

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

Decision Summary

Court	B.C. Supreme Court
Citation	2016 BCSC 936
Result	Judicial Review Allowed
Judge	Madam Justice H. Holmes
Date of Judgment	May 25, 2016
WCAT Decision Reviewed	WCAT-2015-01971

Keywords:

Judicial review – Section 256 of the Workers Compensation Act – “Substantial” requirement in section 256(3)(a) of the Act – Causation

Background

The worker applied for reconsideration of *WCAT-2012-02032* on new evidence grounds.

The issue before the original panel in *WCAT-2012-02032* had been whether the worker sustained personal injuries arising out of and in the course of his employment. The original panel accepted that a forklift had run over the worker's foot at work, but did not accept that this incident caused him injury.

The original decision (*WCAT-2012-02032*) was upheld on judicial review: *Erskine v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2013 BCSC 1583 and on appeal: *Erskine v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2014 BCCA 96.

Subsequently, the worker applied for reconsideration of the original decision on new evidence grounds.

The new evidence panel issued *WCAT-2015-01971* (a “stage one” decision on the new evidence application).

The new evidence panel found that the evidence submitted by the worker was not “substantial” to the original decision, and therefore did not meet this requirement for new evidence set out in section 256 of the *Workers Compensation Act* (the *Act*).

The new evidence panel found that the central issue in the original decision was not the nature of the worker's injuries, but whether he had been injured at work as a result of the forklift incident. The new evidence panel said that this issue in the original decision turned on an assessment of credibility, and an evaluation of the circumstances surrounding the occurrence of the forklift accident and the manner and timing of the worker's seeking of medical attention and reporting of the accident. The new evidence panel found, among other things, that the proffered new evidence did not address in any detail the factual background concerning the manner and timing of the worker's reporting of the accident and seeking of medical attention. Therefore, the proffered new evidence did not address the concerns identified by the original panel.

Summary of Court's reasons

The Court said that the new evidence panel interpreted the "substantial" requirement in section 256(3) of the *Act* as requiring the new evidence to be substantial to the original decision (that is, to the findings in the original decision).

The Court accepted that WCAT's interpretation of section 256 merited considerable deference, but found that the new evidence panel's interpretation of the section was nonetheless patently unreasonable.

It was patently unreasonable because the new evidence panel focused not on the original decision, but on the means or the avenue by which the decision was made.

The Court noted that given the factual matrix before the original panel (that is, an absence of direct medical evidence or other objective evidence to explain how the worker's symptoms were caused), the worker's credibility was central. However, the fundamental issue before the original panel was whether the forklift injured the worker. Credibility was subsidiary to this fundamental issue. The analysis of the worker's credibility was the means by which the original panel addressed that fundamental issue.

The new evidence submitted by the worker potentially provided direct and objective medical evidence indicating a mechanism of injury consistent with the forklift incident. In other words, the factual matrix was potentially changed. By confining new evidence to that which related to the line of reasoning in the original decision, the panel's interpretation of section 256 prevented a meaningful change to the factual matrix from which the original line of reasoning arose. Such a result runs contrary to the nature and purpose of section 256.

In the result, the Court set the new evidence decision aside, and remitted the new evidence reconsideration application back to WCAT.