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

Decision Summary

Court	B.C. Supreme Court
Citation	2018 BCSC 1178
Result	Judicial Review Dismissed
Judge	Mr. Justice Milman
Date of Judgment	July 13, 2018
WCAT Decision(s) Reviewed	A1605033

Keywords:

Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, section 5.1 – Policy item C3-13.00 of the Rehabilitation Services and Claims Manual, Volume II – Triggering event not necessarily cause of mental distress

Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, section 5.1 – Policy item C3-13.00 of the Rehabilitation Services and Claims Manual, Volume II – Patently unreasonable to consider whether an event alleged to cause mental distress is objectively traumatic

Summary:

The court held that the Workers' Compensation Appeal Tribunal (WCAT) was not patently unreasonable in finding that the worker's diagnosed post-traumatic stress disorder was not caused by a work-related event even if the event did trigger the condition. WCAT had also found that the event itself did not qualify the worker for coverage under section 5.1 of the *Workers Compensation Act* because the event was not objectively traumatic. The court held that this latter finding was patently unreasonable but that it did not render the decision as a whole patently unreasonable. Accordingly, the court dismissed the petition for judicial review.

The worker, a licensed practical nurse, was the victim of violence in the past. She was diagnosed with PTSD after an interaction with the angry son of a patient, while the worker was in the course of her employment. The tribunal found that the interaction involved the patient's son yelling at the worker while leaning his arms against the frame of the only door to the room. WCAT accepted that the worker herself felt the interaction was traumatic, but WCAT found the event was not objectively traumatic. The worker claimed her PTSD was caused by the interaction, but WCAT disagreed. The case turned on the expert opinion of the worker's psychologist, who had said that the interaction "served as a trigger for a delayed post traumatic response to the previous traumatic events in her

life". The psychologist did not state that the interaction itself met any of the diagnostic criteria for PTSD. As the court noted, the psychologist's view "appears to have been that the primary cause of Ms. Atkins' PTSD lay in her previous history, which is one of the critical findings that the Vice Chair took from her report".

Following the reasoning in several earlier WCAT decisions, the tribunal in this case held that in determining whether an event was "traumatic", for the purposes of section 5.1 of the *Act* and policy C3-13.00 of the *Rehabilitation Services and Claims Manual, Volume II*, an adjudicator must consider not only the worker's subjective experience, but also whether the event was objectively traumatic. The court agreed with the worker that interpreting law and policy this way is patently unreasonable because it resurrects language that was ordered severed from policy by the Court of Appeal in its 2009 judgment in *Plesner v. British Columbia Hydro and Power Authority*. Specifically, requiring a worker to establish that the event that caused their mental disorder was objectively traumatic places an added burden on the worker, which does not exist for one claiming for a physical injury or illness. Such treatment was found in *Plesner* to be inconsistent with the *Charter of Rights and Freedoms*. Jurisprudence in British Columbia requires that the subjective element in identifying a traumatic event is paramount and an objective assessment is proper "only for the limited purpose of determining whether the event is 'identifiable' and the worker was likely to have been traumatized by it".

In considering whether the interaction was an objectively traumatic event, the WCAT panel noted that the Workers' Compensation Board (Board) practice directive on bullying and harassment provided insight on the issue before it. That practice directive suggests that the test for bullying and harassment is an objective one that accounts for the state of mind of the bully or harasser. The court noted that although it had already found the application of an objective criterion to the test for a traumatic event to be patently unreasonable, it was also patently unreasonable for WCAT to have considered the practice directive because bullying and harassment is considered under section 5.1 of the *Act* to be a "significant stressor", and not a "traumatic event". These two potential causes of mental distress are established differently from each other in law and policy and the Board's practice directive on bullying and harassment is therefore irrelevant to the consideration of whether an event was traumatic.

Despite finding that WCAT reached the patently unreasonable conclusion that the interaction with the patient's son was not traumatic, the court held that the tribunal's decision was not, as a whole, patently unreasonable. WCAT also found that the interaction did not cause the worker's PTSD, which was instead caused by her past traumatic experiences. The court noted that the psychologist's opinion provided evidence for this finding, which meant that the finding was not patently unreasonable. This was the tribunal's primary basis for denying the appeal and was a sufficient basis for that result.

[Note: This judgment issued one day after the Workers' Compensation Board approved changes to the language of policy item C3-13.00 to include the following:

> *In determining whether the event is traumatic or the stressor is significant, the worker's subjective statements and response to the event or stressor are*

considered. However, this question is not determined solely by the worker's subjective belief about the event or stressor. It involves both a subjective and objective analysis.]