

Webb v. Canada (Attorney General)

Decision Summary

Court	B.C. Court of Appeal
Citation	2019 BCCA 288
Result	Application Dismissed
Judge	Mr. Justice Hunter
Date of Judgment	July 30, 2019
WCAT Decision(s) Reviewed	A1600564

Keywords:

Appeal – Application for leave to appeal – Whether a reasonable possibility of appeal succeeding – Extensions of time (court) – Administrative Tribunals Act, section 57(2) – Serious grounds for relief – Standard of review – Fairness – Whether Workers’ Compensation Appeal Tribunal biased – No reasonable possibility of appeal succeeding

Appeal – Application for leave to appeal – Whether a reasonable possibility of appeal succeeding – Extensions of time (court) – Administrative Tribunals Act, section 57(2) – Serious grounds for relief – Standard of review – Patent unreasonableness – Workers’ Compensation Appeal Tribunal’s findings of fact – No reasonable possibility of appeal succeeding

Summary:

The applicant sought leave to appeal an order of the B.C. Supreme Court (2019 BCSC 760) dismissing his application for an extension of time to file his judicial review of a decision of the Workers’ Compensation Appeal Tribunal (WCAT). The B.C. Supreme Court judge had found that there was no reasonable likelihood that the petition would succeed. The Court of Appeal Justice was not satisfied that there was a reasonable chance that a division of the Court would find that the B.C. Supreme Court judge erred in principle.

In its decision, WCAT observed that osteoarthritis is not an occupational disease listed in Schedule B to the *Workers Compensation Act* and, therefore, the facts of the worker’s claim had to establish that the circumstances specific to the worker’s employment were likely to have caused the disease. The worker had provided lengthy submissions, which included references to studies showing a correlation between the operation of rigid-hulled inflatable boats and various types of injuries. WCAT found that this evidence was not helpful because it did not provide evidence to establish that the worker’s own employment activities likely caused his osteoarthritis. In respect of both the occupational disease and

personal injury issues, the tribunal preferred the medical evidence provided by Workers' Compensation Board medical advisers to what medical opinion the worker did provide. WCAT denied the appeal.

The Court of Appeal justice found that there is nothing in the record to support either the inference, alleged by the applicant, that WCAT's evidentiary findings were arbitrary or made in bad faith or the applicant's argument that the WCAT panel was biased.