

Currie v. British Columbia (Workers' Compensation Board)

Decision Summary

Court	Vancouver
Citation	2011 BCSC 550
Result	Judicial Review of WorkSafeBC Decision allowed Judicial Review of WCAT Decisions Dismissed
Judge	Mr. Justice Leask
Date of Judgment	April 29, 2011
WCAT Decision(s) Reviewed	WCAT-2005-02377-RB WCAT-2007-02588 WCAT-2009-02382

Keywords

Judicial review – Vocational rehabilitation benefits – Section 16 of the Workers Compensation Act – Retroactive payment of vocational rehabilitation benefits – Basis for retroactive payment of vocational rehabilitation benefits

Summary

The petitioner argued she was entitled to some combination of retroactive income continuity benefits. After reviewing the long history of decisions of the Workers' Compensation Board (Board), operating as WorkSafeBC, and WCAT pertaining to the petitioner, the Court found that it was only the final decision of the Board respecting vocational rehabilitation benefits that was properly the subject of review. The court held that the Board's decision that the petitioner was not entitled to certain retroactive vocational rehabilitation benefits did not meet the standard of reasonableness articulated by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*.

The Board argued that on judicial review, the court need only ask whether the result of the Board's decision was reasonable, and need not concern itself with the underlying reasoning. The court disagreed, citing *Dunsmuir*, and said that both the decision and the explanation for it must be reasonable.

Owing to the fact the Board had initially terminated the petitioner's benefits, there was a period after her compensable injury when she was participating in a hospitality management training program on her own initiative and without assistance from the Board's Vocational Rehabilitation Department. Subsequently, WCAT found that the petitioner's injuries had not resolved as of the date her benefits had been terminated

and remitted the matter back to the Board for further consideration. The Board would eventually decide to pay the petitioner vocational rehabilitation benefits retroactively only from the date of this WCAT decision.

In a decision that would be upheld by the Board's Review Division, the Board determined it should not pay retroactive vocational rehabilitation benefits for the petitioner's hospitality management training because it was not a program that the Board would have authorized.

The petitioner had appealed the Review Division decision to WCAT. Because WCAT does not have jurisdiction to hear appeals from Board decisions respecting vocational rehabilitation benefits, WCAT refused to hear the appeal. The court agreed that the Review Division decision, and not the WCAT decision refusing to hear the appeal, was the proper subject of the judicial review.

The court held that there were two problems with the Board's decision not to pay vocational rehabilitation benefits for the period the petitioner was engaged in the hospitality management program: 1) the Board gave no reasoned justification for choosing the date of the WCAT decision as the day from which vocational rehabilitation benefits would be paid and 2) the Board failed to account for the fact that the petitioner did not have the guidance of the Board's Vocational Rehabilitation Department when she chose to participate in the hospitality management program. The court said the rationale for the Board's decision was unreasonable.

The court went on to say the result of the Board's decision was unreasonable in light of the petitioner's good faith efforts to rehabilitate and retrain. The court quashed the decision of the Board and remitted the matter of retroactive vocational rehabilitation benefits back to the Board's Review Division with direction to consider the reasoning in *WCAT-2003-01744-RB*, a WCAT decision that said when considering retroactive vocational rehabilitation benefits, the sufficiency of a worker's efforts must be assessed in context and consider "the extent of effort exerted by the worker in the context of available resources, the nature of the effort expended, the duration of the effort, and whether the effort was undertaken in good faith".