

Amos v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2015 BCSC 425
Result	Judicial Review Allowed
Judges	Madam Justice Burke
Date of Judgment	March 19, 2015
WCAT Decisions Reviewed	WCAT-2009-02265, WCAT-2011-01467

Keywords:

Judicial review – Patent unreasonableness – Section 23(3) of the Act – Policy item #40.12 of the Rehabilitation Services Claims Manual Vol. I – Suitable and reasonably available occupations

Summary:

The petitioner brought a judicial review of two decisions of the Workers' Compensation Appeal Tribunal, *WCAT-2009-02265* ("Original Decision") and *WCAT-2011-01467* ("Reconsideration Decision"), on the basis that the Original Decision failed to consider whether the occupation of dispatcher was suitable and reasonably available as required by policy item #40.12 of the *Rehabilitation Services and Claims Manual Vol. I*.

The petitioner was a logging truck driver who was injured in 1997 by a heavy falling log. His claim was accepted by the Workers' Compensation Board (operating as WorkSafeBC, the "Board") and he was provided with a permanent functional impairment award and Vocational Rehabilitation Services. Eventually, a Vocational Rehabilitation Consultant ("VRC") determined the petitioner could return to full time work as a dispatcher as long as the position was modified through use of a headset. Relying on the VRC's opinion, the Board found that the petitioner was not eligible for a loss of earnings ("LOE") award.

The petitioner appealed the Board's decision to the Workers' Compensation Appeal Tribunal ("WCAT"). In his appeal, the petitioner presented evidence of a prolonged and unsuccessful job search, and evidence that the dispatcher position was physically unsuitable. WCAT denied the petitioner's appeal, and found he was not eligible for an LOE award. In coming to its decision, WCAT relied on the VRC's opinion that the dispatcher position could be modified using a headset, and that the occupation of dispatcher was reasonably available.

The petitioner requested a reconsideration of WCAT's decision, which was denied. The petitioner then brought a judicial review of both the Original Decision, and the Reconsideration Decision.

As a preliminary matter in the judicial review proceedings, the Court concluded the object of review was the Original Decision, and that this was unaffected by the B.C. Court of Appeal's

decision in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499. Turning to the Original Decision, the Court found that, as in *Young v. British Columbia (Worker's Compensation Appeal Tribunal)*, 2011 BCSC 1209 ("*Young*"), WCAT simply referenced statistics and market research without considering the petitioner's competitive employability as required by policy item #40.12 in the RSCM I. The Court also found that WCAT solely relied on the VRC's opinion, and this was similar to the defect in *Young* as there was no factual basis for the VRC's opinion.

The Court allowed the petition for judicial review, and remitted the matter of the petitioner's LOE entitlement to WCAT for a new hearing.