

# Maloney v. WCAT

## Decision Summary

Court	BC Supreme Court
Citation	2022 BCSC 957
Result	Petition Dismissed
Judge	Giaschi
Date of Judgment	8 June 2022
WCAT Decision Reviewed	A1901152

### **Keywords:**

*Reconsideration - procedural fairness - oral hearing - interpretation of the Act - what counts as "new evidence"*

### **Summary:**

In setting a long-term wage rate for a fisherman, the Board considered the daily rate paid to crew members. The Petitioner asserted that there were bonus earnings that should have been counted, but did not provide particulars to the Board or the Review Division or WCAT. After the WCAT appeal, the Petitioner successfully pursued a small claims action for unpaid wages. He then applied for a "new evidence" reconsideration on the basis of the small claims trail record and order to pay.

The reconsideration application was dismissed at the first stage, as the Vice Chair held that the small claims documents were not "new" within the meaning of the Act. In the alternative, the Vice Chair held that the Petitioner had not exercised due diligence, since he had evidently presented evidence to the small claims court that he had not presented to WCAT.

On judicial review, the Petitioner argued a denial of procedural fairness as there had been no oral hearing. However, he had not requested one, and the Court held that this was fatal to his argument on judicial review. The Court also noted that the limited scope of the first stage of a reconsideration application was consistent with proceeding by written submission.

The Petitioner also argued that the Vice Chair was too restrictive in his interpretation of the phrase "new evidence" in section 310. However, the Court noted that the small claims documents were derivative of evidence which could have been, but was not, presented to WCAT on the original appeal. Accordingly, it was not patently unreasonable for the Vice Chair's to interpret section 310's newness requirement as excluding such evidence.