

# ***Lysohirka v. Workers' Compensation Board of British Columbia and Workers' Compensation Appeal Tribunal***

## Decision Summary

Court	B.C. Supreme Court
Citation	2011 BCSC 453
Result	Judicial Review Dismissed
Judge	Madam Justice Beames
Date of Judgment	April 11, 2011
WCAT Decision(s) Reviewed	N/A

### **Keywords:**

*Judicial review – Vocational rehabilitation benefits – Section 16 of the Workers Compensation Act – Retroactive payment of vocational rehabilitation benefits – Evidence of participation in vocational rehabilitation activity*

### **Summary:**

The petitioner sought judicial review of three decisions of the Review Division of the Workers' Compensation Board, operating as WorkSafeBC, (Board) considering his entitlement to retroactive vocational rehabilitation benefits. The petitioner also sought judicial review of a decision of WCAT, which addressed the question of retroactive vocational rehabilitation benefits but did not involve the petitioner. At the hearing, the petitioner limited his argument to the Board decisions. Therefore, and because decisions of the Board pertaining to vocational rehabilitation benefits are not appealable to WCAT, WCAT's involvement in this matter was limited.

The petitioner's claim for compensation was initially denied and it was not until a successful appeal to WCAT that the Board considered the petitioner's entitlement to benefits. More than three years after his injury, the petitioner's claim was referred to a vocational rehabilitation consultant, who decided that the petitioner was entitled to certain vocational rehabilitation benefits, but not to retroactive benefits.

The Review Division ultimately determined that the petitioner was entitled to retroactive benefits, but only insofar as he could provide evidence confirming his participation in vocational rehabilitation activity (such as a job retraining program). The petitioner had argued that particularly for the period during which his claim was wrongly denied, he was entitled to full retroactive vocational rehabilitation benefits from the date of his disablement, without having to give evidence of his involvement in vocational rehabilitation activities.

In dismissing the petition for judicial review, the court determined that the Review Division's requirement for evidence of participation in vocational rehabilitation activities, as a prerequisite for receiving retroactive benefits, was a reasonable exercise of the Board's discretion.