

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2022] NZACC 235 ACR 28/22

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

Hearing: 30 November 2022
Held at: Wellington/Te Whanganui-a-Tara by AVL

Appearances: S McCann for Mr Waller
C Wood and J Sumner for the Corporation

Judgment: 6 December 2022

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Suspension of entitlements - s 117(1), decision made in error, s 65,
Accident Compensation Act 2001]

Introduction

[1] This is an appeal from the decision of a Reviewer dated 21 December 2021. The Reviewer dismissed an application for review of the Corporation's decision dated 19 August 2020 suspending Mr Waller's entitlements.

Background

[2] Mr Waller was born in 1957.

[3] On 19 December 2019, while installing an air conditioning unit at work, Mr Waller hurt his neck and back.

[4] On 23 December 2019, Mr Waller presented to Dr Penny Henley, GP, who lodged a claim for a neck sprain and described the accident as “stepped off ladder and jarred back”. On examination, there was no spinal tenderness in the back or neck. The following day the Corporation granted cover for a neck sprain.

[5] On 24 December 2019, Mr Waller was granted cover for his injury claim arising from the accident.

[6] On 13 January 2020, Dr Jason Cook, GP, referred Mr Waller to a General Practitioner with Special Interest (GPSI) for his thoracic spine pain. Dr Cook noted that Mr Waller injured his back at the same time as his neck and had added a claim for his back to his ACC claim. Dr Cook also recorded that Mr Waller had a history of similar issues. Cover was also granted for a thoracic sprain.

[7] On 14 January 2020, Dr Alan Tanner, Consultant Radiologist, reported on an x-ray of Mr Waller’s cervical and thoracic spine:

Thoracic spine: Alignment is normal and no fracture. There are large osteophytes right side of the thoracic spine from T4-T12. Also some anterior osteophytes and anterior longitudinal ligament calcification. Relative preservation of disc height. ...

Cervical spine: Minimal anterolisthesis C2 on C3 probably from facet arthrosis. Moderate to severe disc degenerate changes C4-5 greater than C5-6 greater than C6-7. Prominent posterior osteophyte C5-6, approximate 4-5 mm. Prominent anterior osteophytes, especially C6-7 up to 1.0 cm. Severe uncovertebral joint degenerative changes. Atlantoaxial joint is unremarkable. Prevertebral soft tissues are unremarkable. There is an abnormally long left styloid process and calcified stylohyoid ligament.

Impression:1. Marked cervical and thoracic spondylosis.2. Minimal anterolisthesis C2-3 is probably physiological. 3. Dominant posterior osteophytes cervical spine at C5-6.4. Query diffuse idiopathic skeletal hyperostosis.5. Long calcified stylohyoid ligament. Evaluate clinically for any evidence of Eagle syndrome.

[8] On 5 February 2020, Dr Ian Taylor, GPSI, assessed Mr Waller and noted:

Tony in his capacity of installing electric heat pumps was up a ladder cutting a hole in the ceiling to accommodate a new appliance. It was a little bit more

difficult than anticipated and when he stepped back off the ladder he jarred his neck to the extent that he went into instantaneous spasm and had discomfort along the entire length of his spine. With the passage of time this has improved but he is still left with some residual problems.

At present, he describes reasonable pain in his cervical spine and limited range of movement. If he rotates his head he and will often experience sharp paraesthesias shooting up either side of his occiput. There has been no significant distal involvement in terms of either hands or legs and he has had no major problems with his neck in the past.

The picture becomes slightly clouded here in that he did have what appeared to be about of impetigo which created generalised aches and pains and potentially he may have had a flare of his underlying psoriasis as well. ...

In terms of investigations he has had X-rays of both his lumbar and thoracic spine which reveal relatively widespread spondylitic change throughout but nothing overtly destructive.

Clinically, it is likely that Tony has stirred up pre-existing spondylitic change in his cervical spine but given the fact it is now approaching two months since the injury and he is still relatively incapacitated I have suggested that we obtain advanced imaging of his cervical spine to ensure that there is nothing of concern being missed here. ...

[9] On 11 February 2020, a back-to-work plan, progress and completion report was completed.

[10] On 20 February 2020, MRI of Mr Waller's cervical spine was read by Dr M A Junaid, Radiologist, who noted:

1. Degenerative changes in the cervical spine.
2. Canal narrowing from C4/5 to C6/7, most marked at C4/5.
3. Multilevel bilateral severe exit foraminal narrowing with probable compromise of multiple existing nerve roots.
4. Non-specific high T2 signal noted within the pons. Possibly secondary to arteriosclerosis. Correlation with any previous MRI of the brain is recommended. If none are available, an MRI of the brain is suggested to further assess.

[11] On 25 February 2020, Dr Taylor met with Mr Waller to discuss the MRI results. Dr Taylor noted:

... looking back through my original notes, essentially little has changed...

A review of the MRI reveals relatively widespread degenerative change. This is creating canal that narrowing at the C4/5 level extending down to C6/7. There

as a consequence is creating multilevel foraminal narrowing which is likely to be compromising exiting nerve roots at multiple levels...

As I've explained to Tony today, the emphasis now has to be towards better management. I have suggested that simple analgesia is probably not cutting it and he is happy to trial nortriptyline titrating the dose as his symptoms allow. Hopefully this should control his symptoms but given the degree of degenerative change, there remains the potential for problems in the future.

[12] On 16 March 2020, Dr Taylor wrote to the Corporation and advised:

Although I haven't caught up with Tony subsequent to the introduction of nortriptyline, I would however expect that physiotherapy should be helping as long as it is not aggravating symptoms then I would suggest continuing with it.

The MRI reveals a large degree of pre-existing spondylitic change which is anticipated given Tony's both age and profession. Nevertheless, that being said his symptoms were manageable until he jarred his neck when he stepped awkwardly off the ladder. As a consequence is fair to assume that he had an exacerbation of symptoms on the background of pre-existing change and hopefully his symptoms should settle to his preinjury level under the combined effects of time, appropriate medication and physical input.

[13] On 27 May 2020, Mr Waller had a telephone consultation with Mr Austin Enright, Spinal Surgeon. Mr Enright advised:

History of the current condition:

The patient is a 62-year old male with long-standing complaints of neck pain that worsened in December 2019 when stepping off a ladder. He has quite a difficult time managing his neck pain and has seen multiple GPs as well as the GPSI spine service. His complaint is centred mostly around axial neck pain, headache, and changes and/or loss of his smell and taste. He denies any pain into his arms or hands, or any difficulties with his upper extremity dexterity or lower extremity balance. His bowel and bladder are normal. ...

Diagnostic Tests & Imaging:

His MRI shows global degeneration of the cervical spine. There is canal narrowing from C4 down to C7, but no cord signal changes or significant impingement. At most levels from C4-C7 there is foraminal stenosis with possible compromise of the exiting nerve roots. Changes in the brain previously mentioned.

Specific Diagnosis:

This man likely had an exacerbation of his previous cervical spine degeneration. As he has no complaints of radiculopathy, or myelopathy, no surgery is likely to be of great benefit because of the global nature of his degeneration ...

[14] On 29 June 2020, a brain MRI was taken and read by Dr Pieter Daemen, Consultant Radiologist, who noted that there were no abnormalities.

[15] On 7 July 2020, Mr Morkel Swart, Physiotherapist, emailed the Corporation, advising that he had recently met with Mr Waller. Mr Swart noted that Mr Waller's neck movement had improved but headaches remained an issue.

[16] On 19 August 2020, Mr Stafford Thompson, Clinical Advisor and Physiotherapist, met with Mr Waller and stated:

As noted by Mr Enright and Dr Taylor, Mr Waller has experienced exacerbation of underlying/pre-existing cervical spine degeneration.

The client has evidence of global degeneration within the cervical spine, canal narrowing C4-7 and foraminal stenosis from C4-7. These represent longstanding and gradual process change which would substantially predate the described incident....

There is not a causal link [to the accident that occurred on the 19/12/2019]. The current diagnosis and cause of symptoms and dysfunction relate to the underlying and pre-existing cervical spine degeneration". ...

It often happens that the diagnosis of a sprain/sprain is an early working diagnosis, and that investigation and assessment reveals the true reason for continuing signs and symptoms. In this case the current diagnosis was determined to be that of an exacerbation of the underlying degenerative change within the cervical spine.

While it cannot be excluded that the claimant did suffer the said sprain, it is now clear is that the current signs and symptoms (and results of investigations) are no longer consistent with a sprain; would not have been caused by any of the mechanisms of accident identified, and are more likely being due to the non-accident related pathology as identified above.

This and the time since injury very strongly support any sprain as having long since healed. Clinical evidence does not support the cervical degenerative change or any further condition as having been caused by the index event, as a consequence thereof or as a result of personal injury.

[17] On 19 August 2020, the Corporation issued a decision suspending Mr Waller's weekly compensation and vocational rehabilitation on the basis that the medical information available showed that his current condition was no longer the result of his personal injury of 19 December 2019.

[18] On 24 December 2020, Dr Michael Koch, GP, met with Mr Waller and noted:

Tony sustained an injury to his neck in December last year and had been seen by Austin Enright, spinal surgeon for surgery on his cervical spine due to nerve irritation which affects his ability to work. The pain is getting worse and becomes more and more unmanageable. ACC has declined cover for the surgery but in my opinion is wrong. He didn't have any symptoms before the injury. There is some degeneration in his spine but the accident has aggravated the situation and now is getting severe. Since there were no symptoms before the injury his current pain and nerve problems are surely related to the injury and not to the degeneration.

[19] On 30 October 2021, Mr Thirayan Muthu, Neurosurgeon, following his examination of Mr Waller and review of the MRIs, stated:

Mr Waller is a 64 yr. old electrician, which sustained an injury when he stepped off a ladder on to a hard floor, quite heavily, causing a jarring pain in his neck and back which had progressed ever since then. Despite a variety of conservative measures he has persistent neck and shoulder pain with occipital headaches. MRI of the cervical spine has shown multilevel degenerative changes affecting the discs and also the facets. Mr Waller has had an aggravation of his underlying cervical degenerative conditions, as a result of the injury the 19th of December 2019.

Though he was initially diagnosed as a neck sprain, prior to the MRI scan, the injury was not purely in the soft tissues. The jarring of the cervical spine which already had degenerative changes resulted in activation of the pain receptors in the facets causing the neck pain and also caused irritation to the exiting nerve roots, passing through the already narrowed foraminae, causing paraesthesia in his hands. It has been noted that 19% of Patients with degenerative changes in the cervical spine remain asymptomatic, however, even a trivial injury can exacerbate or irritate the facet joints and the nerve roots in the right foraminae which can result in disabling axial neck pain or cervical radiculopathy. It is also an accepted fact that injury or any kind to the disc does accelerate the degenerative process.

In my opinion, though Mr Waller has pre-existing non-compensable degenerative change in the cervical spine, the injury of the 19th of December 2019, on a balance of probabilities, did cause an aggravation of the underlying degenerative process in the cervical spine, resulting in persistent axial neck pain and paraesthesia in his hands. The injury did not only cause an isolated soft tissue injury i.e. neck sprain.

[20] On 14 December 2021 review proceedings were held. On 21 December 2021, the Reviewer dismissed the review, on the basis that:

- (1) the Corporation had a reasonable basis to be not satisfied that Mr Waller's current incapacity was causally connected to his covered

injury, and so the Corporation had sufficient evidence to suspend Mr Waller's entitlements; and

- (2) the medical evidence from Mr Muthu did not show that Mr Waller's current symptoms were due to a covered injury.

[21] On 28 February 2022, a Notice of Appeal was lodged.

Relevant law

[22] 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.

[23] 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.

[24] 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.

[25] In *Bartels*,¹ 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 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 ...

[26] The Court has, on several occasions, accepted that the Corporation was entitled to revisit and revoke an earlier decision that it had made.²

[27] In *Atapattu-Weerasinghe*,³ 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.

¹ *Accident Compensation Corporation v Bartels* [2006] NZAR 680.

² *Stowers v Accident Compensation Corporation* [2009] NZACC 167; *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.

³ *Atapattu-Weerasinghe v Accident Compensation Corporation* [2017] NZHC 142, followed in *Singh v Accident Compensation Corporation* [2019] NZACC 102, at [112].

[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. ...

[28] In *Johnston*,⁴ 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:⁵

“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.

[29] In *Ambros*,⁶ 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 ...

⁴ *Johnston v Accident Compensation Corporation* [2010] NZAR 673.

⁵ *McDonald v ARCIC* [2002] NZAR 970, at [26].

⁶ *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

...

[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 ...

[30] In *Cochrane*,⁷ Justice Miller stated:

[25] An appellant may not establish causation simply by showing that the injury triggered an underlying condition to which the appellant was already vulnerable (the 'eggshell skull' principle) or that the injury accelerated a condition that would have been suffered anyway (the 'acceleration' principle).

[31] In *Furst*,⁸ 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).

[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.

⁷ *Cochrane v Accident Compensation Corporation* [2005] NZAR 193.

⁸ *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.

[32] In *Stewart*,⁹ Judge Barber stated:

[28] As the issue of causation is essentially a medical question, it must be determined with reference to medical evidence. Evidence provided by Mr Waller as to her symptoms and experience is, of course, useful and is required by the medical experts in order for them to make the appropriate determination. However, in itself, evidence by the appellant cannot establish the required causal link because Mr Waller is not medically qualified to determine the issue of causation.

...

[33] The cases consistently highlight that the question of causation cannot be determined by a matter of supposition. There must be medical evidence to assist the respondent Corporation, and now the Court, to determine that question. A temporal connection, in itself, will be insufficient. There needs to be a medical explanation as to how the ongoing condition has been caused by the originally covered injury. In this case the evidence does not establish this.

Discussion

Reasonable basis to suspend entitlements?

[33] The first issue in this appeal is whether, as at the date of the Corporation's decision, the evidence was sufficiently clear for the Corporation to be not satisfied that Mr Waller was entitled to continue to receive entitlements. Mr Waller was granted cover for neck sprain and thoracic sprain arising out of his accident on 19 December 2019. On 19 August 2020, the Corporation suspending Mr Waller's weekly compensation and vocational rehabilitation on the basis that the medical information available showed that his current condition was no longer the result of his personal injury of 19 December 2019.

[34] Section 117(1) of the Act provides that the Corporation may suspend 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. 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 evidence is in the balance or unclear.¹⁰

⁹ *Stewart v Accident Compensation Corporation* [2003] NZACC 109.

¹⁰ *Furst*, above note 8, at [13] (and the authorities cited there).

[35] Case-law states that, if medical evidence establishes that Mr Waller had pre-existing degenerative changes which were brought to light or which became symptomatic as a consequence of his 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.¹¹ Causation cannot be established by showing that the injury triggered an underlying condition to which Mr Waller was already vulnerable, or that the injury accelerated the condition which he would have suffered anyway.¹²

[36] Mr McCann, for Mr Waller, submits as follows. On a balance of probabilities there is more than enough evidence to indicate that Mr Waller's ongoing incapacity has been caused or contributed to by his accident on 19 December 2019. At the time the Corporation made the decision, it had the reports of Dr Jones, Mr Enright and the clinical advice. However, what none of those reports or advice took into account was whether this could be a fresh state of affairs. Additionally, there was no consideration of concurrent causation. Mr Enright is an orthopaedic surgeon, who very much deals with lumbar spinal difficulties and rarely, if ever, ventures higher than the thoracic spine.

[37] The Court acknowledges the above submissions. However, the Court notes that, at the time that the Corporation suspended Mr Waller's entitlements (19 August 2020), it had the following evidence at hand:

- (a) The report of Dr Ian Taylor, GPSI, dated 5 February 2020: Dr Taylor noted that Mr Waller recently had x-rays of both his lumbar and thoracic spine which revealed relatively widespread spondylitic change throughout but nothing overtly destructive. Dr Taylor assessed that, clinically, it was likely that Mr Waller had stirred up pre-existing spondylitic change in his cervical spine.
- (b) The report of Dr Ian Taylor, GPSI, dated 16 March 2020: Dr Taylor noted that a recent MRI revealed a large degree of pre-existing

¹¹ *Johnson*, above note 4, at [12] (and the authority cited therein).

¹² *Cochrane*, above note 7, at [25] and *Furst*, above note 8, at [16].

spondylitic change which was anticipated given both Tony's age and profession. Nevertheless, that being said, his symptoms were manageable until he jarred his neck when he stepped awkwardly off the ladder. Dr Taylor assessed that, as a consequence, Mr Waller had an exacerbation of symptoms on the background of pre-existing change.

- (c) The report of Mr Enright, Spinal Surgeon, dated 27 May 2020: Mr Enright noted that Mr Waller's MRI showed global degeneration of the cervical spine, and at most levels from C4-C7 there was foraminal stenosis with possible compromise of the exiting nerve roots. Mr Enright assessed that Mr Waller likely had an exacerbation of his previous cervical spine degeneration.
- (d) The report of Mr Thompson, Clinical Advisor and Physiotherapist, dated 19 August 2020: Mr Thompson noted that that the current signs and symptoms, and results of investigations, were no longer consistent with a sprain, would not have been caused by any of the mechanisms of the accident identified, and were more likely due to the non-accident related pathology. Mr Thompson assessed that this evidence, and the time since injury, very strongly supported any sprain as having long since healed; and did not support the cervical degenerative change or any further condition as having been caused by the index event, as a consequence thereof or as a result of personal injury.

[38] The Court concludes from the above evidence that, at the date of the Corporation's decision, the evidence was sufficiently clear for the Corporation to be not satisfied that Mr Waller was entitled to continue to receive entitlements.

Current symptoms due to a covered injury?

[39] The second issue is whether the evidence now before the Court is sufficient to establish the requisite causal relationship between Mr Waller's ongoing neck and back pain and his covered personal injury (as noted above in paragraph [35]).

[40] Mr McCann, for Mr Waller, submits as follows. The Court should adopt the assessment of Mr Muthu, Neurosurgeon. Mr Muthu's opinion, based on his speciality of neurosurgery, should be preferred to Mr Enright's opinion. The assessment of Dr Koch, GP, also provides support for Mr Waller's position. There is sufficient evidence before the Court to establish a causal relationship between Mr Waller's ongoing symptoms and the covered neck and back sprain arising from the accident.

[41] This Court acknowledges the above submissions. However, the Court notes the following considerations.

[42] First, the Court refers to the medical evidence above that Mr Waller's ongoing symptoms were an exacerbation of his previous cervical spine degeneration.

[43] Second, the Court notes that the report of Mr Muthu, Neurosurgeon, dated 30 October 2021, appears to support the findings of the above reports. Mr Muthu noted that Mr Waller had pre-existing non-compensable degenerative change in the cervical spine. Mr Muthu assessed that the injury of 19 December 2019 caused an aggravation of the underlying degenerative process in the cervical spine, resulting in Mr Waller's ongoing symptoms.

[44] Third, the report of Dr Koch, GP, dated 24 December 2020, also acknowledged that there was degeneration in Mr Waller's spine and the accident aggravated the situation. Dr Koch incorrectly posited that Mr Waller did not have symptoms before the injury, but this view is contradicted by the evidence in the reports of Dr Taylor and Mr Enright (see paragraphs [12] and [13] above).

[45] In light of the above considerations, the Court finds that the evidence now before the Court is not sufficient to establish the requisite causal relationship between Mr Waller's ongoing neck and back pain and his covered personal injury.

Conclusion

[46] In light of the above considerations, the Court finds:

- (a) As at the date of the Corporation's decision (19 August 2020), the evidence was sufficiently clear for the Corporation to be not satisfied that Mr Waller was entitled to continue to receive entitlements; and
- (b) The evidence now before the Court is not sufficient to establish the requisite causal relationship between Mr Waller's ongoing neck and back pain and his covered personal injury.

[47] The decision of the Reviewer dated 21 December 2021 is therefore upheld. This appeal is dismissed.

[48] I make no order as to costs.

A handwritten signature in black ink, appearing to read 'P R Spiller', written in a cursive style.

P R Spiller
District Court Judge

Solicitors for the Respondent: Ford Sumner.