

Johnson v. Cassiar Packing Company Ltd.

Decision Summary

Court	B.C. Supreme Court
Citation	2014 BCSC 152
Result	Judicial Review Dismissed
Judge	Madam Justice Bruce
Date of Judgment	January 30, 2014
WCAT Decision Reviewed	WCAT-2013-02179

Keywords:

Judicial review – Evidence – Health Care Benefits (section 21)

Summary:

The Workers' Compensation Board (Board) refused the petitioner's request for reimbursement of the cost of marihuana purchases. The Review Division of the Board confirmed the Board's decision. The Workers' Compensation Appeal Tribunal (WCAT) denied the petitioner's appeal. The petitioner sought judicial review of WCAT's decision.

The WCAT panel noted that the petitioner did not provide details of the purpose for the marihuana, but it appeared to have been intended for pain control. The panel noted that while there was no specific Board policy regarding medical marihuana, the Board's practice was based upon a recommendation of the Evidence Based Practice Group (EBPG). The EBPG had concluded in 2003 that there was insufficient evidence to support the concept that marijuana was a prescribable drug, and had recommended that the Board should not approve any requests for its use. In a 2006 update on its earlier review, the EBPG concluded that the Board's practice should not be changed, based on the evidence available at that time on the effectiveness of cannabis or cannabinoids on treating chronic non-malignant pain.

The Board medical advisor noted that it appeared that the petitioner had been using non-pharmaceutical grade marihuana. The petitioner did not have a prescription for marihuana from a licenced physician or naturopathic doctor. The Board medical advisor recommended that reimbursement be denied, in reliance on the EBPG's opinion.

The WCAT panel reviewed the EBPG's recommendations, noted that the Board medical advisor's opinion was consistent with that recommendation, and noted further that the petitioner had not submitted any contrary medical opinion evidence. The panel denied the petitioner's appeal, finding that the Board's denial of the claim for reimbursement was a reasonable exercise of the Board's discretion under section 21(1) of the *Workers Compensation Act* (the Act).

The court found that WCAT properly decided the appeal on the basis of the only medical evidence that was before it. The petitioner did not produce any medical evidence to support a conclusion contrary to that reached by the EBPG in 2003 and 2006. There was no evidence that the EBPG's conclusion was unreasonable or that WCAT acted unreasonably in relying upon this conclusion. Where WCAT decides an issue in a manner consistent with the only medical opinion evidence before it, the result cannot be regarded as patently unreasonable.

WCAT's reliance on the opinion of a doctor that had not treated the petitioner (namely, the Board medical advisor), did not give rise to a reviewable error in WCAT's decision, because the medical advisor's opinion was based solely on the research available to the Board (that is, the EBPG) regarding the use of marihuana in pain reduction, and in no way depended on the nature of the petitioner's injuries or the severity of the pain he suffered from.

The application for judicial review was dismissed.