

Machado v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2015 BCSC 769
Result	Judicial Review Dismissed
Judge	Madam Justice Ross
Date of Judgment	May 12, 2015
WCAT Decision(s) Reviewed	WCAT-2013-01425

Keywords

Judicial review – Patent unreasonableness – Extension of time to appeal – Section 243(3) of the Workers Compensation Act – Practice directive 8.2.2 of Manual of Rules of Practice and Procedure – No special circumstances precluding filing the appeal on time

Judicial review – Patent unreasonableness – Presumption regarding delivery of document by mail – Section 221(2) of the Workers Compensation Act – Insufficient reliable evidence to rebut presumption

Summary:

The Workers' Compensation Appeal Tribunal (WCAT) exercised its discretion to deny the worker's application for an extension of time to appeal a decision of the Review Division. According to WCAT, the worker had not met the requirements of section 243(3) of the *Workers Compensation Act (Act)* by establishing special circumstances that precluded the filing of an appeal within the time set out in the *Act*. On judicial review, the Court found that there was evidence to support WCAT's findings of fact and inferences drawn from those findings. In the result, the Court dismissed the worker's petition for judicial review.

The worker had received a decision from the Review Division, to which she objected. The decision letter was mailed to her home. It explained that she had 30 days in which to file an appeal with WCAT. A second copy of the letter was sent to the same address to her husband, who was acting as the worker's representative. The worker failed to file an appeal within the prescribed time, but eventually filed an application for an extension of time to appeal, wherein she explained her failure to file within the 30 days as "the letter in the mail box was missed". WCAT invited the worker to make further submissions before a certain date. She subsequently asked for, and received, an

extension of time to make her submissions, but missed that deadline too. Next, the worker filed a new application for an extension of time to appeal but provided a different explanation for the delay: the mail had been accidentally put in the mailbox of a neighbour who was away on holiday at the time.

WCAT attempted to establish the validity of the worker's evidence, but was unsuccessful in contacting the neighbour and the worker failed to produce the neighbour as a witness at the hearing. WCAT concluded that there was insufficient reliable evidence to rebut the presumption in section 221(2) of the *Act* that a document sent by mail is received on the eighth day after it was sent. In considering whether there were special circumstances that precluded the worker from filing a timely appeal, WCAT referred to the factors set out in practice directive 8.2.2 in WCAT's *Manual of Rules of Practice and Procedure*. The WCAT panel concluded that the worker did not take all reasonable steps to ensure a timely appeal and dismissed her application for an extension of time. In dismissing the application for judicial review, the Court determined that WCAT's decision was not patently unreasonable.