

**IN THE DISTRICT COURT  
AT WELLINGTON**

**DECISION NO. 365/2004**

UNDER	The Injury Prevention, Rehabilitation and Compensation Act 2001
IN THE MATTER OF	an appeal pursuant to section 149 of the Act (Appeal No. AI 529/03)
BETWEEN	JOHN D HOWARD Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Submissions: Mr Howard for himself  
Mary Ahern for respondent

Judgment: 19 November 2004

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**JUDGMENT OF JUDGE D A ONGLEY  
ON THE PAPERS**

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[1] This judgment relates to jurisdiction to hear an appeal by an appellant who claims that he has the benefit of a deemed decision under s146 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.

[2] The Notice of Appeal states that Mr Howard filed an application for review on 7 July 2003. He says that a deemed decision arose by operation of s146 when a date for the hearing of the review was not set within three months after the review application was received by the Corporation.

[3] The Corporation says that there was no decision to go to review in the first place, that is to say that the application for review was a nullity because it did not

address a decision or question of delay by the Corporation under s134 of the Injury Prevention, Rehabilitation, and Compensation Act 2001:

**134 Who may apply for review**

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

[4] Mr Howard's review application was framed as follows:

Reason for review:

That ACC has failed to reinstate weekly compensation despite continued representations which have turned out to be false.

The applicant relies on various provisions of the Injury Prevention, Rehabilitation, and Compensation Act 2001.

The applicant relies on provisions in the New Zealand Bill of Rights Act 1990.

The applicant relies on provisions in the Crimes Act 1961 as amended.

The applicant relies on provisions in the Evidence Act 1908.

Relief Sought:

Reinstatement of weekly compensation forthwith.

[5] Whether there was a decision, or a delay, capable of submitting to review is not a matter that the Court can decide from the material on the file. The issue concerned reinstatement of weekly compensation. Weekly compensation had been reinstated in part in June 2003 following compliance with certain ACC requirements. It is not clear from the papers what other periods were in dispute.

[6] Whether or not there was a matter within the jurisdiction of the reviewer, Mr Howard's position is that a deemed decision in his favour occurred by operation of s146 after he filed the review application and when no hearing date was set by 7 October 2003, three months after the Corporation received the application.

[7] It seems unlikely that Mr Howard would want to appeal against a decision in his favour, which is what the deemed decision would be. His appeal is expressed as an appeal "for" a deemed decision. His complaint is against the alleged failure of the

Corporation to implement the deemed decision which he alleges arose by operation of law.

[8] In cases generally, there can obviously be difficulty in identifying what a deemed decision is, unless the review application relates to a specific decision letter. A deemed decision arising on a vague and unspecific application for review may be valueless.

[9] If there is a deemed decision in this case it seems to be a decision that weekly compensation is reinstated.

[10] If such a decision arises, it does so by operation of law. The Court cannot modify the deemed decision by declaring its terms. If the Corporation delayed or decided not to implement the claimed decision, then that itself could perhaps be a matter for review under s134. That is what Counsel for the Corporation submitted in a letter to the Court on 31 August in response to my minute of 11 August.

[11] There is no existing review decision to appeal from under s149:

**149 Who may appeal against review decision**

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

[12] As Mr Howard has pointed out in his submissions, s151(3) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 sets a time limit for appealing against a deemed decision on review. It must have been intended in the legislation that such an appeal could occur. Such appeals may well be confined to cases where there is an argument over contribution to the delay under s146(1)(b), or it may be that a deemed decision should be treated in the same way as a review decision.

[13] Despite s151(3), I consider there is no right for a person having the benefit of a deemed decision to appeal against that deemed decision. There is nothing that the

Court can do for a litigant who already has a decision in his favour. There is no jurisdiction to give directions modifying or enforcing the decision in question.

[14] I understand that Corporation's view to be that Mr Howard invented a decision in order to get a review hearing on general matters affecting the right of the Corporation to suspend entitlements for reasons of alleged non-compliance with requests for information.

[15] Mr Howard's argument would be that the Corporation could not have withheld entitlements without making a reviewable decision in the first place. That seems to be correct so far as it goes. It seems very likely that there must have been a reviewable decision at some point. But having attempted to obtain a review without reference to a specific written decision by the Corporation, Mr Howard is stuck with an alleged deemed decision on review. The effect of the decision, if there is one, cannot be identified.

[16] It may well be that if Mr Howard addresses to the Corporation a precise claim for entitlement arising from the alleged deemed decision, the Corporation may be compelled to make a decision, which he could then take to review if necessary. That would not necessarily open up the general matters in contention, but only an examination of the process and whether or not it resulted in a deemed decision.

[17] If Mr Howard chooses to make broad and general allegations, a possibility that is evident from the material on the file, the Corporation may well not be obliged to respond by making a reviewable decision.

[18] Since my minute of 11 August 2004, Mr Howard has filed a number of documents including applications for equitable or injunctive relief. He has outlined his position in those documents and has confirmed his submissions in an email of 11 November. He wants to have some substantive questions heard. But the jurisdictional question has to be decided first.

[19] I find that the Court has no jurisdiction to hear this appeal because there is no review decision against which Mr Howard could appeal. The appeal is therefore dismissed.

Signed at Wellington on 19 November 2004 at 2:45pm

Judge D A Ongley  
District Court Judge