

Decision Summary

Court	B.C. Supreme Court
Citation	2007 BCSC 1945
Result	Judicial Review Allowed
Judge	Mr. Justice Groves
Date of Judgment	December 7, 2007
WCAT Decision(s) Reviewed	WCAT-2005-03693, WCAT-2006-01402

Keywords:

Section 257 certification – Status of person – Arising out of and in the course of employment – Section 5(1) of the Act – Gap in concrete barrier – Hazard of employer’s premises – Items #14.00, #17A.10, #18.01, #18.11, #18.12, #19.20 of Rehabilitation Services and Claims Manual, Volume I – Patent unreasonableness – No evidence

The Court considered a Workers’ Compensation Appeal Tribunal (WCAT) decision about whether the Petitioner, who was involved in motor vehicle accident on his employer’s property, was a worker and whether his injury arose out of and in the course of employment.

The Petitioner, an employee of the British Columbia Ferry Corporation at the Swartz Bay ferry terminal in Sidney, British Columbia, was leaving work on his motorcycle. While on a road open to the public but on British Columbia Ferry Corporation property, a dump truck with a trailer driven by Mr. Sundher, also a worker but not employed by the British Columbia Ferry Corporation, collided with his motorcycle. Mr. Sundher attempted to turn left through a gap in the concrete barrier in order to do a U-turn and pick up tools left at the ferry terminal and to do so, crossed over the lanes to his left, cutting across the lane in which the Petitioner was travelling. The Petitioner was unable to stop his motorcycle and the collision occurred. The Petitioner was injured in the Accident and brought a legal action against the Respondent Sundher for damages. Pursuant to section 257 of the *Workers Compensation Act (Act)* the Respondent Sundher requested that WCAT determine the status of the Petitioner and the Respondent Sundher, and certify that status to the court. WCAT certified that the Petitioner was a worker at all material times and that his injuries arose out of and in the course of his employment. That determination was based on, among other things, the fact that the gap in the concrete barrier was on the employer’s premises and a finding that large vehicles had to turn across multiple lanes of traffic in order to enter the gap. The WCAT decision was upheld on reconsideration.

The Court concluded that the standard of review of the original WCAT decision was patent unreasonableness. The Court set aside the original WCAT decision and the reconsideration WCAT decision on the basis that the original panel’s finding that the gap in the concrete barrier constituted a hazard of the employer’s premises was based on no evidence and was therefore patently unreasonable.