

## JOHNSON V. BRITISH COLUMBIA (WORKERS' COMPENSATION BOARD)

### Decision Summary

Court	B.C. Supreme Court
Citation	2009 BCSC 877
Result	Application allowed in part
Judge	Madam Justice Gray
Date of Judgment	July 2, 2009
WCAT Decision(s) Reviewed	WCAT 2005-03622-RB

#### **Keywords:**

*Interest on retroactive disability awards - Item #50.00 of the Rehabilitation Services and Claims Manual (RSCM) – Exhaustion of Remedies – Class Proceedings*

The BC Supreme Court considered issues which had been referred back to it by the Court of Appeal, in particular the question of whether the BC Supreme Court can address a new argument on judicial review not raised before the tribunal. This question was considered in light of the Workers' Compensation Board, operating as WorkSafeBC (Board) policy on interest with respect to retroactive payments.

In *Johnson v. Workers Compensation Board and Workers' Compensation Appeal Tribunal*, 2008 BCCA 232, the Court of Appeal questioned whether the BC Supreme Court judge in 2007 BCSC 1410 had the authority to address a new argument on judicial review not raised before the tribunal. The Court of Appeal quashed the order of the BC Supreme Court judge and referred the matter back to the Court 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.

The BC Supreme Court judge addressed the issues referred back by the Court of Appeal and found that Mr. Johnson and the class were entitled to pursue a direct judicial review of the decision of the Board of Director's of the Board (BOD) to adopt a new interest policy on the basis of the Section 5 Argument (namely, whether compensation in section 5 of the *Workers Compensation Act* includes interest), but not on the basis of the Retroactivity Argument (namely, whether the new interest policy had been applied retroactively to Mr. Johnson). The alternative remedy regarding the Retroactivity Argument, of continuing with the judicial review of the WCAT Interest Decision, was an adequate remedy. The Court ordered that Item #2 of Resolution 2001/10/15-03 of the BOD, which sets out the blatant error test for interest entitlement, was patently unreasonable.