

## ***Edwards v. British Columbia (Workers' Compensation Appeal Tribunal)***

### Decision Summary

Court	B.C. Supreme Court
Citation	2017 BCSC 582
Result	Judicial Review Dismissed
Judge	Mr. Justice Gaul
Date of Judgment	April 7, 2017
WCAT Decision(s) Reviewed	WCAT-2014-01189

### **Keywords:**

*Judicial review – Standard of review – Patent unreasonableness – Interpretation of prior Workers' Compensation Appeal Tribunal (WCAT) decision within WCAT's exclusive jurisdiction*

*Judicial review – Patent unreasonableness – WCAT presumed to be aware of applicable law and policy – Sufficiency of evidence – Whether there is any evidence upon which to base decision*

*Judicial Review – Rules of natural justice and procedural fairness – Section 246 of Workers Compensation Act – WCAT has discretion over its procedure – Rule 7.5 of Manual of Rules of Practice and Procedure – Not unfair to proceed without an oral hearing where credibility not in issue and decision turns on weighing of medical evidence*

### **Summary:**

The Workers' Compensation Appeal Tribunal (WCAT) had determined that the worker's compensable skin condition had resolved. In his petition for judicial review of WCAT's decision, the worker asserted that the tribunal had incorrectly revisited an earlier WCAT decision finding that his skin condition was compensable and, in any event, the decision under review was patently unreasonable. The worker also alleged that WCAT had breached the rules of natural justice and procedural fairness by denying his request for an oral hearing. The Court dismissed the petition, finding that WCAT had exclusive jurisdiction to interpret the earlier decision and that its interpretation was not patently unreasonable. In the Court's opinion, WCAT had not purported to change the earlier decision that the worker had a compensable condition but instead the tribunal had found that the compensable condition had since resolved. The Court also held that the tribunal's decision not to hold an oral hearing was fair in the circumstances.

The worker's employment as a truck driver required him to come into contact with an irritant substance, which he claimed caused a severe skin condition on his hands. He was diagnosed with psoriasis. The medical evidence revealed different opinions as to whether he also suffered from contact dermatitis. In an earlier decision, WCAT had found that the worker was entitled to compensation either because he had contact dermatitis caused by his work or because his work had aggravated his psoriasis. That earlier decision also left it for the Workers' Compensation Board (Board) to determine whether the compensable condition was permanent. The Board subsequently determined that the psoriasis was not caused by work but that the condition had been aggravated by the work or by dermatitis caused by work with the irritant substance. The Board determined that the compensable condition had resolved. In the WCAT decision at issue in the petition, the tribunal confirmed the Board's findings. The Court dismissed the worker's petition for judicial review.

The worker argued that WCAT fell into a "true" error of jurisdiction by failing to accept that the earlier WCAT panel had found his condition to be compensable. As a result, said the worker, WCAT's subsequent decision should be reviewed on the standard of *correctness* and the Court owed no deference to WCAT's findings. The Court disagreed, saying that the only true jurisdictional question that could conceivably attract the *correctness* standard would be whether the second WCAT panel had the authority to actually hear the worker's appeal of the Board's decision. The Court held that the effect of the first WCAT decision was within the tribunal's exclusive jurisdiction to decide in the second appeal and that the applicable standard of review was therefore the deferential standard of *patent unreasonableness*. The Court went on to conclude that the second WCAT panel did not unreasonably interpret the earlier decision.

The Court rejected the worker's further arguments that WCAT's decision was patently unreasonable for being based on insufficient evidence and for failing to consider the application of policy item #26.55 of the *Rehabilitation Services and Claims Manual*, which says that where work causes an otherwise non-compensable condition to be significantly accelerated, activated, or advanced, any resulting aggravation of disability is compensable. The Court noted that WCAT is presumed to be aware of the law and policy applicable in an appeal and was not persuaded that the tribunal's failure to specifically reference the policy rendered the decision patently unreasonable. In the judge's opinion, there was ample evidence before WCAT to reasonably find its decision.

In dismissing the worker's allegations that WCAT's procedure was unfair for not holding an oral hearing, the Court noted that section 246 of the *Workers Compensation Act* gives WCAT the discretion to proceed with or without an oral hearing and that in this case, where credibility was not in issue and the decision turned on the weighing of medical evidence, the decision to proceed by way of written submissions was consistent with item 7.5 of WCAT's *Manual of Rules of Practice of Procedure* and did not prevent the worker from making full and comprehensive submissions on the issues.

Finally, the Court found WCAT's reasons for its decision to be adequate.