

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

Decision Summary

Court	B.C. Supreme Court
Citation	2014 BCSC 1643
Result	Judicial Review Dismissed
Judge	Madam Justice Baker
Date of Judgment	August 28, 2014
WCAT Decision(s) Reviewed	WCAT-2014-00883

Keywords

Judicial review – Patent unreasonableness – Section 5(1) of the Workers Compensation Act – Item C3-14.00 of the Rehabilitation Services and Claims Manual, Volume II – Whether injury arising out of and in the course of employment – Evidence

Judicial review – Patent unreasonableness – Sections 29 and 30 of the Workers Compensation Act – Temporary disability benefits – Item #35.22 of the Rehabilitation Services and Claims Manual, Volume II – Calculation of earnings for workers with two jobs

Judicial review – Patent unreasonableness – Sections 29 and 30 of the Workers Compensation Act – Temporary disability benefits – Item #35.30 of the Rehabilitation Services and Claims Manual, Volume II – Duration of temporary disability benefits

Judicial review – Patent unreasonableness – Section 96(7) of the Workers Compensation Act – Item C14-104.01 of the Rehabilitation Services and Claims Manual, Volume II – Fraud and misrepresentation – What constitutes misrepresentation – Reliance by Workers' Compensation Board on misrepresentation

Summary:

The Court dismissed Hamid Seyed Alamolhoda's petition for judicial review, noting that he had failed to demonstrate that the Workers' Compensation Appeal Tribunal (WCAT) decision was patently unreasonable. The petitioner had challenged the WCAT decision generally. The appeal to WCAT arose from a decision of the Workers' Compensation Board (Board) to reconsider three findings it had made in an earlier decision. In its reconsideration, the Board concluded that the petitioner's carpal tunnel syndrome was not compensable and that his only compensable condition had resolved. Because he no longer suffered from a compensable condition, he was not entitled to any further

temporary wage-loss benefits. The Board also determined that the petitioner had hidden the fact that he was earning income at another job while he was receiving compensation benefits. In the result, the Board found that the petitioner should have received temporary partial wage-loss benefits rather than the temporary total wage-loss benefits he had been paid.

Mr. Alamolhoda was working as a delivery driver when he was involved in a motor vehicle accident. He claimed compensation for injuries alleged to have resulted from the accident. Initially, the Board had found that the petitioner had carpal tunnel syndrome caused by the accident. He was paid temporary total wage-loss benefits under section 29 of the *Workers Compensation Act*. Within 75 days of its original decision, the Board issued another decision reconsidering its initial decision. After reviewing the medical evidence, the Board determined that the petitioner's carpal tunnel syndrome was not, in fact, caused by his work accident. The Board accepted that the petitioner did sustain a bruised ulna, but that the medical evidence established that the ulnar bruise had resolved. As a result, the petitioner was no longer entitled to workers' compensation benefits under this claim.

Since issuing its initial decision, the Board discovered that the petitioner had misrepresented his post-injury abilities by failing to disclose his part-time employment at a restaurant during the time he was receiving wage-loss benefits. In light of this discovery, the Board also concluded that the petitioner's wage-loss benefits should have been based on section 30 (temporary partial disability benefits) rather than section 29 (temporary total disability benefits).

In dismissing the petition, the Court noted that WCAT had reviewed the evidence and given valid reasons for preferring the medical evidence that supported the tribunal's conclusions. On the question of whether the petitioner had misrepresented his ability to earn post-injury injury income, the Court noted that although the petitioner disputed the amount of other work he was found to have done, the material question was whether he worked at all during the period he was receiving benefits. The fact that he did work was not in dispute.

The petition also contained an allegation that WCAT's procedure was unfair. This allegation was not pursued at the hearing and the Court found nothing in the decision or record to raise any concern about procedural fairness.