

Decision Summary

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| Court | B.C. Supreme Court |
| Citation | 2010 BCSC 1340 |
| Result | Judicial Review Allowed |
| Judge | Madam Justice Holmes |
| Date of Judgment | September 22, 2009 |
| WCAT Decision(s) Reviewed | WCAT-2008-02206 |

Keywords

Interest on refunded employer assessments – Date payable from – Section 259(2) of the Workers Compensation Act

In this judicial review the Court considered a decision by the Workers' Compensation Appeal Tribunal (WCAT) which addressed the date from which interest is payable by the Workers' Compensation Board, operating as WorkSafeBC (Board) under section 259(2) of the *Workers Compensation Act* (Act).

The Petitioner provided home delivery of newspapers and advertising materials through drop-site supervisors and carriers. In 1998 the Board registered the Petitioner as the “employer” of “workers” or “labour contractors”, and issued an assessment of premiums that it required the Petitioner to pay. The Petitioner maintained that the carriers and drop-site supervisors were independent contractors, and that its relationship with them therefore fell outside the scope of the Act. The Petitioner requested a manager’s review of the Board’s decision. For two years the Board did not respond to this request, finally responding when the Petitioner’s counsel sent a follow-up letter. In 2007 WCAT allowed the Petitioner’s appeal and directed the Board to refund assessed and paid premiums on the basis that the Petitioner’s status had been based on insufficient evidence from an inadequate investigation.

Under section 259(2) of the Act the Board must pay interest on an amount, calculated in accordance with the Board’s policy, refunded to an employer after the employer’s successful appeal or review. The Board’s policy provided for interest only from the time the employer filed a formal review or appeal. This, in effect, limited the payment of interest to only part of the period during which the Board held the funds to be refunded.

The Court concluded that the Board’s policy restricting the period of interest was out of accord with section 259(2) of the Act, and that the WCAT decision upholding the Board’s interest decision was patently unreasonable. In particular, the Court found that WCAT assumed that the policy conforms to section 259(2), without interpreting that section to determine its restrictive effect, if any, on the Board’s jurisdiction to limit the period of

interest. The Court remitted the matter to WCAT for reconsideration, suggesting that WCAT consider whether s. 259 of the Act, read in light of the statutory scheme as a whole, allows the Board to significantly restrict the period for which interest will be paid on amounts refunded; and, if it does, whether the Board's policy, as applied to the Petitioner's situation, is supported by the Act and its Regulations.