

## ***Sacky v. Workers' Compensation Appeal Tribunal***

### Decision Summary

Court	B.C. Supreme Court
Citation	2017 BCSC 1541
Result	Judicial Review Dismissed
Judge	Madam Justice Iyer
Date of Judgment	August 30, 2017
WCAT Decision(s) Reviewed	A1601055

#### **Keywords:**

*Judicial review – Procedural fairness – Adequacy of reasons – Exercise of discretion to investigate – Patent unreasonableness – Weight given to medical opinions.*

#### **Summary:**

The worker injured his right knee at work in 2014. The Workers' Compensation Board (Board) paid temporary disability benefits until March 23, 2015 when it determined that the injury had resolved without permanent disability, and had not aggravated a pre-existing permanent injury. The worker appealed this decision to the Workers' Compensation Appeal Tribunal (WCAT). The worker submitted medical legal reports from his treating physician and a specialist physician. The worker also testified at an oral hearing. WCAT did not seek further medical evidence, and preferred the opinion of a Board medical advisor over the opinions of the worker's physician and the specialist, and denied the worker's appeal. On judicial review the worker asserted that WCAT ought to have exercised its discretion to obtain further medical evidence, and was procedurally unfair for not doing so. The worker further asserted that WCAT did not give adequate reasons for preferring the Board medical advisor's opinion over the other medical opinions. Finally, the worker argued that the Board medical advisor's opinion was outdated and so insufficient that it was patently unreasonable for WCAT to rely on it. The Court found that in its decision WCAT had expressly identified the issues in the appeal, summarized the evidence, set out the applicable law and policy, and explained its conclusion on each issue. In particular, WCAT explained why it preferred the Board medical advisor's opinion over the other medical opinions. The Court concluded that the reasons fell well above the minimum requirement for sufficiency of reasons in administrative law. The Court noted that the worker had not asked WCAT to obtain additional medical evidence, and found that WCAT had considered whether the medical advisor's opinion was outdated, but concluded that it was not. The fact that WCAT did not find the medical evidence the worker submitted to be persuasive did not mean it ought to have independently sought further medical evidence before reaching a conclusion

adverse to the worker. This was not a case of no evidence or of evidence evenly weighted such that section 250(4) of the Workers Compensation Act applied, as it was clear that WCAT did not consider the evidence to be evenly weighted. Accordingly, WCAT's exercise of its discretion was not patently unreasonable. After the fact speculation by the petitioner or medical experts that the tribunal incorrectly weighed the evidence before it cannot establish that the tribunal's decision was patently unreasonable. As there was some evidence to support WCAT's findings, the decision was not patently unreasonable.