

Agarin v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2020 BCSC 739
Result	Application dismissed
Judges	Mr. Justice G.P. Weatherill
Date of Judgment	May 13, 2020
WCAT Decisions Reviewed	A1901776, A1901556, A1901711, A1902137

Keywords:

Judicial review – mandatory injunction – costs.

Summary:

The petitioner worked in a fast food restaurant and sustained a compensable workplace injury when she slipped and fell. The petitioner disagreed with the way that the Workers' Compensation Board ("Board") was administering her claim, and brought a judicial review of a number of decisions from the Review Division of the Board, and the Workers' Compensation Appeal Tribunal ("WCAT").

After filing her petition, and before the petitioner was heard on the merits, the petitioner brought an application for an injunction against the Board. The injunction application sought: an order that the petitioner be declared totally disabled from employment, payment of unpaid temporary disability benefits, payment of specific health care expenses, a direction that the Board replace her current case manager, an order that the Board pay for back surgery in California (including travel expenses), and an order for costs against both the Board and WCAT.

The Court found that the petitioner was seeking a mandatory injunction, despite framing the application as an interim injunction. The application did not meet the test for a mandatory injunction: *R. v. Canadian Broadcasting Corp*, 2018 SCC 5. While a court can make interim orders in a judicial review proceeding under section 10 of the *Judicial Review Procedure Act*, RSBC 1996 c 241, in this case, the Court found it did not have the jurisdiction to make the orders sought. Many of the issues raised were still live issues before the Board. Therefore, the petitioner had to exhaust her internal remedies before she could turn to the Court for relief. Furthermore, the orders sought were either not available in a judicial review proceeding, or did not relate to matters at issue in the underlying judicial review proceeding. In the result, the application was dismissed.

The petitioner sought costs of her application, regardless of whether she was successful. As against WCAT, the petitioner sought costs because it had provided a copy of her submissions to the Board. The Court declined to order costs as against the Board as it was the successful party. The Court declined to order costs against WCAT because counsel ought to exchange submissions prior to a hearing, if possible, as a matter of good practice.