

KERTON v. WORKERS' COMPENSATION APPEAL TRIBUNAL

Decision Summary

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| Court | B.C. Court of Appeal |
| Citation | 2011 BCCA 7 |
| Result | Appeal Allowed Cross Appeal Denied |
| Judge | Mr. Justice Finch Madam Justice Kirkpatrick Mr. Justice Groberman |
| Date of Judgment | January 10, 2011 |
| WCAT Decision(s) Reviewed | WCAT-2006-03952 WCAT-2008-00058 |

Keywords

Standard of Review – Extension of time – Discretionary power

The Court of Appeal considered whether the B.C. Supreme Court in *Kerton v. Workers' Compensation Appeal Tribunal*, 2010 BCSC 644, erred in applying a correctness standard of review to two decisions of the Workers' Compensation Appeal Tribunal (WCAT) that found that section 243(3) of the *Workers Compensation Act* confers on WCAT a residual discretion to deny an extension of the time to appeal where the statutory special circumstances and injustice criteria have been met.

The Supreme Court had found, on a correctness standard, that WCAT does not have a residual discretion – principally on the basis that the legislature could not have intended an extension of time to be refused where there would be a proven injustice – and returned the matter to WCAT for rehearing and to consider afresh what “special circumstances” and “injustice” means in the absence of a residual discretion.

The Court of Appeal allowed the appeal and concluded that the correct standard of review of WCAT's decision was patent unreasonableness. The Court concluded that by characterizing the issue in question as one of jurisdiction the lower court asked itself the wrong question and consequently came to the wrong conclusion. The Court found that section 254 of the Act manifestly places the issue of the extension of an appeal period under section 243(3) under the exclusive jurisdiction of WCAT.

The Court of Appeal found that the WCAT decisions are neither irrational nor unreasonable as their interpretation of section 243(3) is well within the range of interpretative options. The Court further determined that WCAT's interpretation was in fact the most reasonable interpretation. It is the same decision that the Court would reach.