

Brkich v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2019 BCSC 1557
Result	Petition Dismissed
Judge	Mr. Justice Ross
Date of Judgment	September 17, 2019
WCAT Decision(s) Reviewed	A1802368

Keywords:

Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, section 6 – Occupational disease – Policy item #26.04 of the Rehabilitation Services and Claims Manual, Volume II – Recognition by order dealing with a specific case – Policy item #26.50 of the Rehabilitation Services and Claims Manual, Volume II – Natural degeneration of the body – Evidence not supporting causation

Summary:

The petitioner claimed that her work as a dental hygienist caused degenerative disc disease and osteoarthritis in her neck. In support of her appeal to the Workers' Compensation Appeal Tribunal (WCAT), she provided an opinion from her attending physician and many abstracts from journal articles, which she says establish a causal connection between work as a dental hygienist and the development of degenerative disc disease. WCAT considered this evidence against the opinions of two other doctors who observed that there was nothing in the medical literature that demonstrated such a causal connection and, based on observations of the petitioner's work activities, it was unlikely that those activities caused or aggravated her condition. The court found that WCAT's preference for the other doctors' opinions was not patently unreasonable and therefore dismissed the petition.

The petitioner worked as a hygienist for 24 years before experiencing symptoms which were diagnosed as being caused by cervical degenerative disc disease and osteoarthritis. She claimed that the sustained, awkward postures required of her job caused her condition. Her attending physician indicated in a report that he considered the petitioner's work duties played a significant role in her developing degenerative disc disease at a relatively young age. After that report was prepared, the Workers' Compensation Board (Board) had performed a jobsite visit where the petitioner was observed demonstrating

her work activities. Another doctor, who viewed a recording of the jobsite visit, opined that the petitioner's duties did not require her to adopt awkward postures. Additionally, a review of medical literature by the Board's Evidence-Based Practice Group revealed that there was no published data to support the causal association between being a dental hygienist or working in sustained awkward postures and the development of cervical osteoarthritis. In a second report, the petitioner's doctor said that he too was unaware of any such published data or evidence.

On judicial review, the petitioner argued that WCAT's decision was patently unreasonable for failing to consider her doctor's opinion that her work duties played a significant role in the development of her degenerative disc disease and osteoarthritis, for failing to explain its preference for the other doctors' opinions over that of her doctor, and for misinterpreting the medical literature she provided. The petitioner also argued that the tribunal's reasoning was fundamentally flawed for failing to consider that the jobsite visit involved only a brief demonstration of her duties and for failing to consider the risk factors set out in the Board's policy on activity-related soft tissue disorders of the limbs. The court rejected each of the petitioner's arguments.

The court found that when the WCAT decision was read in its entirety, there was a clear inference that the tribunal found the petitioner's doctor's opinion to be speculative, especially in light of his acknowledgment that he was unaware of anything in the medical literature that supported a causal connection between the type of work the petitioner did and her condition. On the issue of the medical literature provided by the petitioner, the court found that it was reasonable for WCAT to conclude that it did not establish that the petitioner's work created risk factors for the development of degenerative disc disease or osteoarthritis in the neck. The court also found that it was not patently unreasonable for the tribunal not to apply risk factors set out in the policy on soft tissue disorders of the limbs when the petitioner's condition was in her neck. Finally, the court observed that the medical opinion accepted by the tribunal assumed that the petitioner performed the observed tasks and postures for the majority of her workday and the fact that the demonstrations at the jobsite visit were brief was immaterial to the tribunal's conclusion.