Franzke v. Workers' Compensation Appeal Tribunal

<u>Decision Summary</u>

Court	B.C. Supreme Court
Citation	2011 BCSC 1145
Result	Petition Dismissed
Judge	Madam Justice Ross
Date of Judgment	August 23, 2011
WCAT Decision(s) Reviewed	2008-00281 (Original Decision) 2009-02191 (Reconsideration Decision)

Keywords:

Judicial review – Standard of Review – Patent Unreasonableness – Section 257 certifications – Reweighing evidence – Drawing of Inferences – Procedural Fairness – Policy Items #14.00 and #18.32 of the Rehabilitation Services and Claims Manual (RSCM), Volume II – Item 20.00 of WCAT Manual of Rules of Practice and Procedure (MRPP)

Facts:

The Petitioner Franzke left work early to go home and avoid the difficulties of a rush hour complicated by snow. She took some files home with her when she left, and planned on working from home that day. On her way home, she was involved in a motor vehicle accident. The Petitioner commenced a tort action against the individual driving the other vehicle, and the limited company that owned the vehicle. The individual and company applied to WCAT for a section 257 determination. WCAT's original panel found that the Petitioner was a worker pursuant to the *Workers' Compensation Act* (the Act), and that her injuries arose out of and in the course of her employment. The Petitioner had been in the course of travel between two points of work, within the meaning of policy item #18.32 of the *Rehabilitation Services and Claims Manual*, Volume II. The reconsideration panel denied an application for reconsideration on the basis of jurisdictional defect and new evidence. The Petitioner sought judicial review of both WCAT decisions.

The Petitioner sought to challenge various factual findings and inferences made by the original panel in support of its conclusion that the Petitioner was in the course of travel between two points of work when the accident occurred. This included the inference that the Petitioner was required to work 7.5 hours per day. The Petitioner also challenged, as being excessive, the weight that both WCAT panels gave her statement, given two days after the accident, in which she said that she had planned on working from home that day.

The Court found that, in challenging these findings, the Petitioner essentially sought to have the court reconsider the evidence that was before WCAT. This was not the task of a court on judicial review. There was evidence before the original panel to support the inference that the

Petitioner worked 7.5 hours a day, and thus this inference did not amount to speculation. There was evidence on which the other challenged findings of the original panel could reasonably be based and thus the original decision was not patently unreasonable in this regard. It followed that the reconsideration decision in this respect was correct.

While the original panel had made reference to the "scant" evidence in relation to the Petitioner's intention to work at home on the day of the accident, and the requirements of the employer in this regard, the decision to carry out further investigation into these matters was a matter of discretion for WCAT. In a case such as this, where WCAT had informed the parties of item 20.41 from the MRPP (which indicated that parties should not assume that WCAT would carry out any further investigations, and should not omit any evidence), and where the evidence was known to the parties and they had the opportunity to make submissions, the discretion was not exercised in a manner engaging any of the factors enumerated in section 58(3) of the *Administrative Tribunals Act.* The original panel's decision in this regard was not patently unreasonable, and the reconsideration panel's dismissal of this ground was correct.

Finally, no breach of procedural fairness arose from the fact that the individual and limited company failed to provide the transcript of the Petitioner's examination for discovery to the original panel. It was clear that, from the time the section 257 application was filed, to the time the original decision was delivered, the Petitioner was aware of the issues being determined, was advised of the potentially relevant Board policies, was aware of the evidence and submissions of the other parties, was given the opportunity to give her own evidence and reply to the other parties' evidence, and was advised of WCAT's policies and procedures. In the circumstances, it could not be said that the Petitioner did not know the case she had to meet; nor could it be said that she did not have the opportunity to present her case. The discovery evidence was the Petitioner's own evidence, and she and her counsel made the tactical decision not to adduce it before the original panel. Her failure to adduce this evidence was her own decision. Therefore, it could not be said that a breach of natural justice arose in these circumstances. The reconsideration panel had reached the same conclusion and was therefore correct.

In the result, the Petition was dismissed.