

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

Decision Summary

Court	B.C. Supreme Court
Citation	2014 BCSC 1194
Result	Petition Allowed
Judge	Mr. Justice Skolrood
Date of Judgment	June 30, 2014
WCAT Decisions Reviewed	WCAT-2011-01272; WCAT-2013-00400; WCAT-2013-02754

Keywords:

Judicial review – Causation – Whether Injury Arose out of and In the Course of Employment (section 5(1)) of the Workers Compensation Act (Act) – Items #26.20, 26.50, and 26.55 of the Rehabilitation Services and Claims Manual, Volume II (RSCM II) – Evidence – Specific Injuries – Patellofemoral Osteoarthritis – Procedural Fairness

Summary:

The petitioner's employment as a press operator regularly required him to kneel and to walk on his knees. He was diagnosed with patellofemoral osteoarthritis (POA) and filed a claim for compensation with the Workers' Compensation Board (Board). In its decision, the Board indicated that it relied upon an opinion from its medical advisor, Dr. Dunn, but did not set out any particular interpretation of this opinion. The Board concluded that the petitioner's exposure at his workplace to risk factors for the development of POA was very limited. It found that the evidence did not support a causal or epidemiological relationship between the petitioner's knee condition and his work activities, and thereby denied the petitioner's claim for compensation.

The Review Division of the Board upheld the Board's decision. The Review Division interpreted Dr. Dunn's opinion as being that kneeling could be associated with increasing the risk for developing POA, but working on one's knees on an occasional basis would not cause or aggravate POA. The Review Division concluded that the petitioner kneeled and/or worked on his knees on an occasional basis only, and therefore work causation was not established.

The petitioner appealed to WCAT. WCAT denied the petitioner's appeal in its original decision. WCAT accepted the petitioner's argument that Dr. Dunn had underestimated the amount of kneeling involved in the petitioner's job, but found that Dr. Dunn's opinion was that, based on the medical literature, kneeling could not cause or materially aggravate POA in the absence of an acute traumatic event or injury to the patellofemoral joints. Thus, the amount of kneeling that the petitioner had engaged in at his workplace was essentially immaterial.

In the original decision, WCAT also found that an opinion from Dr. Chaiton, which indicated that the petitioner's POA was "likely provoked by his work demands" did not address whether the petitioner's job had caused or aggravated his POA. Ultimately, the original panel found that the medical evidence did not support the petitioner's contention that his POA was caused or aggravated by his employment.

The petitioner applied to WCAT for reconsideration of the original decision on the basis of new evidence. Specifically, the petitioner sought to introduce (1) various journal articles that addressed the causal relationship between kneeling as a job requirement and the development of POA, and (2) a further medical report from Dr. Chaiton regarding work causation. WCAT's new evidence panel found that all of the evidence could have been discovered with reasonable diligence. It also found that none of the evidence was substantial. Thus, the new evidence panel found that the proposed new evidence did not meet the test for admission set out in section 256 of the *Workers' Compensation Act* (the Act).

WCAT's reconsideration panel denied the petitioner's application for reconsideration of both the original decision and the new evidence decision, finding that neither decision was patently unreasonable, nor unfair.

The petitioner applied for judicial review of WCAT's decisions.

Reasons of the court

The court found that the original panel's interpretation of Dr. Dunn's medical opinion was patently unreasonable. In the court's view, Dr. Dunn's opinion was that the medical literature would not support a causal relationship between kneeling and the worker's POA in this particular case, given that kneeling was a relatively minor occupational requirement. This was quite different from the sweeping opinion attributed to Dr. Dunn by WCAT that kneeling could not cause or aggravate POA absent an acute trauma.

The court also found that the original panel (and Dr. Dunn) had essentially dismissed Dr. Chaiton's opinion that the petitioner's POA was "likely provoked by his work demands" as not addressing the issue of whether the petitioner's work demands caused or aggravated his POA. The court found that the term "provoke" was in fact synonymous with the terms "aggravate" or "cause", and that in stating that the petitioner's POA was likely provoked by his work demands Dr. Chaiton had intended to convey a causal relationship between the petitioner's kneeling and his POA. Thus, it was patently unreasonable for WCAT to conclude that there was no medical evidence to establish that kneeling had caused or aggravated the petitioner's POA.

The court also found that the original panel had been procedurally unfair, because it did not give the petitioner notice, prior to issuing its original decision, that the question of whether kneeling could cause or aggravate POA absent some trauma was a live issue. The focus of the inquiry changed between the initial Board proceeding and the subsequent WCAT appeal proceeding. The focus during the initial Board proceeding was the amount of kneeling in the petitioner's specific job. That is, the Review Division found that the petitioner kneeled and/or worked on his knees on an occasional basis only, and therefore work causation was not established. The focus before WCAT was the broader issue of whether kneeling could ever cause POA absent a trauma. The petitioner was deprived of the opportunity to address directly the issue on which WCAT ultimately based its decision to deny his claim.

The petitioner sought to address this issue (that is, the issue of whether or not kneeling could cause or aggravate POA absent some trauma) by way of his new evidence application. The court did not deal with WCAT's new evidence decision in any detail but found that WCAT's treatment of the new evidence application, pursuant to which the petitioner's application for new evidence was denied, underscored the unfairness of the process to which the petitioner was subjected.

The court set aside WCAT's original decision and reconsideration decision. The court found it was unnecessary to consider the petitioner's arguments regarding the new evidence decision but set aside the new evidence decision as a consequence of setting aside the original decision.