

# Jensen v. Workers' Compensation Appeal Tribunal

## Decision Summary

Court	B.C. Court of Appeal
Citation	2011 BCCA 310
Result	Appeal Dismissed
Judges	<b>Mr. Justice Low</b> Madam Justice Smith Mr. Justice Hinkson
Date of Judgment	July 6, 2011
Court Decision Reviewed	2010 BCSC 266 (Mr. Justice Preston)
WCAT Decision Reviewed	WCAT-2007-02536

### **Keywords:**

*Rheumatoid arthritis – Compensable consequence – Aggravation of a disease – Pre-existing deteriorating condition – Section 250(4), Workers Compensation Act – Policy items #15.00, #26.55 of the Rehabilitation Services and Claims Manual, Vol. 1*

The Court dismissed an appeal from a chambers judge's dismissal of a petition from a Workers' Compensation Appeal Tribunal (WCAT) decision. WCAT had found that the (appellant) worker's rheumatoid arthritis was not caused, activated, or accelerated by his earlier compensable injury.

### **Facts:**

In 1994, the appellant was injured in a fall while unloading his truck. The Workers' Compensation Board, operating as WorkSafeBC (Board), accepted his claim for compensation with respect to injuries to the right side of his back, right shoulder and right wrist.

The appellant subsequently brought a claim for compensation for arthritic symptoms. The Board denied this claim in a 1994 decision letter, on the basis that there was no connection between the arthritic symptoms, and the compensable injury.

Subsequently, the appellant was diagnosed with rheumatoid arthritis. The appellant sought to appeal the Board's 1994 denial of his claim.

The Court noted that after various procedural steps and rulings, WCAT ultimately heard an appeal of a 2003 Review Division decision that had upheld the Board's finding that the appellant's rheumatoid arthritis was not linked to the 1994 injury.

In *WCAT-2007-02536*, WCAT denied the appeal, finding that the appellant's rheumatoid arthritis was not caused or aggravated by the 1994 compensable injuries.

### **BCSC Decision:**

On judicial review, the chambers judge dismissed the petition, finding that there was some evidence before WCAT upon which it could come to the decision that it did, with the result that the WCAT decision was not patently unreasonable.

### **BCCA Decision:**

On appeal, the appellant argued that the chambers judge erred in dismissing the judicial review petition. WCAT had in fact exceeded its jurisdiction in two ways, first by requiring a "necessary connection" in the medical evidence in order to find that the 1994 injury caused or aggravated the appellant's rheumatoid arthritis, and second, by applying the standard set out in section 250(4) of the *Workers Compensation Act* (the Act) only to the medical evidence.

In this case, there was no suggestion that WCAT did not properly set out the legal framework to be applied in this case, namely, policy items #15.00 and #26.55 of the RSCM Vol. 1, and sections 5 and 6(1) of the Act. The appellant claimed that his rheumatoid arthritis was an occupational disease on the basis that it arose out of and in the course of his employment. The question for WCAT was whether the trauma aggravated or activated the latent condition "to the point of disability ... where such disability would not have occurred but for the employment".

The Court rejected the argument that WCAT had isolated the analysis to the medical evidence in determining the question of aggravation, rather than considering that question in the context of the evidence as a whole. The Court found that WCAT had in fact considered the whole of the evidence on this issue, including (1) the appellant's testimony before it, in which he indicated his subjective belief that the fall had precipitated the onset of his arthritis, and (2) the evidence of the temporal connection between the fall and the onset of the arthritis symptoms.

The Court noted that the causative connection could not be established on the non-medical evidence alone. WCAT reviewed the medical evidence and concluded that it did not rise above speculation and did not, when considered with the rest of the evidence, serve to establish a causative connection to the standard of at least equal probability as required by s. 250(4) of the Act.

WCAT had considered and weighed all the evidence, both medical and non-medical, and applied the relevant Board policies, in determining that there was an insufficient basis to find a causal connection. WCAT's reasons were thorough and complete.

Therefore, there was no basis upon which the chambers judge could find that WCAT's decision was patently unreasonable. The evidence, or absence of evidence before WCAT, supported the decision within the legal framework. The appeal was dismissed.