

# Denton v. Workers' Compensation Appeal Tribunal et. al.

## Decision Summary

Court	B.C. Supreme Court
Citation	<a href="#">2016 BCSC 1219</a>
Result	Extension of Time Denied
Judge	Mr. Justice MacKenzie
Date of Judgment	July 5, 2016
WCAT Decision(s) Reviewed	WCAT-2009-00446 WCAT-2010-00808

### **Keywords:**

*Judicial review – Extension of time to file petition – Section 57 of the Administrative Tribunals Act – Unreasonable delay – Intent to file reconsideration application – Section 5.1 of the Workers Compensation Act – Serious grounds for relief – Charter challenges – Review Division an adequate forum*

### **Summary:**

WCAT determined that the petitioner's claim for a mental disorder should be denied under section 5.1 of the *Workers Compensation Act* on the basis that the work-related stressors that she was exposed to were not significant, even though they were the predominant cause of her mental disorder. WCAT also denied the claim because the stressors constituted decisions of the worker's employer relating to the worker's employment. The petitioner therefore did not satisfy the criteria for compensation set out in sections 5.1(1)(a)(ii) or (c) of the Act.

The petitioner filed a petition for judicial review of WCAT's decision almost seven months after the date the decision was issued. Section 57 of the *Administrative Tribunals Act* provides that an application for judicial review of a final WCAT decision must be commenced within 60 days of the date the decision is issued, subject to the power of the court to extend the time if there are serious grounds for relief, there is a reasonable explanation for the delay, and there is no substantial prejudice or hardship to a person affected by the delay.

The respondent employer made an application to strike the petition for having been filed out of time. The petitioner made an application to extend the time to file. The Court denied the petitioner's application for an extension of time and dismissed the judicial review. The Court determined that as it denied an extension of time it was not necessary to consider the respondent's strike application.

The Court found that an extension of time was not warranted as the petitioner was unable to provide a reasonable explanation for the delay in filing. The Court found that it is not enough to have intended to file a reconsideration application with WCAT. Finding so would render the legislation meaningless. The petitioner had initially delayed applying for reconsideration until her

union, which had been assisting her, developed an overall strategy in respect of section 5.1 mental disorder claims.

Even if an intent to apply for reconsideration was enough, the petitioner was unable to provide a reasonable explanation for the additional five month delay in bringing the petition after the B.C. Court of Appeal in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal* determined that WCAT had no power to reconsider an earlier decision on the basis that it was patently unreasonable. The petitioner had said that it took time for the executive committee of her union to decide whether it would assist her with the judicial review and once it did, a further delay was due to her representative waiting for disclosure of the full Workers' Compensation Board's claim file.

While the finding of no reasonable explanation for the delay was sufficient to deny the extension of time application, the Court also found that there were no serious grounds for relief set out in the petition. The petitioner had argued that WCAT's interpretation of section 5.1 was inconsistent with the equality rights granted under section 15 of the *Charter of Rights and Freedoms* and that WCAT had failed to appreciate that the petitioner's equality rights were "implicated" by its decision. The Court found that WCAT did not fail to balance the petitioner's equality interests with its duty to consider statutory objectives.

The Court also found that the aspects of the petition raising a section 15 *Charter* challenge to section 5.1 of the Act and to related policies of the Board's board of directors had no reasonable likelihood of success as the petitioner failed to raise these challenges before the Review Division. The Court found that the Review Division is an adequate alternative forum despite the fact that WCAT did not have the jurisdiction to consider the *Charter* challenges on appeal. Here the petitioner had an adequate opportunity to present all of the *Charter* issues before the Review Division. The respondents to the petition emphasized that a proper record was required for a *Charter* analysis and the record ought to have produced before and by the Review Division. A party should not be able to turn a judicial review into a hearing *de novo*.

The petitioner has appealed this decision to the B.C. Court of Appeal.