SUPREME COURT OF QUEENSLAND

CITATION:	*Johnson v Workers' Compensation Regulator* [2019] QSC 264
PARTIES:	**ALANA DIANE JOHNSON** (applicant) **v** **WORKERS' COMPENSATION REGULATOR** (respondent)
FILE NO/S:	SC No 993/18
DIVISION:	Trial Division
PROCEEDING:	Application for a statutory order of review
DELIVERED EX TEMPORE ON:	27 September 2019
DELIVERED AT:	Townsville
HEARING DATE:	27 September 2019
JUDGE:	Holmes CJ
ORDER:	**The application for a statutory order of review is refused.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – REVIEWABLE DECISIONS AND CONDUCT – REVIEWABLE CONDUCT – where WorkCover Queensland initially accepted the applicant's claim for compensation for psychiatric injuries suffered during her employment at Townsville Hospital – where Townsville Hospital applied to the respondent Regulator for review of WorkCover's decision to accept the applicant's claim on the grounds that the decision was made without all relevant information, namely without the Hospital's investigation report – where the Hospital's application did not enclose said investigation report, only indicating that a copy of the report was forthcoming – where the Hospital investigation's report was later provided to the respondent Regulator, by which time the applicant argues the Hospital's application was out of time – whether the Hospital's application to the respondent Regulator met the requirements of s 542(5) of the *Workers' Compensation and Rehabilitation Act* (Qld) – whether s 542(5)(c) is to be construed as imposing a permissive or mandatory requirement on applicants to attach material documents to the application for review *Acts Interpretation Act* 1954 (Qld), s 48A(2) *Judicial Review Act* 1991 (Qld) s 20, s 30 *Workers' Compensation and Rehabilitation Act* 2003 (Qld), pt 2, s 539, s 540, s 541, s 542, s 543, s 545

COUNSEL: J A Greggery for the applicant
R H Berry for the respondent

SOLICITORS: Organic Legal for the applicant
Crown Law for the respondent

[1] This is an application for a statutory order of review under s 20 of the *Judicial Review Act* 1991 in relation to a decision of the Workers' Compensation Regulator to set aside a decision of WorkCover Queensland accepting the applicant's claim for compensation and to return the matter to WorkCover with directions. Those directions were, in effect, that an investigation report be provided to the applicant and further submissions in response to it be made by her and by her employer, the Townsville Hospital & Health Service, after which WorkCover was to make a fresh decision.

[2] The applicant's application was for compensation for psychiatric injuries suffered in her employment at the Townsville Hospital. It was accepted by WorkCover on 19 June 2018. On 19 September 2018, the Hospital applied to the respondent Regulator for review.

[3] The applicant contended that the Hospital's application to the respondent Regulator for review of the WorkCover decision was invalid because it did not meet the requirements of s 542(5) of the *Workers' Compensation and Rehabilitation Act* (Qld). She also advanced an argument that she had not been accorded procedural fairness by the Regulator. The Regulator has now repealed its own decision and proposes to make it afresh, giving the applicant the opportunity to make submissions. That means that there is no longer a decision which can be reviewed and the procedural fairness argument is obviated. However, it seems to me that the matter is appropriately dealt with as an application for review of conduct for the purposes of making a decision, that being the Regulator's acceptance of the Hospital's application.

[4] The object of the *Workers' Compensation and Rehabilitation Act* relevant for present purposes is to establish a workers' compensation scheme for the benefit of workers. Review by the Regulator of compensation decisions is governed by Part 2 of the Act. The object of the part, set out in s 539, is "to provide a non-adversarial system for prompt resolution of disputes". It applies to a range of decisions by WorkCover and self-insurers including the decision to allow an application for compensation,[1] and employers are among those who, when aggrieved by a decision may apply for a review of it.[2] Section 542 deals with the application for claim review, which must be made within three months after receiving written notice of the decision. Section 542(5) of the Act sets out the requirements for the application:

> "s 542(5) The application for review—
>
> (a) must be made in the approved form and given to the Regulator; and
>
> (b) must state the grounds on which the applicant seeks review; and
>
> (c) may be accompanied by any relevant document the applicant wants considered in the review …"

---

1 Section 540.
2 Section 541.

[5] The applicant may appear before the Regulator in person, and may make representations by telephone or other means of communication.[3] Section 545 sets out what the Regulator must do in relation to a decision:

> "s 545
>
> (1) The Regulator must, within 25 business days after receiving the application, review the decision and decide (the ***review decision***) to—
>
> (a) confirm the decision; or
>
> (b) vary the decision; or
>
> (c) set aside the decision and substitute another decision; or
>
> (d) set aside the decision and return the matter to the decision-maker with the directions the Regulator considers appropriate.
>
> (1A) The Regulator may act under subsection (1)(d) only if the Regulator—
>
> (a) has considered information that was not available to, or known by, the decision-maker when the decision-maker made its decision …

[6] There is an approved form for a claim review. Under the heading "Section 2 - Grounds for Review" it requires the applicant to identify the insurer decision of which review is sought and its date. It then sets out s 542(5) of the WCRA, followed by the observation:

> "This means you need to specify why you think the Insurer's decision is wrong and should be changed."

The next statement on the form is

> "If there are any documents relevant to your application which you wish to be considered then they must be provided with the application."

There is also a question,

> "Do you have additional material to support your review?"

[7] In the section for stating grounds, the document submitted by the Hospital contained these words:

> "approval I will be lodging a review with the Regulator requesting they review WorkCover's decision to accept Ms Johnsons[sic] claim. At the time of the original assessment an internal investigation was underway and the scope of the THHS response to WorkCover was considered.
>
> The purpose of the review is to allow the decision maker to have access to all the relevant information when reviewing and determining the claim.
>
> we will provide the internal report".

---

[3] Section 543.

The investigation referred to related to the applicant's complaints against her Line Manager for bullying, harassment and discrimination. It was conducted between September 2017 and March 2018 and an investigation report was delivered in June 2018.

[8] The respondent subsequently wrote to the Hospital noting the indication that a copy of the investigation report was to be provided. The Hospital forwarded the investigation report by email on 22 October 2018, a couple of days before the Regulator's decision was due, noting that it found that 15 of 16 allegations made by the applicant were unsubstantiated. The Hospital asked the Regulator to review the report and to give consideration to some further matters concerning the workplace to determine whether the applicant's injury was work-related or was a result of other factors. On the basis that it had considered information not available to WorkCover when it made its decision, the Regulator returned the decision to WorkCover for further investigation and decision.

[9] The applicant contends that the Hospital's application does not state grounds of review; it simply foreshadows an intended application to seek review on the basis of the investigation report. It does not identify any deficiency in WorkCover's decision. In written submissions it was said that the provision of an application without proper grounds was contrary to the legislative intention because it allowed the applicant to avoid articulating the complaint notwithstanding that written reasons were available to it, after it had already had the opportunity to provide evidence and make submissions and forced the Regulator to endeavour to identify the nature of the complaint and conduct a review which was impracticable in the available time. It meant that the applicant for compensation lost the opportunity of making submissions on the specific grounds. All of this was inconsistent with the object of promptly resolving applications for review and rendered s 542(5) ineffective.

[10] Critically, the application for claim review did not attach the document, the investigation report, which is to form the basis of the Regulator's review. Where the ground is that material was not considered by WorkCover, it follows that no review can be undertaken without that material. In considering the statutory intention in the context of the requirements of s 542(5) it was relevant to consider that the review function could not be commenced until the investigation was lodged, which both frustrated the statutory purpose of achieving prompt resolution of disputes and hindered the provision of natural justice to the applicant in this case. The requirement for provision of documents in s 545(2) was mandatory; the use of the word "may" simply recognised that it would not be applicable in all cases.

[11] In written submissions, reliance was placed on s 48A(2) of the *Acts Interpretation Act 1954* which provides that:

> "If a form prescribed or approved under an Act requires
>
> (a) the form to be completed in a specified way; or
>
> (b) specified information or documents to be included in, attached to or given with the form;
>
> …

> the form is not properly completed unless the requirement is complied with."

Its effect was that the application in this case was not properly completed.

[12] On the applicant's argument, the application for claim review was not made until the Hospital provided the investigation report with details of what it sought, by which time it was out of time.

[13] As a starting point in considering the statutory context in which the application for review was made, it is to be noted that the *Workers' Compensation and Rehabilitation Act* does not prescribe any particular grounds for review. The procedure is intended to resolve disputes promptly and in a "non-adversarial" way, suggesting a practical, non-technical approach. The approved form is plainly designed for use by people who are not lawyers, including workers who are applicants for compensation and whose benefit is the object of the Act. Those factors suggest that a relatively informal indication of why it is that the application for review is made will suffice. The Act does not limit review to circumstances where error can be shown. The power in s 545(1A) to return a decision to WorkCover when the Regulator has considered material not available to it suggests that the Regulator's power of review is at large and is not confined to error. The relevant part of the Act is designed for the resolution of disputes, suggesting that the applicant need do no more than raise some basis for arguing that a different decision should have been made.

[14] The significance of the Hospital's failure to attach the investigation report turned largely on whether the s 542(5)(c) reference to provision of material documents was permissive or mandatory. I consider that the former is the case. Firstly, if the legislature had wished to make it mandatory, the word "must" could have been used; the reference to "any" material document would still have made it clear that it was only applicable where such documents existed. Secondly, there is, I think, some risk of placing too much weight on the circumstances of this case in construing that provision. It must be remembered that documents may be material without being pivotal. Where the applicant relies on additional material as the basis for arguing for a different decision, obviously the imperative for their immediate provision to the Regulator is far greater. But the materiality of documents will be of varying degrees, and it will not necessarily be the case that the review process will be stalled without them. And s 545(6), which enables the Regulator to extend the time for decision if the applicant applies for time to provide further information, suggests that an applicant for claim review is not bound by what is forwarded with the application.

[15] This is a provision which deals with the form of an application in an informal process which will often be engaged in by lay people who may not appreciate the importance of the instruction to provide documents or perhaps have the technical skills to do so. The failure to provide identified documentation with the application does not promote prompt resolution, but it is unlikely to frustrate the Act. The Regulator is able, in an informal review process, to ask for the documents referred to. The problems in this case seem to stem, not from the fact that the documents did not accompany the application, but from the delay in asking that they be provided and the delay in their provision. The statement on the approved form to the effect that relevant documents must be attached appears to go beyond what I regard as the permissive statement in 542(5)(c) that such documents may be attached. Given that circumstance, I do not regard the failure to

attach the document as a substantial omission which would render the application non-compliant. I do not think that s 48A(2) of the *Acts Interpretation Act* is relevant; it refers to a requirement for "specified" documents. A broad reference to material documents does not seem to me to meet that description.

[16] I consider that inelegant and lacking in coherence as it was, the application conveyed the basis on which the Hospital contended that WorkCover's decision should be reviewed: that it did not have all the relevant information, not having had the benefit of the investigation report when it made its decision. It contained the information needed to indicate what the dispute was about. Whether it had merit was a different issue.

[17] My conclusion is that the Hospital's application was a valid application for claim review and was properly accepted by the Regulator. The application for a statutory order of review must be refused.