

## GOGOL V. WORKERS COMPENSATION APPEAL TRIBUNAL

### Decision Summary

Court	B.C. Supreme Court
Citation	2008 BCSC 489
Result	Judicial Review Allowed
Judge	Mr. Justice Nathan Smith
Date of Judgment	April 22, 2008
WCAT Decision(s) Reviewed	WCAT-2007-01725

#### **Keywords:**

*Temporary disability benefits – Burden of proof - Section 250 of the Workers Compensation Act (Act) – Standard of review – Patent unreasonableness*

The Court considered the issue of the burden of proof in a Workers' Compensation Appeal Tribunal (WCAT) decision which determined whether the Petitioner was entitled to wage loss benefits when injured on what was to have been his last day of work before being laid off by his employer.

The Petitioner was injured just before he was to be laid off. The issue before WCAT was whether he would have had the opportunity for other employment if he had not been injured. WCAT determined that the Petitioner was not entitled to wage loss benefits in the circumstances because there was insufficient evidence that he had suffered any actual or potential wage loss. The panel considered the Petitioner's statements that he would have "to go on EI" as evidence that he did not intend to seek other employment.

The Court allowed the Petitioner's application for judicial review. The Court found that the standard of review was patent unreasonableness. The Court further found that WCAT reversed the applicable burden of proof and, in effect, required the Petitioner to prove that he would have sought alternate employment if he had not been injured. Under s. 250 of the *Workers Compensation Act* and applicable policy, it was open to WCAT to reject the claim only if there was some evidence that the Petitioner, if he had not been injured, would not have sought or obtained other work. No such evidence had been adduced.