

**IN THE DISTRICT COURT  
AT WELLINGTON**

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

**[2022] NZACC 112      ACR 135/21**

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

Hearing: 3 June 2022  
Held at: Auckland/Tāmaki Makaurau  
BY AVL

Appearances: J Pietras for the Appellant  
F Becroft for the respondent

Judgment: 14 June 2022

---

**RESERVED JUDGMENT OF JUDGE P R SPILLER**  
**[Claim for personal injury - ss 25-26, and suspension of entitlements – s 107,**  
**Accident Compensation Act 2001]**

---

**Introduction**

[1] This is an appeal from the decision of a Reviewer dated 14 May 2021. The Reviewer dismissed an application for review of the Corporation’s decisions:

- (1) dated 28 August 2020, suspending Ms Dixon’s entitlement to weekly compensation and vocational rehabilitation; and
- (2) dated 22 September 2020, declining to provide cover for Ms Dixon’s disorder of patella unspecified.

## Background

[2] Ms Dixon was born in 1988. She worked as a hairdresser.

[3] On 8 February 2020, Ms Dixon was lifting weights at a gym when she suffered an injury.

[4] On 13 February 2020, an ACC injury claim form was filed, noting that Ms Dixon pulled a muscle in her left leg. The diagnoses were a gastrocnemius (calf) sprain and an injury/muscle and tendon/lower leg level, both injuries said to have occurred on 8 February 2020.

[5] Ms Dixon received physiotherapy and chiropractic support. From 14 February 2020, physiotherapy notes recorded intermittent pain in the distal posterior aspect of the left thigh and intermittent numbness in the posterior aspect of the left thigh. On 18 February 2020, another physiotherapy note recorded that symptoms had improved, but that Ms Dixon felt pain more in the knee than in the thigh. From 18 February 2020, chiropractic notes recorded that Ms Dixon was doing a leg extension at the gym and was presenting with a sore right knee.

[6] On 6 March 2020, a telephone interview transcript of a conversation between Ms Dixon and the Corporation recorded the accident mechanism as follows:

I was doing an intense workout at the gym and the pain presented a few days after while I was at work. I was doing a full head of foils which require standing for like an hour and my left knee gave way and then I was limping throughout the day after then but worked the shift and finished 6.00 pm.

[7] Because symptoms persisted, Ms Dixon was referred for x-rays and an MRI scan. On 9 March 2020, an x-ray showed a joint effusion, no other signs of arthritis, no dislocation, no fracture and no focal body lesion.

[8] On 15 March 2020, Dr Stephen Delviso, Radiologist, noted that an MRI showed:

- (1) Hoffa's fat pad and prefemoral fat pad impingement;
- (2) high-grade chondral fissuring medial and lateral to patellar apex; and

(3) no evidence of a meniscal tear or MCL injury.

[9] Medical certificates were filed from around this time and weekly compensation payments commenced. Ms Dixon was referred for a stay at work programme.

[10] On 8 April 2020, Mr David Lyon, Orthopaedic Surgeon, reported, having reviewed the MRI scan and spoken with Ms Dixon on the telephone. Mr Lyon noted that the MRI scan showed no abnormality of the ligaments or menisci of the knee, but that she had some fissuring on the under-surface of the patella with symptoms suggestive of patellofemoral pain. Mr Lyon advised he would arrange to see Ms Dixon again and examine the knee.

[11] On 19 May 2020, Mr Lyon reported again, having had the ability to examine Ms Dixon, who was still suffering from symptoms around the front of her knee. Mr Lyon anticipated that symptoms would improve slowly over time, with the mainstay treatment being activity modification and quadricep strengthening. He suggested a graduated return to work.

[12] On 10 June 2020, Ms Dixon's claim was reviewed by a Clinical Advisor, Mr Hamish Millward, Physiotherapist. He recommended seeking further comment from Mr Lyon in regard to the injury diagnosis.

[13] On 7 August 2020, Mr Lyon responded by email. He described Ms Dixon's condition as an aggravation of pre-existing patellofemoral cartilage damage, and assessed that it was likely that the patellofemoral damage noted on the MRI scan would have predated the injury and been made symptomatic by stress on the knee during gym exercise. Mr Lyon elaborated:

The original injury or condition which produced symptoms on the 8/2/20 is in my opinion, an aggravation of pre-existing patellofemoral cartilage damage. The symptoms and examination findings were consistent with patellofemoral pain and it is likely that the patellofemoral damage noted on MRI scan would have predated the injury and likely to have been made symptomatic by the stress on her knee during her gym exercise

The current diagnosis, at least at the time of my review on the 15/3/20, was one of improving patellofemoral pain. This differs from the original diagnoses on the ACC injury form which are documented as sprain left knee and leg, injury muscle and tendon lower leg, sacroiliac ligament sprain, lumbar sprain, and

sprain gastrocnemius muscle. At the time of my assessment there was no discussion or mention regarding lower back injury or sacroiliac joint sprain and therefore I cannot further comment on this diagnosis. There was no objective evidence of muscle sprain but, as mentioned above, evidence of patellofemoral knee pain. ...

The diagnoses of muscle leg and knee sprain have either resolved or were not clearly present at the time of my review as the diagnosis, in my view, supported by the MRI scan, was one of patellofemoral articular cartilage damage.

[14] On 21 August 2020, Mr Andrew Herbert, Orthopaedic Surgeon, reported that Ms Dixon had been struggling with anterior and medial knee pain on the left side after “overdoing things at the gym in February this year”. He also noted the near fullness chondral fissuring affecting both medial and lateral facets of the patella, associated with oedema affecting the upper and lateral aspect of the Hoffa’s fat pad. Mr Herbert made various recommendations to help minimise symptoms and said that he would review Ms Dixon again after an interarticular injection of a corticosteroid.

[15] On 24 August 2020, Mr Millward reviewed the file again. He advised that the diagnoses of muscle, leg and knee sprain (following the accident) had either resolved or were not clearly present at the time of his review, as the current diagnosis, supported by the MRI scan, was one of patellofemoral articular cartilage damage. He assessed that the original injury was an aggravation of pre-existing patellofemoral articular cartilage damage. He suggested that a suspension of entitlements be considered.

[16] On 26 August 2020, Ms Dixon’s file was reviewed by Gabe McGregor, technical specialist, who was of the view that there was sufficient basis for the Corporation to be not satisfied of Ms Dixon’s ongoing right to entitlement (which at that stage was limited to weekly compensation and vocational rehabilitation in the form of the stay at work programme).

[17] On 28 August 2020, the Corporation issued a decision, suspending Ms Dixon’s entitlements, on the basis that her ongoing symptoms were no longer causally related to injuries suffered on 8 February 2020.

[18] On 14 September 2020, Mr Herbert provided further advice to the Corporation. He described the nature of the initial accident event as significant and sudden, and

thought that the original injury could have caused damage to the retropatellar articular surface. He also thought that it was possible that the damage had been caused over time with gym work. Mr Herbert stated:

In answer to the fourth question it is impossible in my view to know whether this pathology was caused by the accident of 8 February 2020 or by repetitive irritation from the gym exercises or whether the excess loading is the cause of the problem but needless to say the knee was asymptomatic prior to a discreet injury described when Waverley had been a busy hairdresser without any difficulty and there are no other features in the knee to suggest a degenerative process so it is reasonable to consider the possibility that this pathology was caused by the injury reported.

[19] On 16 September 2020, Mr Millward reviewed Mr Herbert's further comment. Mr Millward did not think that Mr Herbert's advice was convincing and noted that it relied heavily on a temporal link. The claim was then reviewed again by a technical specialist, who also did not think that the balance of medical information supported a link between the patellofemoral joint changes and the accident.

[20] On 18 September 2020, a further medical certificate was filed by Dr Angela Wong, GP, with additional diagnoses including Hoffa's fat pad impingement, chondral fissuring, and a disorder of the patellar apex.

[21] On 22 September 2020, the Corporation issued a further cover decision, declining cover for a disorder of the patella unspecified (Hoffa's fat pad impingement and chondral fissuring, medial and lateral to the patella apex). On 19 October 2020, Ms Dixon applied for a review of both the 28 August 2020 and 22 September 2020 decisions.

[22] On 3 December 2020, Dr John Malloy, Musculoskeletal Specialist, provided a report to Dr Wong. Dr Malloy suggested that the MRI scan revealed a tear of the medial meniscus and that arthroscopy was indicated, noting the reported history of injury with an immediate onset of pain and no history of previous injury to the knee. On that basis he arranged a referral.

[23] On 2 February 2021, Mr Kevin Karpik, Orthopaedic Surgeon, reported that Ms Dixon had patellofemoral pain rather than meniscal symptoms, and interpreted the MRI scan as showing only minimal medial meniscal pathology. Like Mr Lyon,

Mr Karpik did not think that there was any good surgical solution for the problem. He recommended that Ms Dixon stay active.

[24] On 20 April 2021, review proceedings were held. On 14 May 2021, the Reviewer dismissed the reviews, on the basis that Ms Dixon's patella disorder was not caused by the accident event of 8 February 2020 but was rather rendered symptomatic by that event; and that, when the Corporation suspended Ms Dixon's entitlements, it had sufficient information to be not satisfied that she should continue to receive the entitlements.

[25] On 4 June 2021, a Notice of Appeal was lodged.

[26] On 15 December 2021, the Corporation's Clinical Advisory Panel ("CAP") reported. The CAP comprised four Orthopaedic Surgeons, an Occupational and Environmental Medicine Specialist, and a General Surgeon. The CAP concluded that a causal link between Ms Dixon's patellofemoral joint pain and the February 2020 accident could not be established, and that the injuries suffered in the accident had resolved. The CAP agreed that the diagnosis as at August 2020 was patellofemoral joint pain related to cartilage damage on the under-surface of the knee cap. The CAP noted that there was no evidence of an acute patellofemoral joint injury and suspected that the joint pain was caused by biomechanical stresses over a long time.

[27] The CAP further noted that the evidence contemporaneous with the accident did not suggest any acute patellofemoral joint injury (there would be a clear history of anterior knee injury, with pain, swelling and tenderness at the front knee, which were not present here); initial symptoms appeared to have been reported in the leg rather than the knee; the patellofemoral condition would have been caused by biomechanical stresses over a long time; and the accident mechanism was not consistent with acute damage to the patellofemoral joint.

[28] In an undated report, Dr John O'Neill, Radiologist, having reviewed the March 2020 MRI scan, reported:

Chondromalacia is often progressive and the symptoms occur late. Patella alta is one of the most common imaging findings associated with patella maltracking. Fat pad oedema suggests impingement, which can be related to patella mal tracking. Although the exact age of the findings in the knee cannot be assessed, the underlying changes could be accelerated by overuse or trauma. In this case according to the history, the patient was exercising at the gym 5 days a week, which could exacerbate the process and lead to the sudden onset of symptoms. In particular, the patella cartilage fissure and fat pad oedema might be acute injuries superimposed on a chronic process.

### **Relevant law**

[29] 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.

[30] 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.

[31] In *Johnston*,<sup>1</sup> 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:

“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.

---

<sup>1</sup> *Johnston v Accident Compensation Corporation* [2010] NZAR 673.

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.

[32] In *Ambros*,<sup>2</sup> 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 ...

[33] In *Furst*,<sup>3</sup> 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).

<sup>2</sup> *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

<sup>3</sup> *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.



[14] Section 26 of the Act defines “*personal injury*” as physical injuries suffered by a person. Personal injury caused “*wholly or substantially*” by a non-work gradual process, disease, or by the ageing process is excluded. 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 injury caused by the accident and not the injury that is the continuing effects of the pre-existing degenerative condition that can be cover: *MacDonald v ARCIC* [2002] NZAR 970, at 26.

[15] There must be a causal nexus between the covered injury and the condition of the claimant for which entitlements were sought at the time of ACC’s decision to suspend or decline entitlements: *Milner*.

[16] Causation cannot be established by showing that the injury triggered an underlying condition to which the appellant was already vulnerable, or that the injury accelerated the condition which would have been suffered anyway: *Cochrane v ACC* [2005] NZAR 193.

[34] In *Gallagher*,<sup>4</sup> Judge Beattie stated:

[34] ... where a pre-existing degenerative condition is compromised by some act or event which brings about a change in its state, then that condition can be accepted as a personal injury.

[35] In *Popoalii*,<sup>5</sup> Judge Henare stated:

[38] ... An assessment of causation should be robust and provide clear medical reasoning whether the covered injuries have morphed into the new condition ..., and if they have resolved, explanation of their resolution ...

## Discussion

[36] The issues in this case are whether the Corporation had sufficient basis to suspend Ms Dixon’s entitlements, and whether Ms Dixon’s patella condition affecting her left knee was caused by a personal injury on 8 February 2020. The Corporation may suspend Ms Dixon’s entitlements if it is not satisfied, on the basis of the information in its possession, that she is entitled to continue to receive the entitlements.<sup>6</sup> The “not satisfied” test requires a positive decision equivalent to being satisfied that there is no right to entitlements, and this test would not be met where the medical evidence was in the balance or unclear.<sup>7</sup> A “personal injury” does not, in principle, include personal injury caused wholly or substantially by a gradual

<sup>4</sup> *Gallagher v Accident Compensation Corporation* [2010] NZACC 116.

<sup>5</sup> *Popoalii v Accident Compensation Corporation* [2018] NZACC 123.

<sup>6</sup> Section 117(1).

<sup>7</sup> *Furst*, above note 3, at [13]; and *Popoalii*, above note 5, at [38].

process or disease.<sup>8</sup> If medical evidence establishes that Ms Dixon had pre-existing degenerative changes which were brought to light or became symptomatic as a consequence of her 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.<sup>9</sup>

[37] Counsel for Ms Dixon submits that she suffered a personal injury by accident on 8 February 2020, being patella cartilage fissure and fat pad oedema, which were superimposed on a chronic process. Although there were some indications of progressive symptoms, Ms Dixon's knee injury was not caused wholly or substantially by a gradual or degenerative process. Two qualified specialists, Mr Herbert, Orthopaedic Surgeon, and Dr Malloy, Musculoskeletal Specialist, have indicated that the nature of Ms Dixon's knee injury was consistent with a sudden, traumatic event. This theory is in line with the findings of Dr O'Neill, an experienced Radiologist. Ms Dixon is therefore entitled to cover and to weekly compensation.

[38] This Court acknowledges the submissions and evidence presented on behalf of Ms Dixon. However, the Court refers to the following considerations.

[39] First, the medical evidence provided shortly after Ms Dixon's accident on 8 February 2020 indicated that Ms Dixon's injury from the accident was to her leg. On 13 February 2020, the ACC injury claim form noted that Ms Dixon pulled a muscle in her left leg, with diagnoses of a gastrocnemius (calf) sprain and an injury/muscle and tendon/lower leg level. From 14 February 2020, physiotherapy notes recorded intermittent pain in the distal posterior aspect of the left thigh and intermittent numbness in the posterior aspect of the left thigh. On 18 February 2020, another physiotherapy note recorded that symptoms had improved. It was only at this point that the physiotherapy note recorded that Ms Dixon felt pain more in the knee than in the thigh.

---

<sup>8</sup> Section 26(2).

<sup>9</sup> *Johnston* above note 1, at [12].

[40] Second, Mr Lyon, Orthopaedic Surgeon, who, from 8 April 2020, reviewed Ms Dixon's MRI scan, spoke with her and examined her, assessed (on 7 August 2020, prior to the Corporation's decision to suspend entitlements) that her original injury or condition, diagnosed as muscle leg and knee sprain, had either resolved or was not clearly present later. Mr Lyon advised that the injury which produced symptoms on 8 February 2020 was an aggravation of pre-existing patellofemoral cartilage damage which was later noted on the MRI scan.

[41] Third, Mr Millward, Physiotherapist, advised (on 24 August 2020, prior to the Corporation's decision to suspend entitlements) that the original diagnoses of muscle, leg and knee sprain (following the accident) had either resolved or were not clearly present later, as the current diagnosis, supported by the MRI scan, was one of patellofemoral articular cartilage damage. He assessed that the original injury was an aggravation of pre-existing patellofemoral articular cartilage damage.

[42] Fourth, the Corporation's Clinical Advisory Panel ("CAP"), comprising four Orthopaedic Surgeons, an Occupational and Environmental Medicine Specialist, and a General Surgeon, concurred with Mr Lyon's assessment. The CAP noted (on 15 December 2021) that the evidence contemporaneous with the February 2020 accident did not suggest any acute patellofemoral joint injury (there was no clear history of anterior knee injury, with pain, swelling and tenderness at the front knee); initial symptoms appeared to have been reported in the leg rather than the knee; the patellofemoral condition would have been caused by biomechanical stresses over a long time; and the accident mechanism was not consistent with acute damage to the patellofemoral joint. The CAP commented that the increased signal of the Hoffa's fat pad on Ms Dixon's MRI scan was a common, incidental finding and was not a contributor to her current presentation. The CAP concluded that a causal link between Ms Dixon's February 2020 accident and her patellofemoral joint pain and could not be established.

[43] Fifth, Mr Herbert's opinion on 21 August 2020, prior to the Corporation's decision suspending entitlements, did not provide a clear analysis of any causal link between Ms Dixon's February 2020 accident and her patellofemoral joint pain. Mr Herbert's later opinion, provided on 14 September 2020, was heavily qualified by

his observation that it was impossible to know whether Ms Dixon's pathology was caused by the accident on 8 February 2020, or by repetitive irritation from the gym exercises, or whether the excess loading was the cause of the problem. Mr Herbert's view extended no further than that it was reasonable to consider the possibility that Ms Dixon's pathology was caused by the accident.

[44] Sixth, Dr Malloy did not express a clear opinion on the issue of causation, and instead referred to Ms Dixon's history (as reported by her) of injury with an immediate onset of pain and no history of previous injury to the knee. Dr Malloy's interpretation of the MRI scan as revealing a tear of the medical meniscus was not supported by the assessment of Mr Karpik, Orthopaedic Surgeon, who considered that the MRI scan showed no meniscal pathology for which surgery would be beneficial.

[45] Seventh, Dr O'Neill's opinion was framed in terms of the suggestion that Ms Dixon's exercise at the gym could have exacerbated her condition and led to the sudden onset of symptoms, and that the patella cartilage fissure and fat pad oedema might be acute injuries superimposed on a chronic process. The suggestion that Ms Dixon's exercise aggravated her condition is in line with the views of Mr Lyon and the CAP.

## **Conclusion**

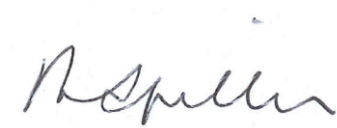
[46] In light of the above considerations, the Court finds that the Corporation had, on 28 August 2020, sufficient basis to suspend Ms Dixon's entitlements, as being not satisfied that she was entitled to continue to receive the entitlements. The Corporation had before it, medical evidence provided shortly after Ms Dixon's accident on 8 February 2020; the clear view of Mr Lyon, Orthopaedic Surgeon, taking account of an MRI scan, that her original injury or condition, had either resolved or was not clearly present later; and the supporting view of Mr Millward, Physiotherapist. The Court finds that this evidence clearly outweighed whatever limited insight on a causal link that could be drawn from Mr Herbert's opinion on 21 August 2020. By the time of the Reviewer's decision of 14 May 2021, there was also Mr Herbert's later heavily qualified opinion on a causal link, and Dr Malloy's

opinion did not express a clear view on the issue of causation. This evidence added little weight to Ms Dixon's case. The CAP's advice of 15 December 2021 serves to confirm that the Corporation's and the Reviewer's decisions were correct; while Dr O'Neill's opinion provides, at most, limited further support to Ms Dixon's case.

[47] This Court also finds that the Corporation's decision dated 22 September 2020, declining to provide cover for Ms Dixon's disorder of patella unspecified, was correct, in light of the above evidence.

[48] The decision of the Reviewer dated 14 May 2021 is therefore upheld. This appeal is dismissed.

[49] I make no order as to costs.

A handwritten signature in dark ink, appearing to read 'P R Spiller', is written over a faint, circular official stamp.

P R Spiller  
District Court Judge

Solicitors: Thomas Dewar Sziranyi Letts, for the Appellant.  
Medico Law for the Respondent.