

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

Decision Summary

Court	B.C. Supreme Court
Citation	2015 BCSC 692
Result	Judicial Review Dismissed
Judge	Madam Justice Harris
Date of Judgment	April 29, 2015
WCAT Decision(s) Reviewed	May 9, 2013 WCAT decision, WCAT-2013-03280

Keywords

Civil procedure – Striking pleadings – Rule 9-5(1)(a) of the Supreme Court Civil Rules – Section 14 of the Judicial Review Procedure Act – Petition disclosing no reasonable claim

Civil procedure – Striking pleadings – Rule 9-5(1)(d) of the Supreme Court Civil Rules – Petition an abuse of process – Substantially similar petition already struck – No circumstances justifying second challenge

Judicial review – Failure to exhaust adequate alternative administrative remedies – Delay in appealing – Former appeal bodies – A tribunal's equitable jurisdiction to review the decisions of another tribunal

Judicial review – Patent unreasonableness – Section 31(1)(f) of the Administrative Tribunals Act – Summary dismissal – No reasonable prospect of success

Judicial review – Patent unreasonableness – Section 256 of the Workers Compensation Act – New evidence – Evidence provided in support of application not material or new

Summary:

The Court dismissed Mr. Mayden's petition for judicial review of two decisions of the Workers' Compensation Appeal Tribunal (WCAT) and one decision of the defunct Appeal Division of the Workers' Compensation Board (the Board). The Court found that the petition did not disclose a reasonable claim and that it was an abuse of the Court's process, chiefly because the petitioner had earlier sought judicial review in a substantially similar petition, which the Court had struck. For these reasons, the Court held that the current petition should be struck under Rule 9-5(1) of the *Rules of Court*.

The Court also found that neither of the WCAT decisions could be said to be patently unreasonable. WCAT had dismissed the petitioner's appeal on the basis that an earlier decision on his claim, by the since-defunct Workers' Compensation Review Board, was final and binding in light of Mr. Mayden's failed application to the Appeal Division for an extension of time to appeal the Review Board decision. In the other decision, WCAT dismissed the petitioner's application to reconsider the decision of the Appeal Division because he did not satisfy the requirements in the *Workers Compensation Act* for new evidence.

The petitioner claims to have been injured at work in 1980. He did not file a claim for compensation until 1992. His claim was denied because it was made out of time and the petitioner had not demonstrated "special circumstances" which precluded him from filing a timely claim for workers' compensation. In 1993 his appeal to the Review Board was denied. In 1999, the petitioner applied to the Appeal Division for an extension of time to appeal the Review Board finding. In support of his application, the petitioner adduced evidence, which he said demonstrated "special circumstances" to account for his initial delay in filing for compensation. The Appeal Division denied the application, noting that the issue before it was not the delay between the original incident and the petitioner's application for compensation but, instead, the delay in seeking to appeal the Review Board finding.

In 2001, the petitioner applied for judicial review of the Appeal Division decision. His petition was struck by the Court for disclosing no reasonable claim. In 2003, the Review Board and the Appeal Division ceased and WCAT came into operation. In 2012, the petitioner asked the Board to reopen his claim for compensation. The Board said that it could not reopen a claim where more than 75 days had passed since its decision and, as here, where there had been a review or appeal decision on the matter. The petitioner ultimately appealed to WCAT. On May 9, 2013, WCAT issued a summary decision dismissing the petitioner's appeal noting that WCAT lacked jurisdiction to grant the relief sought and that the appeal had no reasonable prospect of success.

The petitioner also applied to WCAT under section 256 of the *Workers Compensation Act* to reconsider the Appeal Division decision on the basis of new evidence. The evidence he tendered was the same evidence he had given to the Appeal Division in 1999 in support of his application for an extension of time to appeal the Review Board decision. WCAT dismissed the application, noting that the evidence was not new and not material. Mr. Mayden petitioned the Court for judicial review of the WCAT decisions and the Appeal Division decision.

The Board applied under Rule 9-5 of the *Rules of Court* to strike the petition on the bases that it did not disclose a reasonable claim and that it was an abuse of process. The Court said the petition was difficult to follow and did not meet the requirements of section 14 of the *Judicial Review Procedure Act* by stating the grounds upon which judicial review is sought. The Court also found that it would be an abuse of process to allow the petitioner to again challenge the decision of the Appeal Division in a second judicial review proceeding. The Court found no circumstances which would justify resurrecting his challenge.

WCAT concluded that the Review Board decision was final and binding in light of the Appeal Division's denial of the petitioner's application to extend the time to appeal. WCAT determined that, in these circumstances, it had no authority to interfere with the Review Board decision. The Court, referring to *Demings v. Workers' Compensation Appeal Tribunal*, agreed with WCAT. In respect of the other WCAT decision, the Court concluded that there was a reasonable basis for WCAT's findings that the petitioner's evidence was neither new nor material to the issue that was before the Appeal Division.