

LAVIGNE V. BRITISH COLUMBIA (WORKERS' COMPENSATION APPEAL TRIBUNAL)

Decision Summary

Court	B.C. Supreme Court
Citation	2010 BCSC 341
Result	Judicial Review Dismissed
Judge	Mr. Justice Brooke
Date of Judgment	January 1, 2010
WCAT Decision(s) Reviewed	WCAT-2009-00183

Keywords

Reconsideration – New Evidence – Section 256 of the Workers Compensation Act - Procedural fairness - Method of hearing

The Petitioner sought judicial review of a reconsideration decision of the Workers' Compensation Appeal Tribunal (WCAT) on the basis that WCAT failed to follow the earlier order of the court in *Lavigne v. British Columbia (Workers Compensation Review Board)*, 2008 BCSC 1107.

In that order, Mr. Justice Truscott remitted the decision of the Workers' Compensation Review Board with the direction to reconsider whether the vice chair was prepared to accept the letter of May 26, 2004, over the name of Mr. O'Dare as "new evidence" or as evidence demonstrating that it was unfair as a matter of natural justice not to have conducted an oral hearing with Mr. O'Dare present. The Petitioner also sought orders regarding her wage rate and permanent disability award.

The Court dismissed the petition, finding that it was not patently unreasonable for the reconsideration panel to decline to order an oral hearing, nor was it unfair in light of the fact that the Petitioner expressly asked the tribunal that there be no oral hearing. The Court further found that it had no jurisdiction to address the wage rate and permanent disability award on this judicial review.