

ACC COULD OWE YOU THOUSANDS OF DOLLARS

Now before you get too excited there is a caveat to the headline above,

1 Your covered injury must fall under the 1972 or 1982 Acts, and

2 Your Relevant Earnings were assessed on the basis of earnings as an employee.

Background

This concerns a Judgment of the High Court in April 1994 (*ARCIC v Lewis, HC 149, Barker J, HC Auckland*) which put ACC on notice that they had been misapplying the statute.

The Corporation's approach for the previous 20 years prior to the judgment had been to only include any employment benefit you received if your then employer had also declared said benefit to Revenue as a deduction against his income.

The High Court made it clear that this was not correct and stated that ACC was concerned with compensating people whereas Revenue was concerned with taking money off citizens.

Your declared income for tax purposes is only used exclusively to set Relevant Earnings for those who had been self-employed at the date of injury.

The High Court decision meant that, as an example, that if you share milked on a farm your employer may have provided you with a free house, free electricity and meat. These things have a value that should be included as part of Relevant Earnings and a fair value for these items needed to be assessed.

The Corporation knew or ought to have known the wider implications of the judgment when they decided not to Appeal which would certainly mean that thousands of claimants' assessments over the previous twenty years had been underpaid. Instead the Corporation chose to rely on people's ignorance of the decision even though they knew they had a statutory duty to pay people 80% of their loss of income.

Steps to take

You will need to see what details you can gather after such a length of time which may be difficult. Even if you can only confirm that a particular benefit was a standard part of your employment field, this would be helpful, just remember that it is the Corporation who has put

you in this prejudiced situation by not investigating or even letting you know about the judgement in 1994

Once you have whatever information you can gather send it in to ACC with a copy of the judgment and explain that their original Relevant Earnings decision is wrong and ask them to correct the decision and sort out the back payment. If they agree to the adjustment you will receive a lump sum and an increase in weekly payments if you are still less than 65 years old.

Be sure that in revising its decision that ACC apply section 390 as this is not a decision under the 2001 Act.

If ACC disagree with you, and will not revise, then you apply section 391 (2) & (4) in applying for a late review of the original relevant earnings decision. Make it clear to ACC that you are not applying for a late review under the 2001 Act where you have to prove extenuating circumstances.

Your late review must be heard under Part 5 of the 2001 Act which means that the review provisions of the 1972 or 1982 Act apply.

I would also point out that under the earlier Acts if the Review Officer gives you a positive decision ACC have no right of Appeal from that decision.

Good Luck

Just had a final thought for those who as part of their employment had been paying into a superannuation scheme. Any employer contribution is included as part of relevant earnings but also check the original C3 earnings sheet filled out by your employer. The reason for this is that the employers pay office would have deducted your own superannuation contribution from your gross wages due. This happens before any PAYE deduction which is the figure that may have been sent to ACC on the form which was used to calculate your 80% loss of income. The correct figure should have included the amount deducted for super as well.

Also think about legal representation from proper Compensation Lawyers – John Miller Law, Peter Sara, Andrew Beck and Phil Schmidt/Hamish Peart are the first to come to mind. They will also handle your interest claim as well.