

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

Decision Summary

Court	B.C. Supreme Court
Citation	2017 BCSC 1245
Result	Denied
Judges	Mr. Justice Saunders
Date of Judgment	May 14, 2018
WCAT Decision Reviewed	WCAT-2014-02287

Keywords:

Judicial review – Charter challenge – Patent unreasonableness – Section 5.1 of the Workers Compensation Act– Policy item #C3-13.00 of the Rehabilitation Services Claims Manual Vol. II – bullying and harassment – labour relations exclusion

Summary:

The petitioner was employed as a cardiology technician in a private clinic; her duties included performing stress tests and electrocardiograms on patients. The petitioner had an ongoing conflict with a co-worker at the clinic which the employer had attempted to resolve. The petitioner also had a pre-existing mental disorder, and in November 2012 sought and obtained an accommodation from the employer that she would not perform more than eight stress tests per day. Following events on March 13, 2013, which are described in more detail below, the petitioner left her employment due to a worsening of her mental disorder.

The petitioner made a claim for compensation with the Workers' Compensation Board of British Columbia (the "Board") alleging that a co-worker had bullied and harassed her, that the employer had treated her poorly, and there was an agreement that she would not perform more than five stress tests in a row and that this agreement was breached. The Board denied the petitioner's claim. The petitioner then requested a review from the Review Division of the Board, which was also denied. The petitioner brought an appeal to WCAT.

Before WCAT, the petitioner argued that she had been bullied and harassed by her co-worker, the employer's failure to accommodate her five in a row request was traumatic and threatening in the circumstances, and that events on March 13, 2013 which included the employer's refusal to accommodate the five in a row request had been the final straw.

WCAT denied the appeal, finding that while the co-worker's conduct was unpleasant, it did not rise to the level of bullying and harassment and that the employer's conduct, and in particular the events occurring on March 13, 2013 fell under the "labour relations exclusion" in section 5.1(1)(c) of the *Workers Compensation Act* (Act). In the result, WCAT denied the appeal.

The petitioner brought a judicial review of the WCAT decision. She filed new evidence with the court that was not before the tribunal in the first instance. She challenged section 5.1 of the Act

and policy item C3-13.00 of the *Rehabilitation Services and Claims Manual*, Vol. II (RSCM II) as being contrary to the equality provisions in section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K), 1982, c. 11 (*Charter*). Finally, the petitioner challenged WCAT's decision as being patently unreasonable because, among other things, it had failed to consider whether the accommodation agreement with the employer regarding eight stress tests per day had been breached.

The Court found the petitioner's new evidence inadmissible in the judicial review proceeding and noted that she had also applied to WCAT for reconsideration on the basis of new evidence but that this application had been put on hold due to the judicial review proceedings.

The Court declined to hear the petitioner's *Charter* argument as it was being raised for the first time on judicial review. In particular, the Court noted that the petitioner had not raised the constitutionality of section 5.1 of the Act and policy item C3-13.00 before the Review Division of the Board in the first instance, and the Review Division had exclusive jurisdiction to hear the *Charter* challenge. Furthermore, the petitioner's *Charter* arguments were only tangentially related to the concerns the petitioner raised with the WCAT decision, and it appeared the WCAT decision did not turn on the question of whether the events identified in the proceedings before WCAT were a significant cause of the aggravation of the petitioner's mental disorder.

With respect to the argument that the WCAT decision was patently unreasonable, the Court declined to hear the argument regarding eight stress tests per day as it was entirely new and had not been raised before the tribunal. In any event, even if the issue had been explicitly considered by the tribunal, it would have made no difference to the result due to WCAT's determination that the issues raised by the petitioner largely fell under the labour relations exclusion in section 5.1(1)(c) of the Act.

The Court also found that WCAT's findings of fact were supported by the evidence, and therefore must be given deference. With respect to the petitioner's argument that WCAT's interpretation of policy was patently unreasonable, the Court found that the submissions were based on a misconception of the scope of a judicial review, which is not a rehearing or an appeal. The petitioner was simply rearguing her case, and provided no basis for the Court to find that WCAT's decision was clearly irrational or not within the range of defensible outcomes. In the result, the petition was dismissed.