

BAGRI V. WORKERS' COMPENSATION APPEAL TRIBUNAL

Decision Summary

Court	B.C. Supreme Court
Citation	2009 BCSC 300
Result	Judicial Review Allowed
Judge	Mr. Justice Chamberlist
Date of Judgment	March 6, 2009
WCAT Decision(s) Reviewed	WCAT-2005-03229, WCAT-2006-01515

Keywords:

Chronic pain – Expert evidence – Permanent functional impairment award – 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 permanent functional impairment award.

The Petitioner, a sawmill worker, was injured in 1991 at the age of 44, and has not worked since his injury. The Workers' Compensation Board, now operating as WorkSafeBC (Board), accepted the Petitioner's claim for an L5-S1 vertebral disc herniation and awarded the Petitioner a permanent disability award of 11.11% of a totally disabled person. In 1998 the Board accepted on a temporary basis the Petitioner's diagnosed Adjustment Disorder with Depressed Mood as having been related to the work injury. In 2000, the former Workers' Compensation Review Board confirmed the functional impairment calculation but determined that he was entitled to a permanent disability award based on a loss of earnings basis, and found that he was able to earn \$10.00 per hour. The former Appeal Division of the Board largely upheld the Review Board's decision but referred the claim back to the Board to determine whether the Adjustment Disorder was a permanent psychological condition.

As a result of the Appeal Division decision the Petitioner was referred to a psychologist (Dr. Shergill) who diagnosed him with chronic pain syndrome (CPS) with depressive symptoms. In a later report Dr. Shergill advised that the Petitioner's pain disorder and psychological symptoms were permanent. In 2003 the Board, based on the conclusions of the Board's Psychological Disability Awards Committee (PDAC), decided that the Petitioner was not entitled to a permanent disability award for his psychological condition. The Board did award him an additional 2.5% for functional impairment arising from his chronic pain. That decision was ultimately appealed to WCAT and upheld in *WCAT-2005-03229*.

The Petitioner sought judicial review of *WCAT-2005-03229* which denied the Petitioner's appeal relating to his permanent functional impairment award and found, among other things, that the Petitioner's permanent functional impairment for chronic pain was correctly assessed at 2.5% and that the Petitioner did not suffer a measurable permanent functional impairment as a result of his psychological conditions. The Petitioner also sought judicial review of *WCAT-2006-01515*

which denied the Petitioner's appeal relating to his subsequent loss of earnings permanent disability award and found that the Petitioner was capable of earning \$10.00 per hour (in 2003 dollars) in full-time employment, resulting in a partial loss of earnings pension of \$1,233.17 per month.

The Court set aside both WCAT decisions. The Court found that the appropriate standard of review for both WCAT decisions was patent unreasonableness and fairness pursuant to section 58 of the *Administrative Tribunals Act* (ATA). The 2005 decision was set aside because the Court found that the panel did not weigh the PDAC's opinion against the other opinions on file. The 2006 decision was set aside on the basis that either the decision was patently unreasonable because it depended on the findings of the first decision or because it would be unfair to allow it to stand once the first decision was set aside.