Mr Williamson's sincerity, but that the notice he presented to Dr Robb was misguided and had the opposite effect.

[53] Mr Evans says that in the circumstances an objective test is to be applied, namely, what would any reasonable specialist have done in the circumstances? He submits that such person would not wish to carry on with the assessment, given that included in the appellant's letter presented to Dr Robb on 20 March 2018 was the statement:

> … I provide you with awareness to the possibility that continuing the assessment may make you be complicit in an illegal act.

Further Submissions

[54] After the hearing had concluded, in an email to the registry and to Mr Williamson on 21 December 2022, Mr Evans said that had had wished to draw the court's attention to the case of Slight v ACC [2017] NZHC 2716. At the same time he provided a copy of the decision to Mr Williamson.

[55] Mr Williamson was provided with the opportunity to file further submissions and did so on 30 January 2023.

Decision

[56] What is not in dispute on this appeal is that the appellant suffered a severe accident on 2 March 2017, resulting in a concussive head injury as a result of being impaled while raking hay on his brother's farm.

[57] On 5 May 2017, ACC confirmed that it had added mild traumatic brain injury as an additional injury for cover for Mr Williamson. This was on the basis of receipt of a report dated 1 May 2017 from Dr John McVicar, musculoskeletal pain medicine specialist.

[58] The appellant, plainly an extremely intelligent man, has ranged "widely" in his submissions and in what he has presented to the Court, which has included excerpts from a 2012 documentary which drew attention to allegations that some of the medical professionals used by ACC were not objective in their reports and for mercenary reasons had a bias towards ACC's position.

[59] The appellant alleged that Dr Robb was one such.

[60] This allegation I find to be unfounded on the facts and evidence in this case.

[61] Dr Robb had provided a medical case review in respect of the appellant's injuries dated 13 September 2017. This review is referred to in some depth in Mr Evans' submissions and appears to be fair and careful. In that report, Dr Robb concluded that the appellant's main problem was:

> … Variable persisting headaches affecting the left temporal region, the site of the laceration that occurred on 2 March 2017. An MRI investigation has been normal, and is (sic) was no tenderness over the area. Owen has now had persisting constant unremitting pain in this region for over six months. It is disproportionate, given the absence of clinical or radiological abnormalities and his pain condition therefore meets the criteria for diagnosis of chronic regional pain condition.
>
> He also has long standing chronic fatigue syndrome (CFS), which appears to have been exacerbated by the incident of 2 March 2017, but which was pre-existing, and he has been diagnosed with irritable bowel syndrome (IBS).

[62] Dr Robb concluded that the appellant was unable to work in his pre-injury part time job as a firewood contractor and that he would benefit from a referral to a pain specialist for better management.

[63] Dr Robb's position appears to have been supported by that of Dr Anderson, pain specialist, who reported on 29 January 2018. Under the heading "Diagnosis" Dr Anderson said:

> Owen has a persistent (chronic) pain problem. Specifically, he has a regional pain syndrome predominantly involving the frontal and left parietal regions of his head, with the main pain feeling as if it is located in behind his left eye.

[64] Doctor Anderson made recommendations that may be summarised as:

- Medication trials to be managed by Owen's GP – Doctor Vern Smith, eg. slow release Ibuprofen and perhaps low dose tricyclic analgesic.
- Physiotherapy to "gently mobile his (Owen's) cervical spine" using manual therapy and myofascial release.
- Encouragement to return to an aerobic exercise regime.
- Start his usual work activities, but slow start, and build up, ie. pace himself.

[65] Following this, on 1 February 2018, ACC wrote to the appellant advising him that it had arranged for him to have an IMA with Dr Keith Murray, an independent medical specialist. The appointment was scheduled for 2 March 2018.

[66] Mr Williamson replied by letter dated 7 February 2018 and confirmed that he declined to attend the IMA with Dr Murray. He confirmed that this was because of recent assessments from Drs Anderson and Johnson that indicated that he had ongoing failure to control his pain and other symptoms and he thought that an assessment would be "premature and inappropriate".

[67] ACC advised the appellant by email on 7 February 2018 that he was at risk of losing payment of his weekly compensation if he refused to attend the IMA.

[68] ACC sent Mr Williamson a letter dated 7 February 2018 confirming that it had arranged for him to have an IMA with Dr Robb on 20 March 2018.

[69] The communications that followed between ACC and the appellant and vice versa between 7 February 2018 and 20 March, the date of the IMA appointment with Dr Robb is more fully set out in the background section of this judgment.

[70] I am unable to accept the appellant's criticisms of ACC in the lead up to his appointment with Dr Robb on 20 March 2018. I find the communications from ACC to Mr Williamson were courteous and fair.

[71] Next there is the notice that Mr Williamson presented to Dr Robb on 20 March 2018, (set out in full at paragraph 29 above) which in its initial paragraph said this:

> It is my view that proceeding with this assessment breaches the Supreme Court ruling as set out below.
>
> On the basis that is correct, I provide you with awareness to the possibility that continuing with the assessment may make you complicit in an illegal act.

[72] Towards the end of the notice was this:

> I should have no need to remind you that flippantly breaching a ruling of the Supreme Court is a very serious matter that has the potential to bring ACC into disrepute.

[73] Faced with this, and in spite of the appellant saying to the doctor that the assessment could nevertheless proceed, I find it is unreal to have expected Dr Robb to do anything other than what he did do, namely to call off the assessment. What else could a thinking person reasonably do in such circumstances, when told that to have proceeded meant breaching a ruling of the Supreme Court and that it was a very serious matter?

[74] In these circumstances, I find that the doctor's refusal to carry out the initial medical assessment was choreographed by the appellant and that, objectively, what the appellant did, set out to achieve this. And he was successful in that goal.

[75] I refer to *Parker v ACC*[2] where Judge Joyce QC considered an appeal where the appellant had refused to let an occupational physician undertake a physical examination, thereby thwarting the assessment. In assessing the claimant's conduct, His Honour stated:

> (39) Obviously enough, the Court's determination as regards reasonableness or otherwise of claimant conduct must be an objective one and thus not in any way held ransom to any particular, mayhap idiosyncratic, views harboured by an individual claimant.

[76] I agree with Judge Joyce's assessment and for the reasons set out above it I find that it applies to this case. Objectively therefore I find that the appellant bears sole responsibility for the initial medical assessment by Dr Robb not having occurred.

[77] I find therefore that the appellant breached his obligation under s 72(1) (d) of the Act to undergo assessment by a registered health professional specified by the Corporation, when reasonably required to do so.

[78] Three days later, on 23 March 2018, the respondent wrote to Mr Williamson thus:

> We have been reviewing your ongoing eligibility for weekly compensation.
>
> We advised you that we may stop providing entitlements on your claim if you did not attend your initial medical assessment (IMA) with Doctor Martin Robb on 20/03/2018 and you did not give a reasonable explanation for this.
>
> Doctor Robb was unable to complete the IMA with you, and we consider your communication with him prior to the assessment was unreasonable.
>
> We have now suspended your entitlement to weekly compensation effective immediately.
>
> We will restart your entitlements when you attend the initial medical assessment. Payment will only be backdated in exceptional circumstances.

[79] Notwithstanding the above findings, I also find that the Corporation's written notice to the appellant regarding suspension of his weekly compensation "effective immediately", failed to take account of section 117(2) which provides that the Corporation must give the claimant written notice of the proposed suspension or calculation within a reasonable period before the proposed starting date.

[80] To comply with s 117(2) I find that the respondent's notice should have provided for a reasonable period which, in the circumstances of this case I assess as 21 days, to elapse before the commencement of the suspension of weekly compensation.

[81] In the respondent's letter of 23 March 2018, no reasonable period was given before the suspension of his entitlement to weekly compensation.

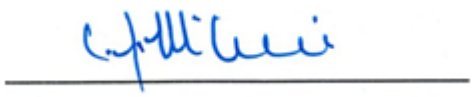
[82] Accordingly, this appeal is allowed to the extent that the commencement of the suspension of the appellant's entitlement to weekly compensation is changed from 23 March 2018 to 13 April 2018, resulting in the appellant being entitled to a further three weeks of weekly compensation. Such change gives the appellant a reasonable period before the proposed starting date of the suspension, as provided for by section 117(2).

[83] To this extent only, the appeal is allowed and ACC's decision of 23 March 2018 is amended accordingly.

---

[2] *Parker v Accident Compensation Corporation* [2013] NZACC 39

[84] Should there be any issue as to costs, the parties have leave to file memoranda in respect thereof.



CJ McGuire
District Court Judge

Solicitors: Hamish Evans, Barrister, Christchurch