

Kostiuk v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2019 BCSC 363
Result	Allowed
Judges	Madam Justice MacNaughton
Date of Judgment	March 15, 2019
WCAT Decisions Reviewed	A1603245

Keywords:

Judicial review – Patent unreasonableness – Section 5(1) of the Workers Compensation Act– Policy items #C3-14.00 and #C3-16.00 of the Rehabilitation Services Claims Manual Vol. II – Arising out of and in the course of employment – aggravation of a pre-existing condition.

Summary:

On October 14, 2010, the petitioner was driving a cement truck that almost tipped over; he managed to right the truck by steering towards the edge of the sidewalk. The back wheels of the truck came off the ground and then landed back on the ground. The petitioner reportedly felt lower back pain within one half hour of the accident. He also had a significant pre-existing back condition.

The petitioner made a claim for compensation with the Workers Compensation Board (operating as WorkSafeBC, the “Board”). The Board accepted his claim for a low back strain, but then subsequently determined that he had recovered from his compensable low back strain and that any ongoing problems were not compensable. This decision was eventually confirmed by WCAT in a 2012 decision.

The petitioner asked the Board to determine whether his pre-existing condition was aggravated by the accident. The Board concluded the accident had not aggravated his pre-existing condition, and this decision was confirmed by WCAT-2013-00955 (the “Original Decision”).

The petitioner then asked the Board to determine whether he had sustained a new back injury as a result of the accident. The Board determined that he had not, and this decision was confirmed on appeal in a 2014 WCAT decision. In the course of the appeal, the panel obtained a medical opinion from Dr. Leith pursuant to section 249 of the Act. This opinion said that the petitioner did not sustain a new back injury as a result of the accident, but that the accident likely aggravated his pre-existing condition.

The petitioner then applied to WCAT for reconsideration of WCAT-2013-00955. The reconsideration proceeded in two stages. In the first stage, WCAT found that the new evidence met the threshold test in section 256 of the *Workers Compensation Act*, RSBC 1996 c. 245. In the second stage decision dated September 29, 2016 (the “Reconsideration Decision”), WCAT

found that the Original Decision should not be set aside. In particular, WCAT found that Dr. Leith's evidence was not consistent with the facts accepted by the panel.

The petitioner brought a judicial review of the Reconsideration Decision. The Court allowed the petition, finding that WCAT misapprehended Dr. Leith's opinion. The Court also found that WCAT failed to address a critical point in policy item C3-16.00, which required a determination of whether the petitioner's pre-existing condition was at a critical point at the time of the accident. Finally, the Court found that WCAT failed to determine whether the petitioner's condition was aggravated, activated, or advanced more quickly by the workplace accident. The matter was remitted to WCAT for reconsideration.