

Bendera v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2018 BCSC 552
Result	Judicial Review Allowed
Judge	Madam Justice Marzari
Date of Judgment	April 6, 2018
WCAT Decision Reviewed	WCAT-2013-01593

Keywords:

Judicial review – Section 5.1 of the Workers Compensation Act – C3-13.00 of the Rehabilitation Service and Claims Manual – Mental disorder – Significant work-related stressor – Decisions of the worker's employer relating to the worker's employment

Summary:

The Petitioner, a vocational counsellor, claimed compensation under section 5.1 of the *Workers Compensation Act* for a mental disorder she said arose from interactions she had in two meetings with her employer at work. In those meetings, the directors of the petitioner's employer had attempted to coerce the petitioner to resign from her position, and when she did not do so, they threatened her with termination for subordination. The Workers' Compensation Board denied her claim, as did the Review Division of the Board. The Workers' Compensation Appeal Tribunal (WCAT) denied her appeal.

WCAT found that the employer's comments were significant work-related stressors as they constituted coercive and deliberately threatening behaviour as set out in policy C3-13.00 of the *Rehabilitation Services and Claims Manual*. The tone, manner, and nature of the two meetings went beyond what would be considered the normal pressures or tensions of the petitioner's employment. The panel also found that they were the predominant cause of the petitioner's mental disorder. The appeal was denied on the basis that the mental disorder was caused by a decision of the employer relating to the petitioner's employment and was thus barred by section 5.1(1)(c) of the Act.

On judicial review the court set aside WCAT's decision on the basis that its interpretation of section 5.1(1)(c) was patently unreasonable.

Extension of Time

The petition for judicial review of WCAT's decision was filed out of time. Section 57(2) of the *Administrative Tribunals Act* provides that the court may extend the time, and the court granted an extension. No prejudice was alleged. There were serious grounds for relief, and the court found that the petitioner had provided a reasonable explanation for the delay in filing the petition.

Petitions must be filed within 60 days of the decision being reviewed. The petition was filed approximately 20 months late. The petitioner had brought a reconsideration application approximately four months after WCAT issued its decision, alleging that the WCAT decision was patently unreasonable. Just over one year later, and before WCAT decided the reconsideration application, the B.C. Court of Appeal, in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499, determined that WCAT lacked the jurisdiction to reconsider a decision on the basis of patent unreasonableness. Patent unreasonableness was a ground that WCAT previously had considered was within its power to consider on reconsideration. WCAT subsequently advised the petitioner of this development and the petitioner filed the petition within 60 days of WCAT's letter.

The court found there was a reasonable explanation for the delay. For the period prior to *Fraser Health Authority*, the petitioner was actively pursuing an available alternative remedy. The court distinguished prior court decisions refusing an extension of time on the basis that the petitioner had filed the reconsideration application well before *Fraser Health Authority* was issued. For the period after *Fraser Health Authority*, the petitioner had made full argument and it was reasonable for her to wait for WCAT to determine how it would proceed in light of *Fraser Health Authority*. Once it did, there was very little delay in filing the petition.

Interpretation of Section 5.1(1)(c)

In its decision, WCAT found that "if the worker's mental disorder is brought about, made to happen, or arises from the action or decision of the employer relating to the worker's employment, the resulting mental disorder is excluded from compensation". On judicial review the petitioner argued that this was a patently unreasonable interpretation of section 5.1(1)(c) of the Act as it was overly narrow and did not take into account the governing principles of statutory interpretation, especially the requirement that the provision be considered in its entire context. On judicial review, the petitioner made arguments regarding the interpretation of s.5.1(1)(c) that she had not made to WCAT.

WCAT conceded that its decision was patently unreasonable on the basis that the panel had failed to engage in an appropriate statutory interpretation analysis, but did not concede that the decision was patently unreasonable because the interpretation itself was patently unreasonable. WCAT relied on B.C. Court of Appeal authority that WCAT argued stood for the proposition that if a tribunal's decision was unreasonable for failing to properly apply the principles of statutory interpretation the matter should be remitted for the tribunal to properly apply them and that it was not the role of the court to provide its own interpretation.

The court found that regardless of WCAT's concession it was required to consider whether WCAT's interpretation was patently unreasonable. The court determined that it was absurd given the overall scheme of the Act and the purpose of section 5.1. The court found that an "interpretation of s. 5.1(1)(c) so as to preclude all actions, conduct, and language of an employer from giving rise to compensation in all cases involving employment related decisions is so incompatible with the language of the provision, the scheme of the WCA, and its legislative intent, as to be patently unreasonable".

Remedy

The court made a declaration that WCAT's interpretation of s. 5.1(1)(c) was patently unreasonable, set aside WCAT's decision, and remitted it to WCAT for reconsideration. The court did not grant the petitioner's request for a declaration that she is entitled to compensation. The court found that it is for WCAT to interpret the provision and that there are at least two other potential supportable interpretations of the provision: the one advanced by the petitioner that it is the reaction to the decision itself, and not to the communication of the decision, that is excluded; and one in which the conduct and actions with respect to the communication of the decision is generally excluded except where that conduct constitutes some form of intimidation, abuse, bullying, or harassment.

The court also required WCAT to reconsider the appeal on the basis of the factual findings WCAT made in its original decision. WCAT had submitted that sections 5.1(1)(a) and (c) must be interpreted together and that if WCAT failed to interpret (c) in light of the principles of statutory interpretation that the panel's findings in regards to (a) should be set aside as well and the whole appeal reheard. The court agreed that a future re-interpretation of section 5.1(1)(c) may well engage the interpretation of (a) but found that WCAT's key findings that the employer's conduct constituted significant stressors are not open to redetermination.