

# Martin v. Workers' Compensation Appeal Tribunal

## Decision Summary

Court	B.C. Supreme Court
Citation	2013 BCSC 2210
Result	Judicial Review Dismissed
Judge	Mr. Justice Ehrcke
Date of Judgment	December 3, 2013
WCAT Decision(s) Reviewed	WCAT-2004-06493-RB WCAT-2004-06493a-RB WCAT-2006-01867

### **Keywords:**

*Judicial review – Patent unreasonableness – Loss of earnings permanent partial disability award – Former provisions of the Workers Compensation Act – Section 23(3) of the Act – Suitability of occupation – Employability assessment*

### **Summary:**

The Workers' Compensation Appeal Tribunal (WCAT) determined that the worker (petitioner) was not entitled to a loss of earnings permanent partial disability award under the former provisions of the Act (as it read prior to June 30, 2002). WCAT concluded that although the worker could not return to his pre-injury occupation as a welder-fabricator because of his work caused condition (bilateral wrist pain) he could adapt to a physically suitable occupation, specifically, automobile service advisor, without suffering a loss of earnings.

On judicial review the worker argued that WCAT's decision was patently unreasonable. He argued that the occupation was not suitable and that there was no evidence before WCAT as to the extent and intensity of the computer work involved. Further, he argued that WCAT failed to take proper account of the restrictions he has in the use of his hands and wrists and his learning limitations with respect of reading and writing.

The Court dismissed the petition on the basis that there was some evidence to support WCAT's conclusion and the decision was therefore not patently unreasonable. That evidence included, but was not limited to, an employability assessment prepared by a vocational rehabilitation consultant in which the consultant specifically commented on the amount of computer work involved in the job of service advisor and concluded that it would not be beyond the worker's physical abilities given certain ergonomic assistance. Further, the consultant noted that testing showed that the worker did not have a learning disability. The Court found that WCAT was entitled to rely on the experience and expertise of the vocational rehabilitation consultant.