

ASQUINI V. BRITISH COLUMBIA (WORKERS' COMPENSATION APPEAL TRIBUNAL)

Decision Summary

Court	B.C. Supreme Court
Citation	2009 BCSC 62
Result	Judicial Review Dismissed
Judge	Mr. Justice Blair
Date of Judgment	January 23, 2009
WCAT Decision(s) Reviewed	WCAT-2004-05802, WCAT-2007-00555

Keywords:

Loss of earnings – Constitutional challenge to section 58 in the Administrative Tribunal Act – Dunsmuir v. New Brunswick – Standard of review – Patent unreasonableness

This was a petition for judicial review of a decision by the Workers' Compensation Appeal Tribunal (WCAT) which considered the Petitioner's claim for a loss of earnings award. The Court also addressed a constitutional challenge to section 58 in the *Administrative Tribunal Act* (ATA).

The Petitioner suffered a neck injury after slipping on a pipe in April 1990 while employed as a crane operator. The worker's neck injury caused his hands to go numb if he looked upwards, consequently he could not operate a crane. The Workers' Compensation Board, operating as WorkSafeBC (Board) found that the Petitioner could operate other heavy equipment which did not require looking up and that such work would effectively replace his lost income, therefore, he was not entitled to a loss of earnings award. WCAT upheld this finding both at the original hearing and on reconsideration.

The Court dismissed the Petitioner's constitutional challenge to the legislated standards of review in sections 58 and 59 of the ATA. The Court also found that *Dunsmuir v. New Brunswick*, 2008 SCC 9, did not redefine patent unreasonableness for British Columbia. The Court further found that the WCAT decision was not patently unreasonable and consequently, the reconsideration was correct. The Court concluded that it was open to the panel to prefer the opinion of the Board's consultant over another consultant and there was a basis in fact for the decision.