

Branch v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2017 BCSC 97
Result	Partially allowed
Judges	Mr. Justice Butler
Date of Judgment	January 23, 2017
WCAT Decisions Reviewed	WCAT-2014-03141

Keywords:

Judicial review – Patent unreasonableness – Section 5(1) of the Workers Compensation Act– Policy items #C3-12.00, #C3-22.00, and #C3-22.30 of the Rehabilitation Services Claims Manual Vol. II – Arising out of and in the course of employment – Pre-existing conditions - Compensable consequences – Symptoms of depression

Summary:

The petitioner was an ironworker and was injured in 2011 by a falling cable. His claim for compensation was accepted by the Workers' Compensation Board (Board). The question before the Workers' Compensation Appeal Tribunal (WCAT), and before the court on judicial review, was the extent of the petitioner's conditions arising from the work injury.

Before WCAT, the petitioner argued that the Board had not recognized the extent of his injuries resulting from the accident, and asked that WCAT find that an additional 18 symptoms or conditions arose out of and in the course of employment pursuant to section 5(1) of the Act. WCAT found that these conditions had not been considered by the Board, so the matter was referred back to the Board pursuant to section 246(3) of the *Workers Compensation Act* for a determination about whether these conditions arose out of and in the course of employment. The Board's determined that the petitioner's cervicogenic headaches arose out of and in the course of employment, but his other conditions did not. WCAT confirmed the Board's determination, finding that the petitioner's cervicogenic headaches arose out of and in the course of employment, but that his other 17 conditions did not.

On judicial review, the petitioner challenged WCAT's decision denying compensation for C7 radiculopathy and chronic right C7 denervation, aggravation of pre-existing cervical spondylosis, and depression. In particular, the petitioner argued that WCAT had ignored relevant evidence regarding his C7 radiculopathy, chronic right C7 denervation, cervical spondylosis, and had ignored symptoms of depression when it found depression was not compensable.

The Court found that WCAT's decision regarding depression was not patently unreasonable because its decision only addressed the question of whether the petitioner had a diagnosis of depression. The petitioner had not raised the issue of symptoms of depression before WCAT, and the Court declined to exercise its discretion to hear this issue for the first time on judicial

review. Therefore, WCAT's decision was not patently unreasonable. The Court also found WCAT's decision regarding spondylosis was not patently unreasonable, as WCAT did not fail to consider relevant evidence regarding this condition as the petitioner had argued.

The Court found WCAT's decision regarding the C7 radiculopathy and chronic right C7 denervation patently unreasonable because WCAT failed to consider medical evidence indicating that the petitioner had sustained these conditions as a result of his work injury. The judicial review was partially allowed, and the matter was referred back to WCAT to reconsider its decision regarding C7 radiculopathy and chronic right C7 denervation.