

HERBAUT V. BRITISH COLUMBIA (WORKERS' COMPENSATION APPEAL TRIBUNAL)

Decision Summary

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| Court | B.C. Supreme Court |
| Citation | 2007 BCSC 1656 |
| Result | Judicial Review Dismissed |
| Judge | Mr. Justice Cole |
| Date of Judgment | November 16, 2007 |
| WCAT Decision(s) Reviewed | WCAT-2007-00757 |

Keywords:

Extension of time to appeal to WCAT – Special circumstances – Reliance on advice of representative – Section 243(3) of Workers Compensation Act – Exercise of discretion by WCAT – Section 58(3) of the Administrative Tribunals Act – Standard of review – Patent unreasonableness

The Court considered the Petitioner's application to set aside a decision by the Workers' Compensation Appeal Tribunal (WCAT) that denied him an extension of time to appeal a review officer's decision.

The Petitioner applied to WCAT for an extension of time to appeal a decision of the Review Division of the Board. He filed his appeal 385 days late. He argued that that he missed the time limit because he received bad advice from his representative not to pursue a review and that the bad advice constituted special circumstances which precluded him from appealing within time. Section 243(3) of the *Workers Compensation Act* provides that before WCAT can grant an extension of time to appeal it must be satisfied that, among other things, there were special circumstances which precluded a timely appeal. WCAT found that there were no special circumstances which precluded the Petitioner from filing his appeal on time.

On judicial review, the Court dismissed the Petitioner's application for judicial review on the basis that the WCAT decision was not patently unreasonable. The Court was satisfied that WCAT's findings of fact were based on the evidence and that WCAT took the necessary statutory requirements into account.