

Lockyer-Kash v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2016 BCSC 2435
Result	Judicial Review Denied
Judge	Mr. Justice Abrioux
Date of Judgment	December 30, 2016
WCAT Decision(s) Reviewed	WCAT-2014-01059

Keywords:

Judicial review – Interest on retroactive awards – Blatant Board error – Lawfulness of former item #50.00 of the Rehabilitation Services and Claims Manual, Volumes I and II - Sections 5 and 251 of the Workers Compensation Act

Summary:

The Court found that it was reasonable for the board of directors of the Workers' Compensation Board (BOD) to determine that the former item #50.00 of the *Rehabilitation Services & Claims Manual*, Volumes I and II, was not so patently unreasonable that it is not capable of being supported by the *Workers Compensation Act* and its regulations.

Between 2001 and 2013, policy item #50.00 provided that interest was payable by the Workers' Compensation Board (Board) on retroactive compensation benefits if a "blatant Board error" necessitated the retroactive payment. The policy provided criteria for the discretionary payment of interest in situations other than those expressly provided by the Act.

The petitioner was granted a retroactive loss of earnings permanent disability award. The issue of interest on that award was delayed until the litigation surrounding the lawfulness of the policy was resolved in *Johnson v. Workers' Compensation Board*. That proceeding ended without the matter being resolved (see 2011 BCCA 255). The petitioner then challenged the lawfulness of the policy before WCAT pursuant to section 251 of the Act, which resulted in a decision by the WCAT chair that the policy was patently unreasonable. The BOD then determined that the policy was not patently unreasonable and that WCAT must apply it. WCAT subsequently issued a decision in the petitioner's appeal finding that it had no reasonable prospect for success as it was bound by the BOD's determination and the petitioner was not arguing that there had been a blatant Board error that necessitated the retroactive payment.

The Court found that the correct question to ask in this case is whether, in confirming the policy, the BOD exercised its discretion in a manner consistent with the purposes and objects of the Act. The question was not, as the WCAT chair had posed, whether the policy was consistent with the purpose of interest. The Court found that because the BOD determined that the blatant Board error test was rational when considered in light of the objectives and purposes of the Act, it was neither arbitrary nor discriminatory.

The Court found that the BOD determination was reasonable because: (a) the test provides an exception to the general rule that interest is only awarded on retroactive compensation payments in the circumstances set out in sections 19(2)(c) and 258(5) of the Act; (b) where the delay in payment has been occasioned by an egregious error not contemplated by the Legislature in designing the system, the worker who was the victim of the error receives interest on their retroactive payment. This results in a tangible monetary acknowledgment by the Board of its blatant or egregious conduct; and (c) payment of interest in these circumstances also acts as an incentive to lessen egregious internal errors. The Court also found that it is a reasonable interpretation of the Act to provide a policy that does not pay interest in typical cases that go through the appellate system. In that regard, the Court noted that an appeal system exists and the Act provides no direction to pay interest in typical cases.

The petitioner has filed an appeal of this decision.