

M.V. v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2016 BCSC 1497 2016 BCSC 1507
Result	Judicial Review Allowed
Judge	Madam Justice Ballance
Date of Judgment	August 17, 2016
WCAT Decision Reviewed	Disclosure Prohibited

Keywords:

Judicial review – Reopening of a claim – Compensable consequences – Aggravation of depression – Misapprehension of medical evidence – Patent unreasonableness – Anonymity order – Sealing order

Summary:

(1) Judicial Review Decision

WCAT determined that the petitioner's compensable back injury was not a significant cause of the worsening of her non-compensable pre-existing depression. The worsening of her depression was therefore not a compensable consequence of her back injury and her appeal of a decision refusing to reopen her claim for further benefits was denied.

WCAT relied on the medical opinion of a psychologist, Dr. S, who had concluded that the petitioner's back injury was not related to the worsening of her depression. WCAT discounted the medical opinion of the petitioner's treating psychiatrist, Dr. P, who had reached the opposite conclusion. WCAT relied on three grounds. First, that Dr. P determined that her back injury was the cause of the pre-existing depression (WCAT found this was inconsistent with the finding of an earlier binding WCAT decision that that they were not related). Second, that Dr. P considered that the petitioner's inability to work after the back injury was a significant cause of her depression (WCAT found that a worker's reaction to the effects of an injury, such as financial distress or difficulty dealing with the Board, are not considered to be compensable). Third, that Dr. P did not discuss the petitioner's prior history of childhood abuse or the history of psychological illness in her family, both of which had factored into all of the other reports. WCAT ultimately determined that the petitioner's heightened level of depression was due to "moving, financial hardship and non-compensable health issues".

The Court found that WCAT's decision was patently unreasonable, set it aside, and remitted the matter to WCAT for reconsideration on the merits. It found that the WCAT panel had misapprehended critical evidence when it found that Dr. P had failed to discuss in his two opinions the petitioner's history of childhood abuse and her mother's psychological illness. The

Court found that Dr. P clearly discussed these factors in both reports. The Court found that the so-called omission occupied a very prominent place in WCAT's reasoning and was a patently unreasonable error.

The two other reasons offered by the WCAT panel for discounting Dr. P's opinion were not sufficient to overcome the error. In respect of the first reason, WCAT nonetheless still considered Dr. P's reports as providing an opinion as to the cause of the petitioner's current episode of depression. In respect of the second reason, the fact that Dr. P had identified other factors that had contributed to the petitioner's depression does not invalidate his opinion that the back injury was also a significant factor nor does it justify attributing less weight to the opinion. Further, unless Dr. S's opinion is evaluated against an informed appreciation of Dr. P's opinion, it cannot independently support WCAT's conclusion.

(2) Anonymity Order and Sealing Order Decision

At the request of the petitioner, the Court ordered that the style of cause of the judicial review proceeding be amended to refer to the petitioner by her initials; that the reasons for judgment not refer to the WCAT decision number as it contains the name of the petitioner's treating psychiatrist and other unnecessary identifying information; and that the entirety of the Court file be sealed and access to the file be restricted.

The basis for these orders was the presence of information pertaining to the history of sexual abuse perpetrated upon the petitioner by a family member from infancy until childhood and credible evidence before the Court from the petitioner's treating psychiatrist that providing public access to this information would likely cause her serious harm in the form of severe anxiety and depression. The Court found that in this case there was a strong superordinate social value and public interest in protecting the privacy of victims of sexual abuse from further exposure in the public domain. These outweigh the negative implications on the presumptive public interest in the principle of openness.