

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

Decision Summary

Court	B.C. Supreme Court
Citation	2014 BCSC 1737
Result	Judicial Review Dismissed
Judge	Mr. Justice Joyce
Date of Judgment	September 16, 2014
WCAT Decision(s) Reviewed	WCAT-2011-01232

Keywords:

Judicial review – Patent unreasonableness – Policy #26.30 of the Rehabilitation Services and Claims Manual, Volume II – Disabled from earning full wages at work – The need to change jobs – Policy #97.32 of the Rehabilitation Services and Claims Manual, Volume II – Statement of worker about his or her own condition – Procedural fairness

Summary:

The petitioner challenged a decision of the Workers' Compensation Appeal Tribunal (WCAT) confirming that his compensable condition had resolved. The petitioner argued that WCAT failed to apply policy items #26.30 and #97.32 of the *Rehabilitation Services and Claims Manual, Volume II*. The WCAT panel found that policy item #26.30 is concerned with a worker's initial entitlement to compensation for an occupational disease and does not apply to the question of the duration of a worker's benefits. The Court concluded that WCAT's interpretation of the policy was a matter within its exclusive jurisdiction and, in this case, could not be said to be patently unreasonable. With respect to the application of policy item #97.32, which says a worker's statement about his or her own condition is evidence, the Court said the petitioner's complaint was really about the weight WCAT gave to his evidence. As the chambers judge stated, it is not for the Court on judicial review to reweigh the evidence.

The petitioner's workers' compensation claim had been accepted for bilateral medial epicondylitis (golfer's elbow). The Workers' Compensation Board (Board), which operates as WorkSafeBC, terminated the petitioner's wage loss benefits when it determined that his compensable condition had resolved. The petitioner disagreed with the Board's determination and requested a review. The Review Division upheld the Board decision. The petitioner appealed to WCAT, arguing that he had ongoing elbow pain and the compensable condition had not resolved or stabilized by the date on which

the Board determined his compensation should end. WCAT found that there was insufficient medical evidence to conclude that the compensable condition had not resolved, and denied the petitioner's appeal. The petitioner sought judicial review, arguing that the WCAT decision was both patently unreasonable and procedurally unfair.

For the reasons summarized above, the Court disagreed that the WCAT decision was patently unreasonable. The Court noted that WCAT's application of policy is entitled to a high degree of deference, and found it could not be said that the application in this case was clearly and evidently unreasonable.

The petitioner also raised procedural fairness concerns because he did not receive an oral hearing before the Board. The Court dismissed this argument because the Board decision was not under review. With regard to the WCAT proceedings, it was apparent that the petitioner had requested that the hearing proceed by written submissions. Finally, the Court dismissed the argument that the WCAT vice chair was biased and concluded that the petitioner's assertion was, again, really a complaint about the weight WCAT gave to the evidence.