

Phillips v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Court of Appeal
Citation	2012 BCCA 304
Result	Appeal Dismissed
Judge	Mr. Justice Groberman Madam Justice MacKenzie Mr. Justice Harris
Date of Judgment	July 17, 2012
WCAT Decision(s) Reviewed	WCAT-2009-02116

Keywords

Judicial review – Standard of review – Patently unreasonable – Permanent disability award (pension) – Average earnings (wage rate) – Section 33(1) of the former provisions of the Workers Compensation Act – Item #67.21 of the Rehabilitation Services and Claims Manual, Volume I – Fettering of discretion – Findings of fact

Natural justice or procedural fairness – Adequacy of reasons no longer independent ground for judicial review

Summary:

The Court of Appeal dismissed this appeal from an unsuccessful petition for judicial review. The appellant argued that the decision of the Workers' Compensation Appeal Tribunal (WCAT) to use her earnings as a part-time employee over the year before her injury as a basis for her long-term wage rate was patently unreasonable. The appellant also argued WCAT's interpretation of policy item #67.21 of the *Rehabilitation Services and Claims Manual, Volume I* (Class Averages/New Entrants to Labour Force) amounted to an improper fettering of the tribunal's discretion and that WCAT had failed to give adequate reasons for its decision.

The appellant moved from Saskatchewan to British Columbia in 1991. She had a record of full time employment in the health care industry in Saskatchewan. She attempted to start a business in B.C. which failed. She then obtained casual employment as a care aide in a long term care facility. Her objective was to attain full time employment in B.C.. However, she was injured on the job and eventually became competitively unemployable. The worker asserted that the wage rate for pension purposes should be based on the average earnings of a full-time care aide in the facility in which she worked or the statistical average wage rate for full-time care aides.

WCAT found that the Workers' Compensation Board (Board) correctly determined the wage rate and that decision was not interfered with on judicial review.

The Court of Appeal applied recent jurisprudence from the Supreme Court of Canada to the effect that the failure to give adequate reasons does not provide an independent or free-standing ground for judicial review. Rather, the reasons must be read together with the result for the purpose of showing whether the result is or is not patently unreasonable. The Court also rejected the appellant's argument that WCAT's interpretation of Board policy amounted to an improper fettering of WCAT's discretion. WCAT is bound by the *Workers Compensation Act* to apply Board policy and therefore cannot fetter its discretion by doing so. The question, which the appellant did address in her oral argument, is whether WCAT's interpretation of policy is or is not patently unreasonable.

A unanimous Court found that WCAT had not actually interpreted the policy too restrictively, as the Appellant had suggested. Even if it had, the Court noted that interpreting Board policy lies at the heart of WCAT's exclusive jurisdiction and the courts may only interfere with WCAT's interpretation if it is patently unreasonable. The Court found that WCAT's interpretation of policy item #67.21 recognized the purpose of the policy was to protect against inequitable use of actual earnings where those earnings are not sufficient to determine what best represents the worker's long-term loss of earnings. As such, the interpretation could not be said to be patently unreasonable.

The Court agreed with the chambers judge's reasons for dismissing the appellant's arguments that WCAT had made several patently unreasonable findings of fact. In each case, the Court was satisfied that there was some evidence in the record capable of supporting WCAT's findings.