

Sanders v. WCAT

Decision Summary

Court	BC Supreme Court
Citation	2023 BCSC 1
Result	Petition Dismissed
Judge	Funt J
Date of Judgment	3 January 2023
WCAT Decision Reviewed	A2001776

Keywords:

Procedural fairness - mode of appeal - appellant requests appeal by written submissions - adverse findings of credibility - oral hearing not required

Summary:

The worker suffered a concussion, but continued to work for several weeks before going off work. Following an investigation, the Board denied wage-loss benefits, and deemed her injury to have resolved.

The worker disputed the Board's decision to the Review Division. She gave a written submissions in which she described her symptoms gradually improving until they resolved about five months post-injury. Accordingly, she requested wage-loss benefits for the time that she missed from work during the recovery period. The Review Division accepted her submission, and granted her wage-loss benefits accordingly.

Despite her success, the worker appealed to WCAT. On her notice of appeal, she requested that the appeal proceed by written submission rather than an oral hearing. In her submission, she reported that her symptoms had improved only slightly and temporarily, and that they were still ongoing and serious. In her decision, the Vice Chair found that the submission made on appeal were inconsistent with the submission made to the Review Division, and that this drew the worker's credibility into question. The Vice Chair considered convening an oral hearing, but held that this was unnecessary. Considering the evidence as a whole, the Vice Chair held that the worker's account to the Review Division was more likely to be true than the later version given to WCAT. Accordingly, the appeal was dismissed.

On judicial review, the worker argued that WCAT should not have made adverse findings regarding her credibility without holding an oral hearing. She claimed that she could not have known that her credibility would be in question, and that she did not know that an oral hearing was an option. However, the Court noted that the Notice of Appeal form requires the user to select from two options, written submissions or oral hearing, and the worker selected written submissions. The Court did not accept that WCAT was procedurally unfair for using the mode of appeal chosen by the worker herself. Also, given that the worker's submissions to the

Review Division were plainly inconsistent with the submission she gave to WCAT, the Court did not accept that the worker had no way of knowing that her credibility would be in issue.