

Aghili v. WCAT

Decision Summary

Court	BC Supreme Court
Citation	2022 BCSC 717
Result	Petition Dismissed
Judge	MacDonald
Date of Judgment	04 May 2022
WCAT Decision Reviewed	A2100291

Keywords:

Judicial review - new evidence generally inadmissible - raising new issue generally not allowed - meaning of WCAT “panel” - allegations of bias unsupported by evidence - retaining or not retaining independent health professional is a matter of discretion - findings of fact supported by evidence are not patently unreasonable

Summary:

The petitioner filed a claim for compensation after the expiry of the one-year limitation period. The Board ruled that his explanations for the delay did not amount to special circumstances that precluded him from filing in time. On appeal, the WCAT panel upheld this decision.

On judicial review, the petitioner tendered new evidence in an affidavit. However, the court noted that the general rule is that new evidence is not admissible on judicial review. The court considered the affidavit as argument, but not as evidence.

The petitioner asserted that WCAT’s use of the word “panel” lead him to expect that his case would be determined by more than one person. However, section 285 of the *Workers Compensation Act*, RSBC 2019, c. 1, provides that panels consist of a single member unless the chair, or her delegate, orders otherwise. WCAT’s *Manual of Practice and Procedure* states in a non-binding directive that a decision to appoint a multi-person panel is based upon the complexity and significance of the case. If a government official makes representations within the scope of their authority to an individual about an administrative process, the government may be held to its word so long as the representations are clear, unambiguous, and unqualified. The court found that such was not the case here.

The petitioner alleged bias. Among other things, he alleged that the panel denied his appeal as a cost-saving measure. However, the court noted that claims costs are the responsibility of the Board, not WCAT, and there was no evidence to support any of his allegations of bias. While disappointment with an outcome is understandable, it cannot serve as a sound basis for an allegation of reasonable apprehension of bias.

The petitioner asserted for the first time on judicial review that the panel should have retained an independent health professional (“IHP”) to assist in assessing the psychological aspects of his

circumstances. However, the court noted that generally a petitioner will not be permitted to raise an issue on judicial review that could have been, but was not, raised in the appeal. Furthermore, retaining an IHP is a matter of discretion, and discretionary decisions of a tribunal are owed deference by a reviewing court. Such decisions are patently unreasonable only if the discretion is exercised arbitrarily or in bad faith, is exercised for an improper purpose, is based entirely or predominantly on irrelevant factors, or fails to take statutory requirements into account: *Administrative Tribunal Act*, RSBC 1996, c.1, ATA s. 58(3). None of these factors were present here.

As for the merits of the WCAT decision itself, the panel noted that the petitioner had two prior claims with the Board, and was therefore not completely unfamiliar with the claims process. During the material time period, he was able to pursue a complaint against his landlord with the Residential Tenancy Branch in a timely way; he was able to apply for employment insurance to assist with the gaps in his income; and he made an application for workers' compensation for another injury. Accordingly, there was evidence before the panel to support her conclusions, and therefore they were not patently unreasonable.