

BASURA V. BRITISH COLUMBIA (WORKER'S COMPENSATION BOARD) ET AL.

Decision Summary

Court	B.C. Supreme Court
Citation	2005 BCSC 407
Result	Judicial Review Dismissed
Judge	Madam Justice Smith
Date of Judgment	March 21, 2005
WCAT Decision(s) Reviewed	WCAT-2003-03018

Keywords:

Subjective pain complaints – Item #39.01 Rehabilitation Services and Claims Manual I (RSCM I) - Section 99 of the Workers Compensation Act (the Act) - Standard of review – Patent unreasonableness

In this judicial review the Court considered a Workers' Compensation Appeal Tribunal (WCAT) decision which addressed whether the Petitioner had a permanent partial disability from a workplace injury involving lifting boxes.

The Petitioner injured her back lifting boxes at work. WCAT found that the Petitioner did not have a permanent functional impairment. WCAT noted section 99 of the *Workers' Compensation Act* (the Act) provides that awards are to be given based on subjective pain complaints in the absence of objective findings. The panel also noted that the applicable policy, item #39.01 *Rehabilitation Services and Claims Manual I*, directs caution where an award for pain complaints is to be made in the absence of objective findings. The only real source of evidence of pain was the worker's reports of pain. Given the worker's inconsistent presentation, the panel did not find her reports reliable.

The Court dismissed the Petitioner's application for judicial review. The Court found that the standard of review was patent unreasonableness, and that in this respect the Petitioner faced a significant burden as she must show that upon a review of the evidence, there is no rational basis for the conclusion reached by the WCAT. A review of the record reveals a rational basis for the conclusion reached by the WCAT. Section 99 requires that an issue be resolved in favour of the worker where the disputed possibilities are evenly balanced. In the present case, there was no indication the WCAT found the disputed possibilities to be evenly balanced. It was open to the WCAT to find the evidence tendered by the Petitioner was less persuasive than the evidence tendered by the Board and to reach the conclusion it did.