

Mardones v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2023 BCSC 385
Result	Judicial Review Dismissed
Judge	Mr. Justice Gibb-Carsley
Date of Judgment	March 15, 2023
WCAT Decision Reviewed	2015-00880 (March 17, 2015)

Keywords:

Judicial review – Reconsideration – New Evidence – Reasonable Diligence – Patent Unreasonableness

Summary:

The Workers' Compensation Appeal Tribunal (WCAT) determined in an original decision that the petitioner's back injury had resolved. WCAT dismissed the petitioner's application for reconsideration of that decision, finding that the original WCAT decision was not procedurally unfair and that the new evidence submitted (two reports by his physician Dr. Frame) did not satisfy the statutory test set out in section 256 of the *Workers Compensation Act* (now section 310). The first report failed to meet the reasonable diligence requirement, as it predated the original decision and no submissions were made to WCAT as to why the report could not have been provided to the original panel. The second report postdated the original decision but did not mention the back injury, so was not substantial and material.

On judicial review, the only issue was whether WCAT's reconsideration decision was patently unreasonable for finding that the first report was not new evidence. The court found that WCAT's decision was not patently unreasonable, and dismissed the petition. Given that neither the petitioner, nor his representative, provided any explanation to the WCAT reconsideration panel as why Dr. Frame's report was not provided earlier, despite making four sets of submissions, it was not patently unreasonable for WCAT to conclude that the petitioner had not exercised reasonable diligence. WCAT was provided no basis for concluding otherwise.

The court found that it would be speculative to posit reasons for why the report was not before WCAT, and any reasons that could be given could have been given to the WCAT reconsideration panel. Lastly, the court rejected the petitioner's affidavit evidence that he had delivered Dr. Frame's report to the original WCAT panel and that WCAT had either lost the report or purposely ignored the report and manipulated the decision. Based on other inconsistent affidavit evidence filed by the petitioner in the judicial review, and the WCAT certified record, the court found as fact that the petitioner did not provide Dr. Frame's report to the original WCAT panel. The court found that the petitioner shifted his story to attempt to cast unfounded blame upon WCAT.