

JOHNSON V. WORKERS COMPENSATION BOARD

Decision Summary

Court	B.C. Court of Appeal
Citation	2008 BCCA 232
Result	Appeal Allowed, BCSC Decision quashed
Judge(s)	Low , Chiasson, Frankel
Date of Judgment	May 27, 2008
BCSC Decision Reviewed	2007 BCSC 1410
WCAT Decision(s) Reviewed	WCAT-2005-03622-RB (See also WCAT-2007-04002 Reconsideration Decision, as ordered by BCSC)

Keywords:

Interest Policy - Item #50.00 of the Rehabilitation Services and Claims Manual (RSCM) – Whether chambers judge has the authority to address new argument on judicial review not raised before the tribunal

The Court of Appeal (BCCA) considered whether the B.C. Supreme Court (BCSC) can decide an issue of first instance (the legality of the new interest policy) when that issue was not determined by the decision of the Workers' Compensation Appeal Tribunal under review.

Mr. Johnson, claimed compensation from the Workers' Compensation Board, operating now as WorkSafeBC (Board), in 1999 as a consequence of back surgery necessitated by a workplace injury for which he had received compensation in 1985. A case manager denied the claim in July 1999. An internal review board allowed Mr. Johnson's appeal on new medical evidence more than two years later, on 21 September 2001. On October 15, 2001, the Board passed a new interest policy (the "New Interest Policy") regarding payment of interest on delayed claims, which became effective on November 1, 2001 and implemented on December 4, 2001. The Board paid the Petitioner's claim but declined to authorize payment of interest during the delay period in accordance with the new interest policy. The Petitioner appealed to the Workers' Compensation Appeal Tribunal (WCAT). A three-member precedent panel upheld the Board's decision not to pay interest.

In the BCSC judgment, 2007 BCSC 1410, the Court concluded that the requirement to provide compensation in section 5 of the *Workers Compensation Act* (Act) includes interest, that nothing in the Act supports a policy based on Board conduct (blatant Board error), and that a policy not to pay interest unless there is blatant Board error is patently unreasonable. The Court found further that it was patently unreasonable for the precedent panel to fail to conclude that the new interest policy was patently unreasonable and remitted the case to the WCAT precedent panel to reconsider in light of the Court's determination. The Court concluded that it did not need to

deal with the retroactive/retrospective/prospective issue because of the decision that the policy was patently unreasonable.

The precedent panel issued its reconsideration decision on December 20, 2007 in *WCAT-2007-04002*. In that decision the precedent panel referred the Board's decision back to the Board and directed the Board to make a fresh decision concerning the worker's entitlement to interest in light of the BCSC decision that the new interest policy was unlawful, and in light of any further policy direction by the board of directors.

The Board appealed the BCSC decision to the Court of Appeal. The Court of Appeal allowed the appeal, quashed the order of the BCSC judge and referred the matter back to the BCSC for consideration of the issues in the petition that remained to be determined. These were: (1) whether the court can (or should) consider the legality of the new interest policy directly and without reference to WCAT's decision; and, (2) the retroactivity issue.