

Othen v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2012 BCSC 818
Result	Judicial Review Dismissed
Judge	Madam Justice Adair
Date of Judgment	June 6, 2012
WCAT Decision(s) Reviewed	WCAT-2008-00657

Keywords:

Judicial review – Permanent disability awards – Section 23 of the Workers' Compensation Act – Loss of earnings award - Cross examination – Travel expenses – Legal costs - Interest

Background:

On September 15, 1994, the Petitioner was injured on the job. He slipped and fell about six feet, from the bed of a truck to the ground, and injured his back. He was awarded a permanent functional impairment award totalling 3.59% for his back injury. The Workers' Compensation Board, now operating as WorkSafeBC (Board) concluded that the Petitioner was not entitled to a loss of earnings award because it found that the Petitioner could restore his pre-injury earnings in another occupation.

In a 2005 decision, the Workers' compensation Appeal Tribunal (WCAT) increased the Petitioner's permanent functional impairment award to account for subjective complaints of pain. Other matters relating to the Petitioner's compensation claim, including further review of his entitlement to a loss of earnings award, were sent back to the Board for consideration, in accordance with the 2005 WCAT Decision. The Petitioner appealed the implementation decisions. In a 2008 decision WCAT dismissed the appeal finding that the Board had properly implemented the 2005 WCAT Decision and that the Petitioner was not entitled to a loss of earnings permanent disability award. WCAT further found that interest had not yet been initially adjudicated by the Board so made no decision in that respect, and held that legal costs and the expenses of attending the hearing were not reimbursable. The Petitioner sought judicial review of the 2008 WCAT Decision.

Reasons of the Court:

The Court dismissed the judicial review finding that the 2008 WCAT Decision was not patently unreasonable as there was evidence in the record of proceedings to support the conclusions made, and that in all of the circumstances the Petitioner was treated fairly by WCAT. The Court further noted that WCAT's decision to refer the question of entitlement to interest back to the Board for an initial adjudication in accordance with the Court of Appeal's decision in *Johnson v. British Columbia (Workers' Compensation Board)*, 2011 BCCA 255, 19 B.C.L.R. (5th) 123 was

not patently unreasonable. The Court also found that there was a rational basis for WCAT's denial of the Petitioner's request for reimbursement of travel expenses and legal costs. Finally, the Court held that the Petitioner was not denied a fair hearing as a result of the vocational rehabilitation consultant not being produced for cross-examination given that the vocational plan that the Petitioner pursued was one he had designed, and the Board agreed to.