

Edens v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2022 BCSC 556
Result	Petition dismissed
Judge	Wilkinson
Date of Judgement	6 April 2022
WCAT Decision Reviewed	A1605713

Keywords:

Judicial review - Petitioner not permitted to advance an argument contradictory to the argument made to WCAT panel

Judicial review - Patent unreasonableness - Findings of fact - Court will not reweigh evidence

The worker injured his back and other parts of his body in a 1991 motor vehicle accident. He received wage-loss benefits for about five months before returning to work. Subsequently, he had several additional claims involving back injuries. In 2016, he asked the Board to reopen his 1991 claim for adjudication of a compression fracture of his T11 vertebra which was apparently detected by an MRI in 2006. In response, the Board denied acceptance of a T11 compression fracture.

On appeal, the WCAT panel found that the worker had suffered a T11 compression fracture in his compensable accident. The fracture had been merely temporary, and therefore, the worker was not entitled to a permanent partial disability award.

On judicial review, worker's counsel raised two arguments. One was that because the Permanent Disability Evaluation Schedule ("PDES") has an entry for thoracic compression fractures, this deems compression fractures to be always permanent, at least to some degree, and therefore always subject to evaluation. The other argument was, essentially, that the medical-legal report commissioned for the appeal was the best and most reliable evidence concerning the worker's conditions.

The Court declined to consider the argument concerning PDES because it had not been put to the panel, and in fact counsel on the appeal had acknowledged the possibility that the T11 fracture had indeed healed. Accordingly, it was not open to the worker to make a contradictory argument on judicial review. As for the medical evidence, the Court will not reweigh evidence on a judicial review.