As of October 6, 2014, this decision is no longer considered by WCAT to be noteworthy.

WCAT Decision Number: WCAT-2005-05366
WCAT Decision Date: October 13, 2005
Panel: Herb Morton, Vice Chair

Introduction

The widow of the deceased worker seeks reconsideration of the September 3, 2003 Workers' Compensation Appeal Tribunal decision (*WCAT Decision #2003-02336-RB*, or the WCAT decision).

A submission dated July 6, 2005 has been provided on the widow's behalf by a lawyer (union representative). On July 19, 2005, WCAT's legal counsel advised this application would be considered on an expedited basis. She further provided the applicant with the *Applications for Reconsideration – WCAT Information Sheet*, and granted a further period for submissions. No further submission was provided. By letter dated August 30, 2005, the employer advised it would not be participating in this application.

The worker's death by suicide on January 17, 2001 followed his dismissal from his job on October 27, 2000. The parties subsequently pursued an arbitration process and reached an agreement on March 30, 2001. Under this agreement, the deceased worker was retroactively "reinstated" to his job as of October 27, 2000, the termination letter was rescinded, the employer's complaint to the worker's professional governing body was withdrawn, the employee's personnel file was sealed, and there was no admission of fault or liability by any party. The WCAT panel found that the phrase "arising out of and in the course of employment", as used in section 5 of the *Workers Compensation Act* (Act), does not include the termination of employment. The panel found that as the widow's claim did not meet the threshold test that the injury must arise out of and in the course of employment, it was not necessary to determine whether the employee's psychological injury was traumatically induced by the termination of his employment.

The widow's lawyer submits that the WCAT decision:

- involved an error of law in addressing an issue which was not before the WCAT panel;
- inappropriately refused to consider the merits of the widow's appeal; and,
- was patently unreasonable.

This application is brought on the common law grounds of an error of law going to jurisdiction, and not on the basis of new evidence under section 256 of the Act.

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Issue(s)

Did the WCAT decision involve an error of law going to jurisdiction?

Jurisdiction

Section 255(1) of the Act provides that a WCAT decision is final and conclusive and is not open to question or review in any court. In keeping with the legislative intent that WCAT decisions be final, they may not be reconsidered except on the basis of new evidence as set out in section 256 of the current Act, or on the basis of an error of law going to jurisdiction. A tribunal's common law authority to set aside one of its decisions on the basis of jurisdictional error was confirmed by the British Columbia Court of Appeal in the August 27, 2003 decision in *Powell Estate* v. *WCB (BC)*, 2003 BCCA 470, [2003] B.C.J. No. 1985, (2003) 186 B.C.A.C. 83, 19 W.C.R. 211.

The test for determining whether there has been an error of law going to jurisdiction generally requires application of the "patently unreasonable" standard of review. With respect to an alleged breach of natural justice, the common law test to be applied is whether the procedures followed by WCAT were fair (see *WCAT Decision #2004-03571*).

Effective December 3, 2004, the provisions of the ATA which affect WCAT were brought into force. Section 58 of the ATA concerns the standard of review to be applied in a petition for judicial review of a WCAT decision. Practice and procedure at item #15.24 of WCAT's *Manual of Rules of Practice and Procedure*, as amended December 3, 2004, provides that WCAT will apply the same standards of review to reconsiderations on the common law grounds as would be applied by the court on judicial review. Under section 58(2)(a) of the ATA, questions concerning the WCAT panel's handling of the evidence involve the patent unreasonableness standard, which is defined in section 58(3). Section 58(2)(b) of the ATA provides that questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly. On all other matters (i.e. jurisdictional issues), the standard of review is correctness (see *WCAT Decision #2005-01984*).

This application has been assigned to me by the chair on the basis of a written delegation (paragraph 26 of *55. 6*, "Delegation by the Chair", June 1, 2004).

Background

By decision dated May 23, 2002, the case manager, sensitive claims section, denied the widow's claim for benefits. He found that as the worker's death took place as a result of a labour relations dispute when he was no longer an employee, the claim must be disallowed as he was not a worker in the course of his employment at the time of his death.

On June 12, 2002, the widow submitted a request for an inquiry by a Medical Review Panel into the cause of death of the worker. By decision dated October 16, 2002, a medical appeals officer denied her request. The medical appeals officer advised that: "As the Case Manager's decision [of May 23, 2002] involves an application of law and policy, there is no medical question that can be referred to and resolved by a Medical Review Panel."

The widow also requested a manager's review of the May 23, 2002 decision. On October 9, 2002, a client services manager noted that paragraph two of the May 23, 2002 decision "may be in error, since it suggests that the claim was denied because the client was not an employee at the time of his death." She noted, however, that paragraph 3 went on to state that the claim had ultimately been denied because the adjudicator determined that the deceased was not a worker in the course of his employment at the time of his death. She concluded that while the deceased may have been an employee, she did not find that he was a worker. As well, she found that the worker's suicide did not result from an injury which could be said to have arisen out of and in the course of employment.

The widow appealed the October 9, 2002 and May 23, 2002 decisions to the former Workers' Compensation Review Board (Review Board). The workers' compensation appeal system was restructured effective March 3, 2003, pursuant to the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63). The former appeal bodies (Review Board, Appeal Division and Medical Review Panels) were replaced by an internal Review Division, and an external WCAT. Section 38 of the transitional provisions contained in Part 2 of Bill 63 provided that all proceedings pending before the Review Board on March 3, 2003 "are continued and must be completed" as proceedings pending before WCAT (except where the Review Board had already completed an oral hearing, or received final written submissions and begun its deliberations, prior to March 3, 2003). Accordingly, instead of being addressed by the Review Board (as the initial level of appeal), the widow's appeals were heard by WCAT (as the final level of appeal).

The widow initially requested an oral hearing. By letter dated September 18, 2002, her lawyer requested that the appeal proceed by way of written submission. By letter dated January 17, 2003, the widow's lawyer requested that the widow's appeals be expedited. She advised:

> This family, I can personally attest, has suffered the greatest degree of distress with firstly the unjust firing of [the worker] which led to his untimely death, his posthumous reinstatement at his place of employment and clearing of his record and the devastating shock of hearing that the Workers' Compensation Board did not consider he was an employee at the time of his death irrespective of the fact that the employer had entirely withdrawn the termination and considered that [the worker] had been a

> continuous employee with no interruption in his employee status whatsoever.

By letter dated April 11, 2003, the appeals coordination officer advised the parties that the panel wished to conduct a telephone pre-hearing conference to, among other things, clarify and discuss the issues in the appeal, and arrange a date and time for the hearing of the matter. By letter dated May 23, 2003, the appeals coordination officer advised that further to the May 15, 2003 pre-hearing conference, a further conference call would be held on June 5, 2003.

In a letter to the parties dated June 11, 2003, the WCAT vice chair provided a summary of the telephone pre-hearing conference held on June 5, 2003. The letter contained a detailed listing of matters which might need to be addressed in this appeal. On page 2, the letter noted:

> The participants agreed that the question of whether the worker was in the course of employment when he was dismissed should be adjudicated as a preliminary issue. If *he was not in the course then the claim will be denied. If he was in the course of employment a further* pre-hearing conference will be held, as soon as possible, after issue of the decision on the preliminary issue, to arrange for a statement of agreed facts, and for all other preliminary matters concerning the evidence that is to be adduced and the manner in which the hearing is to be conducted.
>
> (emphasis in original)

The June 11, 2003 letter referred to *Appeal Division Decision #98-0645*, and also attached a copy of *Appeal Division Decision #99-1987*. *Appeal Division Decision #98-0645* found as follows:

> Given the history and the purposes of worker's compensation we have concluded that the phrase "arising out of and in the course of employment" does not include the termination of employment. As a result, injuries arising from a dismissal are not compensable under the Workers Compensation Act and the worker must seek compensation through remedies available under labour and employment legislation and at common law.
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> (underlining in original)

On June 23, 2003, the widow's lawyer provided a written submission "to address the issue of whether a termination can be compensable" under the Act. This included submissions concerning *Appeal Division Decision #98-0645*. On June 25, 2003, the appeals coordinator disclosed this submission to the employer, which did not respond.

The WCAT decision was issued on September 3, 2003. On page 1 of the WCAT decision, the panel noted:

> The employer filed a notice of appearance but did not oppose the appeals. In the course of appeal management the parties agreed that for the appellant to succeed on her appeals she must first succeed on the preliminary question of whether the phrase "arising out of and in the course of employment", as it is used in section 5 of the Act, includes the termination of employment.
>
> Counsel for the appellant filed a submission dated June 23, 2003. The employer's counsel did not file a response. I adjudicated the issue without an oral hearing, based on a consideration of the claim file, the submission, and relevant law and cases.

The WCAT panel further noted, on page 4:

> I provided counsel with copies of two Appeal Division decisions that hold that the phrase "arising out of an in the course of employment" does not include termination of employment: *Decision No. 98-0645* and *Decision No. 99-1987*.
>
> (underlining in original)

While *WCAT Decision #2003-02336-RB* was made under Part 2 of Bill 63, rather than involving an appeal filed to WCAT under Part 4 of the Act, section 38(1) provided that such appeals "must be completed as proceedings pending before the appeal tribunal except that section 253 (4) of the Act, as enacted by the amending Act, does not apply to those proceedings." Accordingly, the related provisions regarding WCAT's decision-making authority applied, apart from the time frame for WCAT decision-making. The widow's lawyer has not raised any concerns with respect to the preliminary handling of the appeal.

Analysis

An application for reconsideration on the common law grounds concerns whether or not a valid decision has been rendered, or whether the decision should be set aside as void. In that event, the widow's appeal would be considered afresh by WCAT. I have considered this application from several perspectives as set out under the various headings below. While the analysis provided under these various headings overlaps to some extent, I have included the headings to provide focus regarding various aspects of the issues raised by this application.

(a) Applicable legislation

The widow's lawyer points out that section 5.1 of the Act did not exist at the time of the worker's death. It is evident that the WCAT decision was concerned with the wording of section 5(1) of the Act:

> Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

The WCAT decision did not refer to the wording of section 5.1 of the Act (which came into effect on June 30, 2002). There is no basis for considering that the WCAT panel made a jurisdictional error by applying the wrong statutory provision, and this is not alleged.

(b) Refusal to consider merits

The widow's lawyer submits that the vice chair "quite inappropriately refused to consider the merits of this case." I find that the WCAT panel made a decision on the merits. While it focused its consideration on one "threshold" issue of law and policy, this was a central issue concerning the merits of the appeal. As well, there had been an agreement with the parties (based on a telephone pre-hearing conference) that this issue should be adjudicated as a preliminary issue. It was clearly outlined in the June 11, 2003 letter by the vice chair, summarizing the pre-hearing conference, that a negative conclusion to this preliminary issue would result in the appeal being denied, while a positive finding would lead to further consideration of the merits in relation to additional issues.

(c) Issue before WCAT; notice to parties

The widow's lawyer argues that the vice chair "committed an error of law in that she addressed an issue which was not before her."

The vice chair's June 11, 2003 letter summarizing the telephone pre-hearing conference set out the range of issues the vice chair was prepared to address, but noted:

> Both parties indicated that if at all possible they would like to avoid having to introduce evidence concerning the allegations set out in the letter of dismissal, and the employer's investigation, and any determination concerning whether the allegations were correct. . . .

> The participants agreed that the question of whether the worker was in the course of employment when he was dismissed should be adjudicated as a preliminary issue.

The June 23, 2003 submission by the widow's lawyer commenced as follows:

> I am writing these submissions to address the issue of whether a termination can be compensable under the Workers Compensation Act.
>
> (underlining in original)

It may be that the wording used in the June 11, 2003 letter to describe the preliminary issue which would be addressed by the WCAT panel does not correspond precisely to the issue addressed in the WCAT decision. If this wording had caused the widow's representative to address a different issue than the one decided by the WCAT panel, there would be grounds to consider whether there had been a breach of natural justice. Having regard to the June 23, 2003 submission by the widow's lawyer, however, I find that it is clear that the representative was fully aware of the issue which would be addressed by the WCAT panel. While the wording of the June 11, 2003 letter may have been imprecise, it would appear that the nature of the issue had been made clear in the telephone pre-hearing conference, and disclosure of the prior Appeal Division decisions. Alternatively, the submissions regarding whether the worker was in the course of employment when he was dismissed involved one aspect of the central issue, which was whether an injury resulting from the termination of employment is one arising out of and in the course of employment. The written submissions by the widow's lawyer were precisely on point, in addressing the issue determined by the WCAT decision. I do not consider that there was any breach of natural justice or procedural fairness, in terms of the opportunity provided to the widow's representative to make submissions concerning the issue addressed in the WCAT decision.

(d) Patently unreasonable decision

In her July 6, 2005 reconsideration application, the widow's lawyer refers to her submissions to the WCAT panel regarding the fact that in the worker's case, the parties to the contract of employment agreed that the worker's employment was to be considered uninterrupted up until the date of his death. She submits the WCAT panel quite inappropriately refused to consider the merits on this basis. She refers to decisions by arbitrators which have held that reinstatement of a worker has the effect of insuring "continuous" employment. She submits that the rationale of the WCAT decision was patently unreasonable.

In *Speckling v. British Columbia (Workers' Compensation Board),* (2005) BCCA 80, accessible at: http://www.courts.gov.bc.ca/jdb-txt/ca/05/00/2005bcca0080err1.htm, February 16, 2005, the British Columbia Court of Appeal explained the effect of the "patent unreasonableness" standard of review (at paragraph 37):

> . . .a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable.

In *Administrative Law in Canada*, Third Ed. (Ontario: Butterworths, 2001), Sara Blake states at pages 191-192:

> Findings of fact are reviewable only if patently unreasonable. An unreasonable finding of fact is one that is not supported by any evidence. A court will not review the evidence considered by the tribunal to determine whether there was sufficient evidence to support a finding of primary fact. A court will go no further than to determine whether there was any evidence, and only essential findings of fact upon which the decision of the tribunal turns will be reviewed in this manner. Non-essential findings of fact are not reviewable.
>
> ...
>
> A patently unreasonable rejection of evidence or a refusal in bad faith to consider relevant evidence may be grounds for review. If a tribunal, without explanation, completely ignores important evidence, its decision may be set aside.

Section 58 of the ATA provides:

> 58 (1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
>
> (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable, . . .

(3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

It is necessary to consider, therefore, whether the WCAT decision was arbitrary, based on irrelevant factors, or "openly, clearly, evidently unreasonable".

The WCAT decision reviewed in detail the reasoning provided in two prior Appeal Division decisions. I note, in this regard, that the reasoning in those two decisions had been similarly followed in a third decision, *Appeal Division Decision #00-1041* dated July 11, 2000, which concerned the implementation of a Medical Review Panel certificate. In that case, the Appeal Division panel reasoned (paragraphs 106-107):

> There is some question as to whether the worker's knowledge of his loss of his job, which was a factor, would be a compensable cause of disability. We have considered #99-1987 and #98-0645 (unpublished but copies provided to the parties for their consideration). Those Appeal Division decisions reviewed the compensability of psychological disability which followed workers' reactions to dismissal from employment….
>
> Whether the worker is entitled to additional benefits as a result of the certificate is an issue on appeal. In turn that issue requires an assessment of whether the causal agents identified by the MRP are work related. Thus we consider that the compensability of any reaction to the termination of employment, while not previously addressed, is before us for adjudication. We accept the analysis found in the above noted Appeal Division decisions and find that such reactions do not arise out of and in the course of employment and are not compensable under the Act. As a result we do not consider that any of the other factors identified by the MRP create entitlement under the Act.

In *WCAT Decision #2003-02336-RB*, under the heading of "Analysis", the WCAT panel began by stating:

> I agree with and adopt the reasoning employed and the conclusions reached in Decision No. 98-0645 and Decision No. 99-1987.

The WCAT panel reasoned in part:

> And even if a claimant suffered a psychological injury due, not to the dismissal itself, but solely to the manner in which it was carried out, there would still be no escaping the fact that the injury arose from a contractual event, not out of the doing of the work or of other acts that were incidental to the doing of the work.

The WCAT decision reasoned, in the final paragraph prior to its conclusion:

> Last, the appellant's counsel suggested that to deny compensation benefits in this case would be to deny the employee's dependants coverage because of a period of difficulties between the parties, even though the difficulties were later resolved. **However, it is not because of the period of difficulties between the employer and the employee that compensation is not payable in this case. It is because the injury did not arise out of and in the course of employment, but rather from a contract event that actually took place, even though the contractual legal ramifications of it were later negated.**
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> [emphasis added]

This reasoning relates back to the reasoning expressed by the WCAT panel on page 9:

> A common theme tends to run through the various activities that the Board's policies, as set out in Chapter 13 of the RSCM, consider to be incidental to employment. Although some of these activities are considered generally to be in the course of employment, while others are only viewed as such in specific circumstances, they are all activities that either support the worker in being able to do the work, such as travelling to work, eating, using the bathroom - or assist in maintaining health or morale, such as working out or even horseplay - or activities that need to be done in order for the worker to be able to get paid, as in cashing a pay cheque. That is, they support the worker in some fashion in the doing of the work. Termination, on the other hand, is a purely contractual event. The act or event of termination does not support the doing of the work; it brings an end to the work.

Under the heading "Conclusion", the WCAT panel reasoned:

> I find that the phrase "arising out of and in the course of employment," as it is used in section 5 of the Act, does not include the termination of employment.

> As the appellant's claim does not meet the threshold test that the injury must arise out of and in the course of employment, it will not be necessary to adjudicate whether the employee's psychological injury was traumatically induced by the termination. Therefore the appeals are denied. The Board officers' denials of the claim are confirmed.

WCAT Decision #2003-02336-RB has been followed in subsequent decisions. *WCAT Decision #2005-03295*, dated June 23, 2005, was by the same WCAT panel. In this later decision, the panel found as follows:

> The worker's intrusive thoughts, anxiety, insomnia and distress began when he was sent home from work. A pattern of escalating symptoms occurred after that, with each successive step in the severing of the contractual relationship between the worker and his employer, the first of which was suspension without pay. Being suspended without pay pending investigation was no more connected to the essence of the work than was the ultimate dismissal.
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> I find the worker's psychological injury resulted from his suspension from and dismissal from employment, and thus did not arise out of and in the course of employment.

In *WCAT Decision #2005-01260* dated March 14, 2005, a different WCAT panel reviewed *Appeal Division Decision #99-1987*, *Appeal Division Decision #98-0645* and *WCAT Decision #2003-02336-RB*, and concluded:

> I agree with the reasoning in those decisions and the conclusion that injuries caused by dismissal from the employment are not compensable. I find that it is not possible to separate the disciplinary process that led to the worker's dismissal from the dismissal itself. The investigatory process which was set in motion sometime prior to January 14, 2000 resulted in the March 27, 2004 dismissal of the worker. There were no intervening events or further actions by the worker that led to his dismissal. The worker was quite prepared to work on February 14, 2000 but he was not permitted to do so and it seems quite evident from the medical reports that the worker's depression escalated into disability with the loss of his job.
>
> The rationale for concluding that injuries caused by a dismissal also applies to the process that ultimately resulted in this dismissal. The worker's four-day suspension, followed by his indefinite suspension and then the revocation of his AVOP, without which he could not work, are not activities or processes that are incidental to the employment. They are activities related to the termination of the employment contract. As a

> result, injuries caused by this process as well as the dismissal do not satisfy the requirement in section 5(1) in that they do not arise out of and in the course of the employment.

The fact that *WCAT Decision #2003-02336-RB* followed an analysis set out in earlier Appeal Division decisions, and was itself followed in subsequent decisions, is obviously of only limited assistance in considering whether its analysis was clearly irrational. It is evident, however, that the reasoning provided in *WCAT Decision #2003-02336-RB* was consistent with the analysis provided in both earlier and later decisions. This suggests that the decision involved a coherent framework with some logical basis.

With respect to the significance of the worker's posthumous reinstatement to his employment, the WCAT decision reasoned in part:

> The appellant's counsel argued that in this particular case the termination should be viewed as having occurred in the course of employment because the termination was rescinded and the employee was retroactively reinstated. She depicts a scenario in which the worker, through his agents, attended the arbitration and reached a settlement with the employer that cleared up all of their differences and, as between the parties, voided the termination.
>
> First, the employee was not present at the arbitration. The employer and the employee did not resolve their differences. The employer and the employee's agents resolved their differences, which involved quite different interests and considerations than those that would have prevailed between the employer and the employee. So the fact that after the employee was deceased the employer agreed with the employee's widow to reinstate the employee retroactively says nothing about whether the employee would have been reinstated had he survived.
>
> Second, even if I could find that had he survived the employee would have been reinstated and the termination voided, the settlement was nothing more than an agreement between the parties. It affected only the contractual legal rights as between the parties, and could have no effect on third parties, such as the Board. Regardless of the settlement, the fact is that in real time the employee was terminated, and, according to the appellant's claim and the evidence on file, it was the termination that caused the injury.

The widow's lawyer submits that the logical culmination of the vice chair's reasoning, that one could not ascertain whether the deceased's employment status would have been altered ultimately because he was dead and therefore not able to participate in the eventual resolution, leads to an absurdity. She submits that what the vice chair is

saying is that in any matter where the employee is so traumatized by the workplace incidents that he dies as a result, the matter cannot then be adjudicated because he is not around to give his side of the story. She submits this interpretation would tend to cultivate a culture of reward for workplace situations which were so extreme that people could not cope with them.

This critique relates to the finding by the WCAT panel that the worker's posthumous reinstatement says nothing about whether the employee would have been reinstated had he survived. I do not consider, however, that this particular passage reflects the full basis for the WCAT decision. I read the WCAT decision as being concerned with whether or not the effects of dismissal on a worker are compensable. It is evident from the various decisions referred to above that the same logic was applied whether the subsequent claim for benefits involved death or disability. The basis for the WCAT decision was not that the worker had died, but that the adverse effects (whether disability or death) suffered by an employee due to an employer taking action to terminate the worker's contract of employment, are not compensable. The WCAT panel made it clear in the following paragraph that its decision would have been the same even if the worker had not died. Thus, I am not persuaded that the WCAT decision involved the "absurdity" painted by the widow's lawyer.

In *WCAT Decision #2003-02336-RB*, the WCAT panel turned its mind to the arguments presented by the widow's lawyer regarding the significance of the posthumous reinstatement of the worker to his employment. The panel did not fail to address the submissions on this basis. The panel provided reasons for its conclusions on this issue. I do not consider that the decision of the WCAT panel was patently unreasonable, in its consideration of the significance of the worker's reinstatement in relation to the worker's suicide following his earlier dismissal.

I do not consider that any of the four criteria set out in section 58(3) are met in this case. I do not consider that the WCAT decision was patently unreasonable in respect of its weighing of the evidence, or that it was clearly irrational in its analysis.

(e) Jurisdictional error

On jurisdictional issues, a correctness standard applies. However, I do not consider that the WCAT panel involved any jurisdictional error with respect to the issue addressed in its decision. This is not a case where the panel asked itself the wrong question, in addressing the widow's appeal.

Given the WCAT panel's conclusion regarding the law and policy issue as to whether the worker's reaction to his "dismissal" was compensable, the WCAT panel did not find it necessary to address the medical issue as to whether the worker's suicide was causally related to his "dismissal". As was similarly decided in *Appeal Division Decision #00-1041*, the establishment of a medical connection between a worker's dismissal,

and the worker's subsequent disability or death, would be rendered moot by a finding that a worker's reaction to dismissal was non-compensable for reasons of law and policy. I am not persuaded, therefore, that the WCAT panel "inappropriately refused to consider the merits of this case." In view of the panel's finding on the first issue of law and policy, further consideration of the factual and medical evidence was moot.

(f) Irrelevant factors

On page 10, the WCAT panel commented:

> Third, although the panel in *Decision No. 98-0645* commented that the goals of the workers' compensation scheme, such as prevention and vocational rehabilitation, cannot be effectively applied in the case of a severed employment relationship, **those comments were not central to their findings.** At the end of the day the panel concluded that the act or event of termination is not incidental to work, as it would have to be to be seen as occurring in the course of employment. The obvious difficulties associated with prevention and vocational rehabilitation in the context of a severed employment relationship merely supported the interpretation of the word "employment" that the panel had already reached. So even if were established that in fact the employment relationship was not severed in this case, that would not alter the fact that the injury did not arise out of and in the course of employment.
>
> [emphasis added]

It is commonly the case that a worker is unable to return to their former place of employment following a compensable injury. The severance of the employment relationship between a particular worker and their employer do not detract from the employer's ongoing responsibilities for prevention, and the worker's eligibility for rehabilitation assistance. However, in pointing out that this passage was not central to the findings of the Appeal Division, the WCAT panel was, in effect, indicating that her agreement with *Appeal Division Decision #98-0645* did not rest on the reasoning provided in this passage. Accordingly, I do not consider that the validity of the WCAT decision can be impugned on this basis.

Conclusion

The circumstances of the worker's death, and the loss to his family, are tragic. However, the issues faced by the WCAT panel in addressing the widow's appeal involved thorny questions involving the scope of workers' compensation coverage. This appeal involved questions at the very heart of the specialized jurisdiction of decision-makers under the Act. The WCAT panel provided a reasoned explanation for its decision. I find that there was a logical basis for the WCAT decision, and that it was not "openly, clearly, evidently unreasonable." The decision was not patently unreasonable, and did not involve jurisdictional error. Upon review of the WCAT decision, together with the submissions of the widow's representative, I find no basis for concluding that the WCAT decision involved an error of law going to jurisdiction, including a breach of natural justice.

The widow's application for reconsideration of *WCAT Decision #2003-02336-RB* is, therefore, denied (on the common law grounds). The WCAT decision stands as "final and conclusive" under section 255(1) of the Act.

Herb Morton
Vice Chair

HM/pm