

Van Dam v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2017 BCSC 227
Result	Petition Dismissed
Judge	Madam Justice Adair
Date of Judgment	February 14, 2017
WCAT Decision Reviewed	WCAT-2014-00524

Keywords:

Judicial Review – Extensions of Time (Court) – Mental Disorder (section 5.1 of the Workers Compensation Act)

Summary of WCAT Decision:

Ms. Van Dam (the worker) was a hospital nurse. An elderly resident that she cared for fell and subsequently passed away. A second resident had contributed to the elderly resident's death.

WCAT-2014-00524 concerned whether the worker suffered a mental disorder that was compensable under section 5.1 of the *Workers Compensation Act* ("the Act"). WCAT accepted that the worker suffered an aggravation of her pre-existing mental disorder. It found that the resident's fall and death did not constitute "traumatic events". The fall, death, and management's response were part of a series of "significant work-related stressors." The applicable causation test was "predominant cause." The panel found that these stressors together constituted the predominant cause of the worker's aggravation of her pre-existing mental disorder.

The panel then considered the "labour relations exclusion" in section 5.1(1)(c) of the *Act*. It found that decisions of the worker's employer relating to the worker's employment caused the worker's aggravation of her pre-existing mental disorder. Therefore, the worker's claim was not compensable due to section 5.1(1)(c) of the *Act*. That section prohibits compensation for a mental disorder that is caused by a decision of the worker's employer relating to the workers' employment.

Summary of Court Decision:

Ms. Van Dam filed a petition for judicial review of the WCAT decision on May 28, 2015, which was more than 60 days after the date of the WCAT decision (February 20, 2014), and therefore beyond the 60-day timeline prescribed in the *Administrative Tribunals Act* (ATA), (section 57(1)).

The employer (Fraser Health Authority) applied for dismissal of Ms. Van Dam's petition, on the basis that it had been filed out of time.

Pursuant to section 57(2) of the *ATA*, the court may extend the time for filing a petition if it is satisfied that there are serious grounds for relief set out in the petition, there is a reasonable explanation for the delay in filing the petition, and no substantial prejudice or hardship will result to a person affected by the delay in filing the petition.

Ms. Van Dam argued that there was a reasonable explanation for the delay in filing the petition. Ms. Van Dam applied to WCAT for reconsideration of the WCAT decision on patent unreasonableness grounds, on December 12, 2014. There was no time limit to bring such an application. Ms. Van Dam argued that it was common practice not to file a petition for judicial review of an original decision, but instead to await a decision on a reconsideration application before applying for judicial review.

On December 18, 2014, the Court of Appeal issued its decision in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499. The majority held that WCAT could not reconsider its own decisions on patent unreasonableness grounds. The evidence of Ms. Van Dam's counsel was that he did not file a petition for judicial review at that time because he became aware that WCAT would be going through each of the outstanding applications for judicial review and advising whether or not, as a result of *Fraser Health Authority*, WCAT retained jurisdiction over the issues raised in the application. On April 24, 2015 WCAT advised Ms. Van Dam that, as a result of the decision in *Fraser Health Authority*, her application for reconsideration of the WCAT decision would not be processed. Ms. Van Dam, through her counsel, filed her application for judicial review on May 28, 2015.

The court found that the petitioner had not provided a reasonable explanation for her delay in filing the petition. The 60-day timeline to file a petition expired in April 2014. The explanation for doing nothing between the expiry of the deadline in April 2014, and December 2014 (when the reconsideration application was filed), a period of about 8 months, was essentially that a reconsideration application was eventually going to be filed, there was no deadline for doing it, and counsel was busy. The court found that this explanation was not reasonable and was incompatible with the intention of the legislature to have administrative law issues resolved in a timely way.

Even if there could be said to be a reasonable explanation for a delay into December 2014, once *Fraser Health Authority* was released [in December 2014], it was no longer reasonable for Ms. Van Dam or her counsel to rely on the former practice of awaiting a reconsideration decision from WCAT, prior to filing a petition for judicial review. It was not reasonable for Ms. Van Dam's counsel to wait more than five months [until May 2015] before filing a petition on her behalf.

The court's finding of no reasonable explanation for the delay in filing the petition was sufficient to allow the employer's application to dismiss the petition as being out of time. The court nonetheless went on to briefly consider whether the petition set out serious grounds for relief. The court found that, given the applicable standard of review of patent unreasonableness, Ms. Van Dam had failed to establish serious grounds for relief. First, neither WCAT's interpretation of "traumatic events", nor WCAT's conclusion applying that interpretation to the evidence, could be said to be clearly irrational. Second, the petitioner could not challenge WCAT's interpretation of the words "decision of the worker's employer relating to the worker's employment" in section 5.1(1)(c) of the *Act*, because this was a new issue and the general rule is that new issues cannot be raised for the first time on judicial review. Even if this issue could be raised on judicial review, the interpretation of the provision falls within WCAT's exclusive jurisdiction. The court implicitly found that WCAT's interpretation was not patently unreasonable.

The court dismissed the petition. The petitioner had not satisfied the time extension criteria in section 57(2) of the *ATA*.