

SROCHENSKI V. WORKERS' COMPENSATION APPEAL TRIBUNAL

Decision Summary

Court	B.C. Supreme Court
Citation	2009 BCSC 1488
Result	Judicial Review Allowed
Judge	Mr. Justice Meiklem
Date of Judgment	November 2, 2009
WCAT Decision(s) Reviewed	2004-05166-RB, 2005-05864, 2007-00502

Keywords

Arising out of and in the course of – Natural degeneration – Policy item #15.10 of the Rehabilitation Services and Claims Manual Volume I – Causation – item #14.30 “Scope of Decision” of the Manual of Rules of Practice and Procedure

In this judicial review, the Court considered three decisions of the Workers' Compensation Appeal Tribunal (WCAT). The Court dismissed the petition against one of the WCAT decisions, and with respect to the remaining two decisions remitted the matter back to WCAT to consider the evidence that the current symptoms were not entirely the result of natural degeneration.

The first WCAT decision determined that wage loss benefits were properly terminated by the Workers' Compensation Board, operating as WorkSafeBC (Board). The panel found that it did not have the jurisdiction to address the disc protrusion issue and so remitted it to the Board for initial adjudication. The petition with respect to the first decision was allowed in part. The Court ordered that the portion of the decision addressing any aspect of the “current” or “ongoing” symptoms or disability that was addressed in the third decision and remitted by the Court be quashed.

The second WCAT decision determined that the Petitioner's right-sided disc protrusion was not a compensable consequence of the work injury. The panel found that it did not have the jurisdiction to address the question of whether the work incident caused the disc protrusion. The petition with respect to this decision was dismissed as moot as the third WCAT decision overtook the question of the cause of the disc protrusion.

With regard to the third decision, the Court considered whether or not the worker's current and ongoing symptoms were entirely the result of natural degeneration. The Petitioner suffered a minor, compensable, left-sided low-back strain at work. About three months after the date of injury, it was discovered that the Petitioner had a right-sided disc protrusion. The Petitioner continued to complain of left-sided symptoms for many years after the injury. The medical experts could not correlate the Petitioner's right-sided discogenic problems to his left-sided pain complaints. At least two doctors, a neurologist and an orthopedic surgeon, suggested that the

Petitioner may be suffering from myofascial pain syndrome, or problems in his sacroiliac (SI) joints or facet joints. There was evidence of pre-existing degenerative disc disease.

The petition with respect to the third decision was allowed in part. The Court found that WCAT decided two issues within the third decision. First, WCAT found that the work injury did not include the disc prolapse and second, that the ongoing or current symptoms were a product of natural degeneration of his back. The Court found that the decision on the first issue was unassailable, but with regard to the second, found that the evidence was incapable of supporting the conclusions that the current or ongoing symptoms were at a critical point of degeneration at the time of the work injury and that the current symptoms were entirely the result of natural degeneration. The Court remitted the questions of whether the work injury caused more than a strain, and if not, when did the strain resolve or plateau, and if so, whether the additional injuries are compensable and when did they resolve or plateau.