Kerr v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2017 BCSC 1245
Result	Denied
Judges	Mr. Justice Saunders
Date of Judgment	June 29, 2017
WCAT Decisions Reviewed	WCAT-2016-00123

Keywords:

Judicial review – Patent unreasonableness – Section 5(1) of the Workers Compensation Act– Policy items #C3-14.00 and #C3-18.00 of the Rehabilitation Services Claims Manual Vol. II – Arising out of and in the course of employment

Summary:

The petitioner tripped and fell while she was walking to her car after work, injuring her knees. At the time of the injury petitioner was discussing work-related matters with a student she was mentoring as part of her employment. She had offered the student a ride home and they were walking to her car. Her claim for compensation was denied by the Workers' Compensation Board (Board) on the basis that her injuries did not arise out of and in the course of her employment. The petitioner brought an appeal of this decision to the Workers' Compensation Appeal Tribunal (WCAT).

Before WCAT, the petitioner argued that even though she had left the employer's premises she was still effectively on the employer's premises as the sidewalk was the only access point between the parking lot where her car was located and her workplace. The petitioner also argued that she was still in the course of her employment because she was in the course of mentoring the student. WCAT denied the appeal, finding that the petitioner was not on the employer's property and that the conversation with the student was an incidental intrusion of a work activity into an otherwise personal matter. Crucially to the judicial review, WCAT analogized the conversation between the petitioner and student to two co-worker's discussing work at a pub after work hours. The petitioner brought a judicial review, and challenged WCAT's finding that her injury did not arise in the course of employment

On judicial review, the Court rejected the petitioner's argument that the evidence showing she had a supervisor meant that she was being supervised at the time of the injury. In this regard, the Court found the petitioner's interpretation was so broad that it made the question of whether the worker was being supervised at the time of injury meaningless.

The petitioner argued that WCAT had erred by referring to evidence that she was not on the employer's premises in considering whether her activities at the time of injury were part of her job. The Court found it would not be patently unreasonable to consider evidence relevant to the

question of whether the petitioner was on the employer's premises under the heading "For the employer's benefit/Part of the worker's job" if the evidence was relevant to the question that the tribunal was considering. In any event, the Court found this is not what WCAT did, it was simply explaining the effect of its earlier findings.

The petitioner argued that WCAT's pub analogy was a patently unreasonable finding. The Court rejected this argument, and found the analogy was not critical to WCAT's conclusion and therefore was not a reviewable error. The analogy was solely offered by way of illustration. Finally, the Court found the petitioner's argument conflated the nature of the petitioner's relationship with the mentee with the nature of the intrusion of employment activities into the private realm.

By way of general comment, the Court said the petitioner's submissions overlooked the nature of a judicial review proceeding, which was to determine if the decision as a whole was patently unreasonable, not its constituent parts. The Court found the WCAT reasons were transparent and disclosed the basis for the decision reached by the tribunal, thus meeting the *Dunsmuir* criteria.

Finally, the Court noted the petitioner's submissions only attacked WCAT's finding that the injury did not arise in the course of employment. However, WCAT had found the injury did not arise out of or in the course of employment. The Court said that both parts of the test must be met in order for the work injury to be compensable, and therefore the petitioner would have to convince the court in a judicial review that WCAT's findings on both parts of the test were patently unreasonable.