

Chinook Scaffolding Systems Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2014 BCSC 997
Result	Judicial Review Dismissed
Judge	Mr. Justice Butler
Date of Judgment	March 28, 2014
WCAT Decision(s) Reviewed	WCAT-2012-03082

Keywords

Judicial review – Patent unreasonableness – Sections 29 and 30 of the Act – Temporary disability benefits – Item #34.11 of the Rehabilitation Services and Claims Manual, Volume II – Selective/light employment – Safety of selective or light duties offered by employer

Summary:

Chinook Scaffolding Systems Ltd. (Chinook) petitioned the Court for judicial review of a decision of the Workers' Compensation Appeal Tribunal (WCAT), which had found that Chinook's offer of temporary light duties was not suitable for one of its injured workers. Chinook argued that the WCAT decision was patently unreasonable because it relied, according to Chinook, on insufficient medical evidence that did not evaluate the safety of the light duties or the worker's medical limitations, contrary to policy item #34.11 of the *Rehabilitation Services & Claims Manual* (i.e., the policy on selective/light employment). The chambers judge disagreed with Chinook's argument, noting that the evidence reveals a rational basis on which WCAT could conclude that the work offered by Chinook could not be performed safely by the worker. The Court dismissed the petition.

The worker had injured his left hand at work, when it was caught between two pallets. In accordance with its own policy, Chinook asked the worker to return to work to perform modified duties. The duties assigned to the worker were intended to only require use of his uninjured hand. Before the end of his first shift, he left the worksite, complaining that his injured hand had become sore and swollen. A few days later, a doctor treating the worker filed a report with the Workers' Compensation Board (WorkSafeBC) stating simply that he was "unable to work". Chinook argued that WCAT was patently unreasonable to rely on this report, which Chinook said failed to specifically consider whether the worker was capable of safely performing the particular

light duties on offer, as required by policy item #34.11.

Chinook noted that policy item #34.11 also requires workers to accept, within reasonable limits, offers of light duties. Chinook argued that the worker's refusal to take further part in its modified duties program was so clearly unreasonable that WCAT's finding to the contrary was itself patently unreasonable. In the circumstances, according to Chinook, WCAT should have reinstated WorkSafeBC's original decision to deny the worker further wage loss benefits.

WCAT concluded that all of the medical evidence suggested that the worker was not capable of safely performing the work offered by Chinook. The chambers judge found that WCAT's decision was based on a consideration of all of the evidence, including six medical reports, and there was a rational basis for the tribunal's decision. With respect to Chinook's second argument that the worker's refusal to participate further in its modified duties program violated policy item #34.11, WCAT noted that there was nothing unreasonable about the worker's refusal to carry on with the only modified duties Chinook had offered (*i.e.*, the duties that aggravated his injury) and Chinook never supplied a detailed description of any other light duties being offered. The chambers judge agreed that the worker never refused an offer of modified light duties.