

Demings v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2012 BCSC 475
Result	Judicial Review Denied
Judge	Madam Justice Dardi
Date of Judgment	March 30, 2012
WCAT Decision(s) Reviewed	WCAT-2010-01872 WCAT-2010-01872a

Keywords:

Judicial review – Failure to exhaust adequate alternative administrative remedies – Delay in appealing – Former appeal bodies – A tribunal's equitable jurisdiction to review the decisions of another tribunal – Notice to tribunal of application for judicial review – Undue delay in seeking judicial review

Summary:

The primary issue in this judicial review was whether the Petitioners (the mother of a deceased worker and the estate of the father) had exhausted their internal administrative remedies within the workers' compensation system so as to permit them to pursue a judicial review remedy in the courts over 30 years after their original claim for compensation was denied by both the Workers' Compensation Board (Board) and the former boards of review, and over 20 years after the elimination of the statutory appeal body to which the Petitioners had a right of appeal (the Commissioners of the Board). A related issue was whether subsequent statutory appeal bodies within the workers' compensation system, now also eliminated, namely the Workers' Compensation Review Board and the Appeal Division of the Board, had the jurisdiction to take any steps or to provide any remedy in relation to the boards of review decision.

The court dismissed the judicial review of the 1980 boards of review decision on three grounds: (1) failure of the Petitioners to exhaust their adequate internal administrative remedies; (2) undue delay in seeking judicial review; and (3) failure to provide notice of the judicial review proceeding to the boards of review.

- (1) In respect of Petitioners' failure to exhaust internal remedies, the court noted that the Petitioners could have appealed to the Commissioners of the Board within the 60 days permitted for appeal, sought an extension of time to appeal from the Commissioners before that body was abolished in 1991, or sought a reconsideration from the boards of review before that body was abolished in 1986. The Petitioners had not argued that the process before the Commissioners was inadequate. The court noted that an appeal to the Commissioners would have permitted the Petitioners to adduce new evidence and make new submissions regarding the nature of their dependency on their son.

- (2) In respect of the Petitioners' failure to seek judicial review in a timely way, the court noted that failure to seek a timely remedy can result in proceedings being barred where the statutory body that rendered the impugned decision no longer exists. The Petitioners had argued that the various delays were caused in part by the father's deteriorating health. The court found that the delay in seeking review of the boards of review decision was 28 years and was unreasonable. Further, the court found that the delay would manifestly result in potential prejudice to the Board in assessing the merits of the claim being presented by the Petitioners.
- (3) In respect of the Petitioners' failure to provide notice, the court found as an independent ground for dismissing the judicial review of the boards of review decision that the Petitioners failed to discharge the mandatory notice requirement set out in section 15 of the *Judicial Review Procedure Act*. Section 15 requires the Petitioner to serve the boards of review with notice of the petition. The court noted that while it was not possible to serve the boards of review when the petition was filed in 2008, the Petitioner had six years to serve a petition before the boards of review was abolished.

The court dismissed the judicial review of the Review Board and Appeal Division decisions on the basis that they had no statutory or equitable jurisdiction to, respectively, review the boards of review decision for unfairness, or extend the time to appeal the boards of review decision, and therefore erred when they purported to do so. In respect of any statutory jurisdiction, the court found that the relevant statutes did not confer such a power expressly or impliedly on either tribunal. In respect of any equitable jurisdiction, the court noted that the courts have consistently held that unless otherwise stated, an administrative tribunal has the jurisdiction to reopen or reconsider its own decisions if they involve a jurisdictional error or a denial of natural justice sufficient to vitiate the entire proceeding. However, the court found that this equitable jurisdiction to reopen or reconsider does not extend to the decisions of previous appellate bodies that were no longer in existence.

Two of the three decisions of the Workers' Compensation Appeal Tribunal (WCAT) being challenged depended upon the existence of a valid Appeal Division decision. Therefore, the court found that the Petitioners' challenges to them were moot. The Petitioners also challenged a third WCAT decision which had determined in an unrelated appeal to WCAT that WCAT lacked jurisdiction to reopen a decision of the Appeal Division on jurisdictional grounds. The WCAT decision in the Petitioners' proceeding had considered this decision and came to the same conclusion. The court found that the Petitioners' lacked standing to challenge the earlier decision as their interests were not affected by the decision given that the decision was not binding on the latter WCAT panel and because notice was not given to the parties in that appeal that their decision was being challenged on judicial review.

Lastly, the Petitioners sought review of two letters they had received and that they claimed were decisions. One was a 1997 letter from the Board that advised the Petitioners that the case had already been adjudicated, appealed, and lost. The other was a 2008 letter from WCAT, sent before WCAT issued its decisions in respect of the Petitioners, that advised the Petitioners of the earlier WCAT decision that had addressed the same jurisdictional issue. The letter advised that WCAT would be taking no further action until it heard from the Petitioners. The court found that both letters were informational letters and as such were purely administrative in nature. They were not decisions and therefore could not be reviewed.

Facts:

The Petitioners are the parents of William Demings. He was lost at sea in 1980 at the age of 20 while working on a commercial fishing boat partly owned by his father. The Petitioners maintained that they were dependants of their son and were entitled to compensation. Section 17(3) of the *Workers' Compensation Act* (Act) provides for compensation to dependants arising from fatal cases. Section 17(3)(h) relates to pecuniary loss suffered by a dependant by reason of a worker's death. Section 17(3)(i) relates to compensation to be paid if a parent, spouse or child, though not dependent on the worker's earnings at the time of his death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.

The original Board decision made in 1980 determined that the Petitioners were not entitled to compensation under either section 17(3)(h) or 17(3)(i) of the Act as they were not dependants. At that time, the basis of the Petitioners' claim was that they had suffered a pecuniary loss because their son paid them a certain sum every month. The Board determined that this sum simply represented the son's room and board expenses at the Petitioners' house and that this sum could be replaced by renting the room. The boards of review denied the Petitioners appeal that same year on the same basis. The Petitioners did not appeal this decision, though at the time they had a right to appeal it to the former Commissioners of the Board.

In 1997, seventeen years later, as a result of an inquiry by a lawyer retained by the Petitioners, the Board advised them by letter that the decision denying compensation would not be changed. Later that year the lawyer contacted the Appeal Division to complain of a "serious jurisdictional error" in the boards of review decision and asked for a reconsideration. The lawyer alleged that the boards of review had not addressed the father's claim that his son was being trained to take over control of his fishing boat. The Appeal Division forwarded the request to the Review Board. In 1998 the Review Board determined that the boards of review decision could not be voided on the basis of a breach of natural justice. It determined that neither the Board nor the boards of review had any knowledge of any alternate claim by the father at the time they made their decisions. The Petitioners then sought an extension of time from the Appeal Division to appeal the boards of review decision. In 1999 the Appeal Division determined that no extension of time would be granted because no exceptional circumstances prevented the Petitioners from initiating an appeal to the Commissioners of the Board in time.

All subsequent events took place before WCAT as a result of applications brought by the Petitioners. In 2010, WCAT determined that WCAT does not have jurisdiction to set aside a decision of the former Appeal Division on the basis that it contains a jurisdictional defect. WCAT subsequently issued an addendum to its decision and denied the Petitioners' application to WCAT for reconsideration of the Appeal Division decision on the basis of new evidence pursuant to section 256 of the Act. WCAT determined that the evidence provided was not "substantial and material" to the Appeal Division extension of time decision and further, that the Petitioners did not satisfy the statutory reasonable diligence requirement in relation to the evidence.