

# Vandale v. British Columbia (Workers' Compensation Appeal Tribunal)

## Decision Summary

Court	B.C. Court of Appeal
Citation	2013 BCCA 391
Result	Appeal Allowed
Judges	Mr. Justice Frankel Madam Justice Garson Madam Justice MacKenzie
Date of Judgment	September 9, 2013
WCAT Decision(s) Reviewed	WCAT-2004-04388-AD WCAT-2010-02774

### **Keywords**

*Appeal – Judicial review – Standard of review – Patently unreasonable*

*Appeal – Judicial review – Exhaustion of internal remedies – Role of administrative tribunals*

*Permanent disability awards (section 23(1)) – Policy item #29.20, Rehabilitation Services and Claims Manual, Volume I – Workers Compensation Act, sections 242, 250(1), 250(4) – Former Appeal Bodies – Appeal Division – Jurisdiction*

### **Summary:**

The Workers' Compensation Appeal Tribunal (WCAT) issued a decision that Mr. Vandale was no longer entitled to workers' compensation benefits because he had recovered from his compensable condition. In the course of deciding Mr. Vandale's petition for judicial review of the relevant WCAT decisions, the chambers judge asked the parties for submissions on whether the WCAT decisions were reconcilable with an earlier finding of fact by the former Appeal Division on Mr. Vandale's claim. This issue had not been raised by Mr. Vandale in the proceedings before WCAT. In her judgment (see 2012 BCSC 831), the chambers judge dismissed both of the grounds raised by Mr. Vandale, but set aside the WCAT decisions based on the issue she had raised. The Court of Appeal allowed WCAT's appeal on the basis that the chambers judge erred in finding that WCAT's implicit interpretation of the Appeal Division decision was patently unreasonable. Also, the Court of Appeal declined to remit the new issue back to WCAT.

In 2001, the Appeal Division found that Mr. Vandale suffered from chronic obstructive pulmonary disease (COPD), which consisted of an “indivisible” combination of asthma and other respiratory illnesses. The Appeal Division found that the asthmatic component was at least as likely as not caused by Mr. Vandale’s employment as a welder and was reversible, but that the non-asthmatic component was likely attributable to his years of smoking and was irreversible. The Appeal Division directed the Workers’ Compensation Board to determine the degree and extent of Mr. Vandale’s disability due to the asthmatic component of his COPD.

In 2004, after legislation had replaced the Appeal Division with WCAT as the final level of appeal in the workers’ compensation system, WCAT issued the decision finding that the asthmatic component of Mr. Vandale’s COPD had been reversed through the use of inhalers. As a result of this finding, it could no longer be said that Mr. Vandale’s COPD was work-related and he was therefore no longer entitled to workers’ compensation benefits. Mr. Vandale successfully applied for judicial review of this decision (and the subsequent reconsideration decision). The chambers judge found that WCAT’s conclusion that the asthmatic component of the COPD was completely reversible was irreconcilable with the Appeal Division finding and that the WCAT decision was, therefore, patently unreasonable. According to the chambers judge, the only rational interpretation of the Appeal Division’s decision was that the asthmatic component of Mr. Vandale’s COPD was not completely reversible. She determined that WCAT made an implicit finding that its conclusion was consistent with that of the Appeal Division.

On appeal, the Court agreed with WCAT that the chambers judge’s interpretation of the Appeal Division decision was not the only rational one and, furthermore, that WCAT’s finding was reconcilable with at least one other rational interpretation of the Appeal Division decision. In the result, the Court found that the chambers judge erred in finding that WCAT’s decision was patently unreasonable.

Although the Court of Appeal did not find it necessary to consider WCAT’s first argument – that the chambers judge’s consideration of the new issue was in and of itself an error – the Court did decline to remit to WCAT the question of whether the respective findings of the Appeal Division and WCAT were reconcilable. In the opinion of the Court of Appeal, “[t]o allow a party a new hearing before an administrative tribunal because it overlooked raising an issue or making an argument at the original hearing would unduly interfere with the role entrusted to such tribunals”.