

# Scanlan v. Workers' Compensation Appeal Tribunal

## Decision Summary

Court	B.C. Supreme Court
Citation	2016 BCSC 314
Result	Judicial Review Dismissed
Judge	Madam Justice Young
Date of Judgment	February 24, 2016
WCAT Decision Reviewed	WCAT-2015-00123

### **Keywords:**

*Judicial review – standard of review – patent unreasonableness – section 5(1) of the Workers Compensation Act, Item # 97.32 of the Rehabilitation Services and Claims Manual, Volume II (RSCM II) – question requiring medical expertise.*

### **Summary**

The worker, a pipefitter, developed an infection in his right hand. The Workers' Compensation Board (the Board) denied the worker's claim for compensation. The Review Division of the Board confirmed the Board's decision, based on the opinion of a Review Division medical advisor (RDMA) (Dr. Bulgur). The Review Division accepted the RDMA's opinion that the worker's pipefitting activities did not likely significantly contribute to the development of his right hand infection.

On appeal to WCAT, the worker gave evidence regarding the development of a callus on his thumb. WCAT accepted the worker's evidence with respect to the development of the callus, but said that the question of whether the callus had causative significance with respect to the infection was a matter requiring medical expertise. WCAT noted policy item #97.32 which states that a worker's statement about his or her own condition is evidence insofar as it relates to matters that would be within the worker's knowledge and requires no corroboration, but a conclusion contrary to such a statement may be reached if it is based on a substantial foundation, such as clinical findings or other medical or non-medical evidence. WCAT preferred the RDMA's opinion over the worker's statement. WCAT found that the medical evidence did not support the conclusion that work activities were of causative significance with respect to the worker's infection.

The Court concluded that it was not patently unreasonable for WCAT to prefer the RDMA's opinion on causation, over the worker's arguments, and over the scientific textbooks that the worker had relied upon. The vice chair was entitled to consider all evidence and weigh the strength of the evidence.

There was a rational basis for the overall result in the decision. The textbooks that the worker had relied upon set out scientific theory for the passage of microorganisms into the body, but they did not relate directly to the petitioner and this injury, and the causation of this infection. The petitioner had not submitted an opinion regarding his specific facts from the author of the textbook. Nor had the petitioner submitted medical reports from his treating physicians. For that reason WCAT was well within reason to prefer the medical evidence of Dr. Bulgur (RDMA).

The following arguments did not give rise to breaches of procedural fairness: (1) WCAT denied the worker the ability to quote a doctor from a text at the oral hearing and (2) the vice chair failed to give the

worker notice that she would not rely on his evidence [regarding causation] because it was not within his knowledge and expertise.

The first argument did not give rise to a breach of procedural fairness because WCAT did not in fact deny the worker the ability to quote the textbook at the hearing.

The second argument did not give rise to a breach of procedural fairness because the petitioner was well aware of the policies governing WCAT. He was also aware that his appeal to the review division did not succeed because there was no medical opinion presented by him to contradict that of Dr. Bulgur.