

Webb v. Canada (Attorney General)

Decision Summary

Court	B.C. Supreme Court
Citation	2019 BCSC 760
Result	Application Denied
Judge	Mr. Justice Affleck
Date of Judgment	May 14, 2019
WCAT Decision(s) Reviewed	A1600564

Keywords:

Judicial review – Extensions of time (court) – Administrative Tribunals Act, section 57(2) – Serious grounds for relief – Standard of review – Fairness – Whether fair to limit duration of hearing when written submissions received and no testimony given – No serious grounds for relief

Judicial review – Extensions of time (court) – Administrative Tribunals Act, section 57(2) – Serious grounds for relief – Standard of review – Patent unreasonableness – Workers Compensation Act, section 6 – Occupational disease – Policy item #26.04 of the Rehabilitation Services and Claims Manual, Volume II – Recognition by order dealing with a specific case – Facts warranting recognition of worker’s condition as an occupational disease – No serious grounds for relief

Judicial review – Extensions of time (court) – Administrative Tribunals Act, section 57(2) – Serious grounds for relief – Standard of review – Patent unreasonableness – Workers Compensation Act, section 5 – Whether injury arose out of and in the course of employment – No serious grounds for relief

Summary:

The court dismissed the petitioner’s application pursuant to section 57(2) of the *Administrative Tribunals Act* for an extension of time to apply for judicial review, finding that there was no reasonable likelihood that the petition would succeed.

As a fishery officer, the petitioner’s job required him to spend time on rigid-hulled inflatable boats. He made a claim for workers’ compensation on the basis that the shocks and vibrations experienced when operating the boats had caused the osteoarthritis in his knees and that, while operating these boats, he injured his knee menisci. His claim was denied by the Workers’ Compensation Board and, after his request for review to the

Board's Review Division was denied, he appealed to the Workers' Compensation Appeal Tribunal (WCAT).

Before WCAT, the worker did not propose to testify or call any witnesses, but indicated that he required a lot of time at the hearing to go through his submissions. The tribunal gave the worker less time than he requested but assured the worker that the panel had read his submissions.

In its decision, WCAT observed that osteoarthritis is not an occupational disease listed in Schedule B to the *Workers Compensation Act* and, therefore, the facts of the worker's claim had to establish that the circumstances specific to the worker's employment were likely to have caused the disease. The worker had provided lengthy submissions, which included references to studies showing a correlation between the operation of rigid-hulled inflatable boats and various types of injuries. WCAT found that this evidence was not helpful because it did not provide evidence to establish that the worker's own employment activities likely caused his osteoarthritis. In respect of both the occupational disease and personal injury issues, the tribunal preferred the medical evidence provided by Board medical advisers to what medical opinion the worker did provide. WCAT denied the appeal.

The worker sought judicial review of the WCAT decision, but did so outside the time limit provided for in the *Administrative Tribunals Act*. His application to the court for an extension of time required the court to decide whether there were serious grounds for relief set out in the worker's petition. The court noted that "serious grounds for relief" had been determined in other cases to mean that there is a reasonable likelihood that the petition would succeed.

The worker's petition alleged that WCAT's procedure was unfair in several ways, but chiefly by restricting the time available to him at the hearing of his appeal. He also alleged that the tribunal's findings were patently unreasonable. In his application for an extension of time, the worker argued that his petition had a reasonable likelihood of succeeding. In light of the record of the tribunal's proceedings and the standards of review that would be applied to WCAT's findings and procedure, the court concluded that there was no such likelihood in this case. The court said that WCAT can control the nature of its own hearing and that the worker was given a fair opportunity to present his case. The court also found that WCAT's analysis of the evidence and submissions was comprehensive and that a court on judicial review would not be able to reconsider the materials and come to different conclusions.