

Paleos v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2019 BCSC 1113
Result	Petition dismissed
Judges	Madam Justice Fitzpatrick
Date of Judgment	July 10, 2019
WCAT Decision Reviewed	A1700441

Keywords:

Judicial review – Procedural fairness– Summary dismissal – Withdrawn appeal – Age 65 – Reconsideration – Manual of Rules of Practice and Procedure items #8.5, 20.2.2, 20.2.2.1.

Summary:

On October 8, 2010, the petitioner's counsel wrote to the Workers' Compensation Appeal Tribunal (WCAT) requesting withdrawal of an appeal that had been filed with WCAT. Counsel's letter said that subsequent events had made all issues in the appeal moot. In a decision dated October 14, 2010, WCAT's Registrar allowed the withdrawal request, and summarily dismissed the appeal, consistent with item #8.5 of WCAT's *Manual of Rules of Practice and Procedure* (the Original Decision).

Underlying the Original Decision was a September 29, 2005 decision from the Workers' Compensation Board (Board, operating as WorkSafeBC) that set the petitioner's permanent partial disability award at 14.25% of total disability and determined that the award would terminate when the petitioner turned age 65. The Board's decision was confirmed by the Review Division of the Board in a decision dated April 4, 2006. The petitioner appealed the Review Division decision to WCAT, but the appeal was suspended for a lengthy period pending further decisions from the Board.

The petitioner applied for reconsideration of the Original Decision. The petitioner said that neither he nor his counsel realized there was an "embedded" decision respecting age 65 in the September 29, 2005 decision. The Original Decision therefore was unfair because it confirmed a decision from the Board that was unfair.

WCAT dismissed the reconsideration application in an April 30, 2018 decision (the Reconsideration Decision). WCAT found the duty of fairness did not require the Registrar to determine whether all issues in the appeal were in fact moot before allowing the withdrawal request. Although the Board's decision was flawed, it did not deny the petitioner notice of the age 65 determination date, or notice of his ability to dispute the decision. Thus, WCAT found that the Original Decision was not unfair.

The petitioner brought a judicial review of the Reconsideration Decision, arguing that WCAT was incorrect when it found that the Original Decision was not procedurally unfair. He argued that the Board's communication of the September 2005 decision was deficient, and this unfairness permeated the entire proceeding. The petitioner also argued that a discussion between the Registrar and the petitioner's counsel as to whether all issues in the appeal were moot made the proceeding unfair.

The Court found that the question on judicial review was not whether the Board acted unfairly, but whether the Reconsideration Decision was correct when it found that the Original Decision was not unfair. This is because the WCAT decision was the object of the judicial review.

The Court found that the petitioner and his representative either knew or ought to have known that a decision respecting retirement age was contained in the September 2005 decision. Thus, the petitioner's representative either knew or ought to have known that, by abandoning the appeal, the petitioner's ability to dispute the age 65 determination was foreclosed.

Finally, the Court found that the duty of fairness did not extend to the Registrar making inquiries to determine whether all issues in the appeal were in fact moot. WCAT was not required to provide legal advice to either the petitioner, or any other worker. Rather, it was the petitioner's counsel's responsibility to identify and inform him of appealable issues in the Board decision. The Registrar did not act unfairly through the pre-decision communication, there was no indication from this communication as to WCAT's position and no implication from WCAT that the proceeding was moot.

In the result, the petition was dismissed.