

SIDHU V. BRITISH COLUMBIA (WORKERS' COMPENSATION APPEAL TRIBUNAL)

Decision Summary

Court	B.C. Supreme Court
Citation	2010 BCSC 277
Result	Judicial Review Dismissed
Judge	Mr. Justice Kelleher
Date of Judgment	March 4, 2010
WCAT Decision(s) Reviewed	WCAT-2006-04471

Keywords

Reconsideration – Error of law going to jurisdiction - Method of hearing – Permanent disability award – Interest - Standard of review – Patent unreasonableness

In this judicial review, the Court considered a reconsideration decision by the Workers' Compensation Appeal Tribunal (WCAT) which upheld an earlier WCAT decision that dealt with a number of issues including the permanent disability award of a sawmill worker with right hand injuries.

On judicial review, the Petitioner initially alleged some twenty errors on the part of WCAT, but refined those down to six. The Petitioner asserted that WCAT unlawfully failed to hold an oral hearing; unlawfully applied a patent unreasonableness standard of review to the original decision; unlawfully found that the Review Board lawfully denied the Petitioner a loss of earnings (LOE) pension prior to December 13, 1995; unlawfully found that the Review Board lawfully denied the Petitioner a permanent functional impairment (PFI) pension increase retroactive to December 13, 1989; unlawfully denied interest on the retroactive portion of the LOE pension; and unlawfully breached *Manual of Rules of Practice and Procedure* (MRPP) item #14.30 when it failed to give notice that its jurisdiction to reconsider previous Review Board and Appeal Division decisions was at issue.

Regarding the standard of review, the Court found that jurisprudence has established that under the *Administrative Tribunal Act* (ATA), patent unreasonableness normally applies to WCAT for issues of entitlement to compensation, including pensions. Patent unreasonableness is to be defined as it stood prior to the decision in *Dunsmuir*. However, because the decision under review was a reconsideration decision, the Court found that correctness was the correct test to apply by reference to the original decision. The Court noted that in this case, the reconsideration panel found the original decision to not be patently unreasonable, but also found it to be correct. The Court acknowledged that WCAT had argued that for matters of first instance considered by the reconsideration panel, the patent unreasonableness standard should apply, but the Court found it was unnecessary to decide whether that is so because the reconsideration decision easily withstood the test of correctness.

On the issues, the Court found (1) that WCAT did not act unfairly or unlawfully when the reconsideration panel denied an oral hearing as there were no issues of credibility or issues of a factual nature; (2) the reconsideration panel did not act unlawfully when it applied the patently unreasonable test to the original decision, and more, applied a standard most favourable to the Petitioner when it decided that the original decision was correct; (3) WCAT was correct in denying an LOE pension prior to December 13, 1995; (4) WCAT acted lawfully in denying a retroactive increase in the PFI pension effective December 13, 1989; (5) WCAT ought to have considered the issue of interest on the retroactive LOE pension paid but could not be faulted for not considering it, nonetheless that issue was remitted as a missed issue for further consideration; and (6) WCAT did not breach MRPP item #14.30 by failing to give notice of the jurisdictional issue or standard of review; the Court found that standard of review is at issue in every application for reconsideration on jurisdictional grounds and WCAT expressly raised the jurisdiction issue.

Finally, the Court found that WCAT conceded that the Rule of Fifteenths issue had not been considered and remitted that matter as well. No costs were awarded.