

## ***Steadman v. Workers' Compensation Appeal Tribunal***

### Decision Summary

Court	B.C. Supreme Court
Citation	2021 BCSC 477
Result	Petition Dismissed
Judge	Mr. Justice Punnett
Date of Judgment	March 17, 2021
WCAT Decision(s) Reviewed	A1700421

#### **Keywords:**

*Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, section 134 – Arising out of and in the course of employment – Evidence not supporting causation*

*Judicial review – Standard of review – Patent unreasonableness – Policy item #97.00 of the Rehabilitation Services and Claims Manual, Volume II – Policy statement that there is no onus or burden of proof on a worker or employer does not extend to appeals*

#### **Summary:**

The petitioner claimed that he suffered a brain injury as a result of a trip and fall at work. The Workers' Compensation Appeal Tribunal (WCAT) confirmed the decision of the Workers' Compensation Board (Board) that the fall did not cause a brain injury. The petitioner argued that WCAT's preference for the evidence of one doctor was patently unreasonable because the facts upon which that doctor relied were incorrect. The petitioner also argued that WCAT misunderstood principles of causation and erred in placing a burden of proof upon the petitioner. The court dismissed the petition, finding that WCAT's understanding of the evidence was reasonable and that, contrary to the petitioner's argument, there is an onus on a worker to prove his or her entitlement to compensation when appealing a Board decision.

WCAT based its decision on the opinion of Dr. Kotzé, who opined that the petitioner's gradual development of personality, mood, behavioural, and cognitive changes after the workplace accident were inconsistent with a concussion, where damage occurs instantaneously and gradually improves. The petitioner argued that the evidence showed that he did experience symptoms of concussion – specifically dizziness and nausea – right after his fall. The court found that the tribunal's finding was reasonable. The evidence indicated that the worker's nausea was not experienced at the same time as the petitioner's fall and that there was no evidence to support the petitioner's argument that

his brief period of dizziness after the fall was a symptom consistent with the post-concussion symptoms set out in Dr. Kotzé's report.

The petitioner asked the court to find that WCAT had misapplied a well-established principle of causation when the tribunal found that a temporal connection between the petitioner's dizziness and the accident was insufficient evidence that the fall caused a brain injury. WCAT reached this finding after noting that there was a significant gap in time between the fall and the onset of the petitioner's other symptoms and that there were other possible explanations for the petitioner's cognitive condition, including significant pre-existing conditions. In these circumstances, the court held that WCAT's finding of an insufficient temporal connection was not patently unreasonable.

The petitioner pointed to Board policy item #97.00 of the *Rehabilitation Services and Claims Manual*, which provides that there is no onus on a worker to prove that their injury is compensable. The court found that when it comes to an appeal, where the appellant worker knows the reason their claim was denied by the Board, there is an onus on them to prove their case on appeal.