

Chmielewski v. Workers' Compensation Appeal Tribunal

Decision Summary

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| Court | B.C. Supreme Court |
| Citation | 2017 BCSC 2013 |
| Result | Allowed |
| Judges | Mr. Justice Brundrett |
| Date of Judgment | November 7, 2017 |
| WCAT Decisions Reviewed | A1603921 |

Keywords:

Judicial review – Patent unreasonableness – Sections 5(1) and 5(4) of the Workers Compensation Act– Policy items #C3-14.00, #C3-14.20, #C3-16.00, and #C3-19.00 of the Rehabilitation Services Claims Manual Vol. II – Arising out of and in the course of employment – section 5(4) presumption

Summary:

The petitioner was a truck driver who drove a multi-axel dump truck hauling shale to road construction projects. At the time of the injury, the petitioner was staying a work camp in northern British Columbia. He finished eating dinner at a restaurant across the street from the work camp, walked outside, and fainted, striking his face on the ground. His claim for compensation was denied by the Workers' Compensation Board (Board) on the basis that his injuries did not arise out of and in the course of employment. The petitioner brought an unsuccessful request for review of the decision to the Review Division of the Board. Finally, the petitioner brought an appeal of to the Workers' Compensation Appeal Tribunal (WCAT).

WCAT considered the petitioner's appeal, and found that he was in the course of his employment when the injury occurred, and the presumption in section 5(4) of the *Workers Compensation Act* ("Act") applied. WCAT then went on to find that the presumption in section 5(4) was rebutted because the evidence before it did not support work causation. The petitioner had a longstanding history of vasovagal (fainting) episodes, without a clear cause, and there was nothing in the evidence to support work causation.

On judicial review, the petitioner argued that WCAT was patently unreasonable when it found the presumption in section 5(4) was rebutted because it relied upon an absence of evidence to rebut the presumption, instead of evidence showing that his injury was not caused by work. The petitioner had also filed the petition out of time, and applied for an extension of time pursuant to section 57 of the *Administrative Tribunals Act* ("ATA").

The Court granted the petitioner's extension of time application, finding that the petitioner had met the test set out in section 57 of the ATA. The Court also allowed the petition, finding that WCAT relied on an absence of evidence to rebut the presumption in the Act instead of evidence

showing that the injury did not arise out of the employment. The matter was remitted to WCAT for reconsideration.