Morris v. British Columbia (Workers' Compensation Board)

Decision Summary

Court	B.C. Supreme Court
Citation	2019 BCSC 706
Result	Petition dismissed
Judges	Madam Justice MacNaughton
Date of Judgment	May 7, 2019
WCAT Decision(s) Reviewed	WCAT-2013-00635, as amended by WCAT-2013-00635a; WCAT letter dated February 7, 2018; WCAT summary decision dated June 20, 2018 (A1801030)

Keywords

Reopening – Section 96(2) of the Workers Compensation Act (the "Act") – Exhaustion of statutory remedies – WCAT's authority to hear an appeal under section 240(2) of the Act

Background

Mr. Morris was injured in a 2010 work injury. Pursuant to a Review Division decision, he received temporary wage loss benefits until January 24, 2012.

Mr. Morris appealed this Review Division decision (among other decisions) to the Workers' Compensation Appeal Tribunal ("WCAT"). In *WCAT-2013-00635*, the "2013 WCAT Decision", WCAT extended Mr. Morris' temporary wage loss benefits to May 13, 2012. It found that Mr. Morris' condition had plateaued as of May 14, 2012. WCAT also accepted that Mr. Morris experienced shock-like symptoms resulting in intermittent loss of motor control and that this condition was permanent, as of May 14, 2012.

In 2017, Mr. Morris sought to have his 2010 claim reopened on the basis that there was a significant change in his condition.

In a May 5, 2017 letter to Mr. Morris, a Board case manager indicated that he had informed the Board's Nanaimo office that Mr. Morris had requested that his 2010 claim be reopened.

Mr. Morris did not hear from the Board's Nanaimo office.

On February 7, 2018 Mr. Morris filed a notice of appeal with WCAT. He attached the Board's May 5, 2017 letter.

On February 7, 2018 WCAT wrote to Mr. Morris, indicating that it appeared that the Review Division could review the Board's May 5, 2017 letter and thus it had forwarded his notice of appeal to the Review Division.

On February 27, 2018, the Review Division issued a decision. It said that, while it could review most Board decisions, the May 5, 2017 letter from the Board was an information letter that did not contain any reviewable decisions. Thus, a review of that letter would not proceed.

On April 8, 2018, Mr. Morris applied to WCAT for an extension of time to appeal the Review Division's February 27, 2018 decision.

On June 20, 2018, WCAT issued its summary decision No. A1801030 (the "2018 WCAT Decision"). WCAT dismissed Mr. Morris' appeal, finding that it did not have jurisdiction to hear it, and the appeal had no reasonable prospect of success. WCAT found that its authority was limited to issues arising from Board or Review Division decisions. The Board or Review Division had not yet decided the reopening question, thus, WCAT did not have the authority to hear the appeal. WCAT confirmed the Review Division's finding that the May 5, 2017 letter was informational only, and therefore not subject to review. Thus, the appeal did not have any reasonable prospect of success.

In the meantime, starting in March 2018, the Board started communicating with Mr. Morris about his reopening request, and started receiving some of his medical records. On August 8, 2018, Mr. Morris filed his petition for judicial review. In November 2018, the Board issued a decision. The Board decided not to reopen Mr. Morris' claim.

Reasons of BC Supreme Court

The Board's November 2018 reopening decision

Mr. Morris argued that the Board had lost jurisdiction due to its failure to fulfill its statutory duty to provide Mr. Morris with a decision in respect of his request to reopen the 2010 claim, and that the Board be compelled to fulfill its statutory decision and issue a decision in respect of Mr. Morris' reopening request.

The court found that this aspect of the petition was now moot. Subsequent to the filing of the petition, the Board had issued a decision regarding the reopening question. The Board had thus fulfilled its statutory duty in the form of its November 2018 decision. An order requiring the Board to do what it has already done would be redundant. There was no reason for the court to determine a moot issue.

The court said that if Mr. Morris was asking it to decide his reopening request, the court

could not do so. The *Workers Compensation Act* (the "*Act*") sets up a legislative regime in which the Board, possibly the Review Division, and WCAT have exclusive jurisdiction to decide whether a claim under the *Act* should be reopened.

Mr. Morris must exhaust the steps available to him under the statutory scheme. If Mr. Morris was not satisfied with the Board's reopening decision, he may appeal to WCAT. If he remained dissatisfied with a WCAT decision he may seek judicial review by the court on appropriate grounds.

The 2013 WCAT Decision

WCAT found that Mr. Morris' condition plateaued on May 14, 2012. Mr. Morris challenged this finding on the basis that over time, and after the 2013 WCAT Decision was issued, his shock-like symptoms subsided. Thus, WCAT was wrong when it found that his condition plateaued on May 13, 2012.

The court found that evidence about what happened after the 2013 WCAT Decision was issued is inadmissible on judicial review. Mr. Morris could not establish that WCAT's factual finding that his condition plateaued as of May 14, 2012 was patently unreasonable on the basis of this inadmissible evidence.

The 2018 WCAT Decision

Mr. Morris submitted that, at the time of the 2018 WCAT Decision, the Board had failed to make a decision with respect to his reopening request. A failure to make a decision is in fact a decision. As a result, section 240(2) of the *Act* permitted him to appeal directly to WCAT.

Section 240(2) of the *Act* provides that "a decision to reopen or not to reopen a matter on an application under section 96(2) may be appealed to the appeal tribunal."

The court said that, pursuant to WCAT's interpretation of its authority, a condition necessary for the exercise of WCAT's appeal authority is the existence of lower Board and/or Review Division decisions. This interpretation was not patently unreasonable. Section 240(2) did not give rise to reviewable error in the 2018 WCAT Decision. WCAT's decision that it did not have authority to act in circumstances where there had been no Board or Review Division decision was not patently unreasonable.

WCAT's February 7, 2018 letter

Mr. Morris submitted that it was wrong for WCAT to remit his February 7, 2018 notice of appeal to the Review Division (by way of WCAT's letter of that same date). Instead, WCAT should have decided his appeal of the Board's failure to make a decision in respect of his reopening application.

The court noted that it had already concluded that WCAT's interpretation of its

jurisdiction, as flowing from earlier decisions of the Board or Review Division, was not patently unreasonable. The court found that, even if WCAT's February 7, 2018 letter constituted a decision reviewable under the *Judicial Review Procedure Act*, undertaking judicial review of it would serve no useful purpose. That was because even if WCAT had considered Mr. Morris' appeal under s. 240(2) of the *Act*, instead of sending it to the Review Division, the outcome would have been the same. WCAT would have concluded that it did not have authority to hear an appeal under s. 240(2) of the *Act*, in the absence of a Board reopening decision under s. 96(2).

Orders sought for entitlement to workers' compensation benefits

The court rejected Mr. Morris' claim for an order that benefits be payable by WCAT. The court cannot direct the payment of compensation benefits. It is not the court's role to make the ultimate entitlement decision or to direct the result of any reconsideration that it has ordered. In any event, the court could not order WCAT to pay benefits because under the statutory regime, all benefits are payable from the accident fund which is solely funded by employer premiums and maintained by the Board and not WCAT. WCAT does not have the authority under the *Act* to pay benefits to a worker. WCAT only has the power to direct the Board to pay such benefits on an appeal from a Board or a Review Division decision.