

Rabbani v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2018 BCSC 445
Result	Judicial Review Dismissed
Judge	Mr. Justice Harvey
Date of Judgment	March 20, 2018
WCAT Decision(s) Reviewed	WCAT-2016-01015 and A1604369

Keywords:

Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, s. 5(1) – Whether injury arose out of and in the course of employment – Whether disc herniation was related to previously accepted workplace injury

Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, s. 96(2) – Reopening claims – Whether worker's medical condition significantly changed or injury recurred – Whether there had been a recurrence of low back strain

Judicial review – Procedural fairness – Manual of Rules of Practice and Procedure rule 7.5 – Appeal method – Whether fair to proceed without oral hearing where opposing medical opinions assumed irreconcilable facts

Summary:

The Workers' Compensation Appeal Tribunal (WCAT) had to consider whether the worker's back complaints in late 2014, including a herniated disc, were the result of a workplace injury in 2013, which injury the Workers' Compensation Board (Board) had earlier accepted for a back strain. There were conflicting medical opinions. WCAT had denied the worker's request for an oral hearing (ordering the appeal proceed by written submissions) on the basis that the issues on appeal were principally medical and did not require an oral hearing to resolve. WCAT preferred the medical opinions indicating it was unlikely that the worker's back condition in 2014 was related to his 2013 injury and denied the appeal. The court dismissed the worker's petition for judicial review, finding that there was some evidence upon which WCAT could reach its conclusion and that the tribunal's decision not to have an oral hearing did not amount to procedural unfairness.

WCAT determined that the worker's herniated disc was not a result of the 2013 injury. To arrive at that decision, the tribunal preferred the opinions of the worker's original doctor and two Board medical advisors over the opinion of the worker's new doctor. The opinions of the first three doctors were based on facts consistent with statements made by the worker to his original attending physician and that doctor's examinations of the worker immediately following the 2013 accident and thereafter. Those examinations revealed no neurological abnormalities, which, had there been any, could be indicative of a herniated disc. In 2015, the worker got a new doctor whose opinion assumed that the worker experienced neurological symptoms immediately following the 2013 workplace injury. WCAT did not accept this as fact.

In confirming the Board's decision not to reopen the worker's claim under section 96(2) of the *Workers Compensation Act*, WCAT concluded that the worker's accepted condition, low back strain, had resolved and not recurred since his benefits ended in October, 2013. There was evidence from the worker's original treating physician and the worker's massage therapist, both of whom indicated that the worker had attained good recovery by October 27, 2013. WCAT noted that the clinical records showed a ten month gap in treatment between October, 2013 and August, 2014. According to the tribunal, this gap did not corroborate the worker's evidence that he had significant and continual symptoms throughout that period.

The worker also asked the court to find that WCAT's decision not to hold an oral hearing was unfair. The court considered its earlier judgment in *Cannon v. Workers' Compensation Appeal Tribunal*¹, where it found that WCAT was unfair for not testing the worker's credibility by allowing her to testify about the nature of her medical condition. The court in this case distinguished *Cannon*. In this case, the only reference to the worker experiencing neurological symptoms immediately following the 2013 injury is in the report of the worker's new doctor. In contrast, the records of his original doctor at the time of the injury and in the weeks following consistently note no neurological compromise. In his submissions to WCAT, the worker did not refer to the symptoms upon which his new doctor's opinion was based. The court held that WCAT's determination as to the lack of a causal relationship between the disc herniation and the workplace injury did not require an assessment of the worker's credibility and the tribunal's decision not to hold an oral hearing was fair in all the circumstances.

¹ (26 November 2010), Vancouver, S092291 (B.C.S.C. in chambers).