

Erskine v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2013 BCSC 1583
Result	Judicial review denied
Judge	Mr. Justice Affleck
Date of Judgment	August 29, 2013
WCAT Decision Reviewed	WCAT-2012-02032

Keywords:

Judicial review – standard of review – patent unreasonableness – section 5(1) of the Act – burden of proof – Item #97.00 Rehabilitation Services and Claims Manual, Volume II – Section 250(4) of the Workers Compensation Act – weighing evidence – credibility – Workers' Compensation Appeal Tribunal's duty to investigate

Summary:

A forklift truck ran over the petitioner's left foot while he was at work. He subsequently developed left foot, knee, hip, and low back pain. The Workers' Compensation Board, operating as WorkSafeBC, (Board) initially accepted the petitioner's claim for benefits, but his employer requested that the Review Division of the Board review this decision. The Review Division determined that the forklift accident did not cause the petitioner's injuries, and therefore his injuries did not arise out of, and in the course of employment pursuant to section 5(1) of the *Workers Compensation Act (Act)*. The petitioner appealed to the Workers' Compensation Appeal Tribunal (WCAT). On appeal, WCAT confirmed the Review Division decision, finding that the petitioner's injuries were not caused by his work accident. In coming to its decision, WCAT relied on a doctor's note made contemporaneous to the date of injury which indicated the petitioner's foot injury was caused by pushing a "quad".

The petitioner applied for judicial review of the WCAT decision (*WCAT Decision No. WCAT-2012-02032*), arguing WCAT unfairly relied on a doctor's note to reach an unfavourable conclusion about his credibility. He argued that WCAT distorted its decision making process by on his credibility. The petitioner submitted that it was obvious he was injured at work, and he had no means of refuting the doctor's note besides testifying it was wrong. The petitioner submitted that WCAT should have undertaken further investigation into his claim if it was unsatisfied with the evidence he presented in support of his appeal.

On judicial review, the Court found WCAT's inquiry properly focused on the question of credibility, and that WCAT's weighing of evidence could not be criticized. The Court found it must defer to WCAT's findings of fact unless they were based on no evidence, and found that there was some evidence on which WCAT could have come to its conclusion. The Court found that WCAT was not obliged to further investigate the matter as it made no finding that the evidence was incomplete.

In response to the petitioner's argument that WCAT had an obligation to further investigate, the Court stated that there were always further avenues of investigation. WCAT was only required to consider if the evidence was sufficiently complete and reliable, allowing it to reach a sound conclusion with confidence. WCAT made no finding that the evidence was incomplete or unreliable, which would have given rise to an obligation to further investigate. Therefore, WCAT had no duty to investigate.

The Court found that WCAT had evidence on which it could reach a decision favourable to the petitioner, but also had evidence unfavourable to the petitioner. The Court found that WCAT properly considered evidence both favourable and unfavourable to the petitioner's claim. WCAT's weighing of evidence, the Court said, could not be criticized. The Court noted that WCAT had not found the evidence evenly weighted, which would have led to a favourable outcome for the petitioner pursuant to section 250(4) of the Act and policy item #97.00.

The Court found that, viewed broadly, WCAT's decision properly focused on credibility. This does not mean WCAT was inquiring into whether the petitioner was attempting to deceive the decision maker. The question before WCAT was whether, as a whole, the evidence supported a conclusion that the petitioner's symptoms were caused by the forklift accident. This is the question WCAT answered, and it was not for the Court to tell WCAT its weighing of evidence was deficient. The Court must defer to WCAT's findings of fact unless they are based on no evidence, making them patently unreasonable. In this case, WCAT's findings of fact were based on some evidence.