

Alton v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	Oral Reasons (May 28, 2012), Vancouver S106342
Result	Judicial Review Allowed
Judge	Madam Justice Dickson
Date of Judgment	May 28, 2012
WCAT Decision(s) Reviewed	WCAT-2010-02204

Keywords

Judicial review – Standard of review – Patently unreasonable – Evidence of permanent disability – Temporary disability – Item #34.54 of the Rehabilitation Services & Claims Manual, Vol. I

Summary:

The worker injured his left foot in 1977. He was diagnosed with a soft tissue injury and doctors said that he was able to return to work. The worker continued to suffer some pain and had a limp after he returned to work. In 1989, the worker experienced increasing pain in his foot and his claim was reopened. An x-ray and medical reports from the time indicate that the worker's foot was deforming, had developed osteoarthritis, and was tender to palpation. The worker was off work for a brief time and received benefits for a few weeks in 1989. Throughout the 1990s, his foot became progressively worse, to the point, in 2001, where he felt he could no longer work. He applied for a reopening and, in the course of medical investigations, a CT scan determined for the first time that the worker had an old ununited Lisfranc fracture in his left foot. Ultimately, his 1977 claim was reopened and temporary wage loss benefits were paid between January 2001 and January 2002. The worker also received a permanent disability award from January 2002. He appealed these two determinations to the Workers' Compensation Appeal Tribunal (WCAT), although, because of defects in the way he brought his appeal, WCAT was left to consider whether the worker was entitled to wage loss, permanent disability benefits, or a combination of the two, over the whole period from 1977 to 2001.

WCAT denied the worker's appeal of the wage loss benefits decision in light of policy item #34.54, which says that if a worker's condition is not expected to significantly improve or worsen in the next 12 months, the condition is stabilized. The panel found that the worker had not provided any medical evidence demonstrating that there was a

significant improvement or worsening of his condition within any one year period between 1977 and 2001.

Next, WCAT allowed in part the worker's appeal of the commencement of his permanent disability award. Although WCAT found that the worker broke his foot in the 1977 workplace accident, WCAT concluded there was insufficient evidence that the fracture was disabling between 1977 and 1989. WCAT did determine that there was objective evidence of disability from the 1989 x-ray and medical reports and that the permanent disability award should commence from 1989.

The Court allowed the judicial review, determining that the decision was patently unreasonable because WCAT's conclusion that there was no disability before 1989 was based on no evidence. In fact, the uncontroverted evidence was that the worker was suffering minor pain, discomfort, and an altered gait ever since the 1977 injury. The Court commented that given the nature of the evidence and the legal framework, the question of the worker's entitlement to benefits for any temporary disability logically followed, rather than preceded, the question of the petitioner's permanent disability.