

# ***Cannon v. Workers' Compensation Appeal Tribunal***

## Decision Summary

Court	B.C. Supreme Court
Citation	Unreported (Oral Reasons)
Result	Judicial Review Allowed
Judge	Madam Justice Baker
Date of Oral Judgment	November 26, 2010
WCAT Decision(s) Reviewed	WCAT-2007-03228 WCAT-2009-00576

### **Keywords:**

*Judicial review – Procedural fairness – Denial of oral hearing*

### **Summary:**

The Petitioner worker had appealed to the Workers' Compensation Appeal Tribunal (WCAT) the Workers' Compensation Board's (Board) and Review Division's denial of her claim for compensation for a disc protrusion and resulting symptoms.

WCAT denied the worker's request for an oral hearing. The original panel denied the worker's appeal.

The Court set the original panel's decision aside. It held that WCAT had acted unfairly in denying the worker's request for an oral hearing, in the specific circumstances of this case.

The medical opinions before WCAT were based on differing understandings and interpretations of matters such as the nature, time of onset, severity, duration and continuity of the worker's symptoms. The medical opinions conflicted on the key issue of causation of the symptoms. Therefore, in order to properly assess and weigh these medical opinions, WCAT had to make crucial findings of fact about the worker's symptoms.

The original panel accepted the Review Division Medical Advisor's opinion. In doing so, it rejected the worker's evidence before it regarding the temporal onset of her symptoms. The Court found that, in effect, the original panel accepted the worker's statements made previously to third parties on this issue, over her assertions made to the panel. The original panel thereby made an adverse credibility finding against the worker.

The worker's credibility was a key and central issue in this case, given the differing factual assumptions relied upon in the medical opinions. Thus, fairness demanded that a credibility finding be made only after an oral hearing. An oral hearing would have provided the worker with the opportunity to clarify and either confirm or deny the accuracy of the factual assumptions on which the medical opinions rested.

Thus, the original panel's decision was set aside, and the matter remitted to WCAT for a new hearing and decision. The Court did not consider the reconsideration decision as the parties had agreed that that decision would fall if the original decision was set aside.