

Cima v. Workers Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2016 BCSC 931
Result	Petition Allowed
Judges	Madam Justice Young
Date of Judgment	May 25, 2016
WCAT Decision(s) Reviewed	WCAT-2015-02101

Keywords

Judicial review – Workers Compensation Act, section 5.1 – Mental disorder claims – Traumatic event – Significant work related stressor – Bullying and harassment

Summary

The Workers' Compensation Board (the Board) denied the worker's claim for compensation for mental disorder under section 5.1 of the *Workers Compensation Act* (the *Act*). The Review Division of the Board upheld the Board's decision. In *WCAT-2015-02101*, WCAT denied the worker's appeal.

The worker had an undiagnosed progressive speech disorder, that made his speech difficult to understand. From April – December 2013 the worker's supervisor used the F-word in a text message to the worker, used the word "liar" in describing the worker to a customer, sent the worker a cartoon that the worker interpreted as racist, and sent the worker an offensive text message on December 25, 2013 that included the F-word and the word retard. Subsequently to these events, the worker was diagnosed with ALS in January 2014.

The WCAT panel considered whether these events constituted "traumatic events", or "significant work-related stressors", within the meaning of section 5.1 of the *Act*.

The panel found that the worker's receipt of the December 25 text message was not "traumatic" within the meaning of that term in Policy #C3-13.00. The panel accepted that the worker was vulnerable due to the symptoms related to his ALS, found that the text message was highly offensive and objectionable to the worker, but agreed with the Review Division that the definition of traumatic was intended to capture events much more serious or traumatic than the receipt of the text message. The panel found that if the receipt of the text message had been an emotionally shocking event, she would have expected to see a much more significant reaction within a short time of the worker having received the text message.

Under section 5.1 of the *Act*, significant work-related stressors include bullying or harassment. The panel considered whether the supervisor's conduct amounted to bullying or harassment. The panel applied the Practice Directive, which says that, in general terms, both bullying and harassment reflect conduct that is intended to, or should reasonably have been known would, intimidate, humiliate or degrade an individual.

The panel found that the supervisor had not intended to humiliate or degrade the worker, nor could he have reasonably been expected to know the worker would interpret the events described above as humiliating or degrading.

The panel agreed with the Review Division that the supervisor's behaviour reflected bad taste, poor judgment and unprofessionalism, but did not cross the line into bullying or harassment.

The panel found that the events of April through December 2013 did not constitute a series of work-related stressors, nor did the text message constitute a single significant work-related stressor. WCAT dismissed the worker's appeal.

Reasons of BC Supreme Court:

The Court said that the vice chair had applied an entirely objective standard of what one might consider traumatic, in finding that the worker's receipt of the December 2013 text message was not traumatic. Some subjectivity to the analysis was required. The vice chair is to determine what effect the allegedly traumatic event had on the worker.

The Court said that the vice chair's conclusion that the worker did not suffer trauma was based on her conclusion that she would have expected to see a much more significant reaction within a short time of the worker's receipt of the text message, had the receipt been an emotionally shocking event.

The Court said that there was no evidence to support the vice chair's finding that the worker did not suffer trauma. That is, there was no evidence from the worker describing his immediate reaction to his receipt of the text message. The reason there was no evidence in this regard was because the Board intentionally did not interview the worker for the reasons that he had legal representation and a speech impediment. The Court found that these reasons could not justify the Board's refusal to interview the worker. The fact that the worker did not request an oral hearing at WCAT did not rectify the Board's error in this regard.

With respect to the vice chair's conclusion that the supervisor's conduct did not amount to bullying or harassment, the Court said that there was no analysis as to how the vice chair concluded that the supervisor could not reasonably have been expected to know that the worker would interpret the events as humiliating or degrading. The Court said that this was an objective test. The question should have been: based on what the supervisor knew at the time, would a reasonable person have known that the text

message would be offensive and belittling?

The vice chair's conclusion that the supervisor could not reasonably have been expected to know the worker would interpret the events as humiliating or degrading was patently unreasonable. The panel failed to consider specific evidence in this regard, such as the progressive worsening of the worker's speech disability, which was accompanied by the supervisor's demeaning statements to the worker, condescending behaviour, and a co-worker's reminder to the supervisor that the worker was losing his voice, not his intelligence. Given all of this information, the supervisor ought to have known that a text message calling the worker a "retard" would be viewed as offensive and belittling.

Ultimately, the Court concluded that the decision was patently unreasonable because:

- the vice chair disregarded any subjective evidence of the worker's reaction to the event when considering whether the text message constituted a traumatic event. Instead, the vice chair conducted an objective analysis of what constitutes trauma;
- the Board failed to interview the worker because he had a speech impediment and was represented by a lawyer;
- the vice chair drew conclusions about the worker's reaction [to the alleged traumatic event, that is, the text message] from irrelevant factors and without supporting evidence;
- the vice chair's conclusion that the supervisor could not reasonably have been expected to know the worker would interpret the events as humiliating or degrading was based on no evidence or analysis;
- the vice chair disregarded the worker's family physician's (Dr. Yong's) opinion. The Court said that Dr. Yong had opined that the worker had presented with symptoms consistent with depression [after the December 25 text]. This was evidence of the worker's reaction to the December 25 text. The panel failed to consider this evidence.

In the result, the Court set the decision aside.