

Lawrence v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2023 BCSC 1695
Result	Petition dismissed
Justice	Justice Lyster
Date of Judgment	September 28, 2023
WCAT Decision Reviewed	A2000239

Keywords:

Mental disorder – Reconsideration – Procedural fairness – Reasonable apprehension of bias – New Evidence – Prohibited action – Significant work-related stressors – Employment decision exclusion

Summary:

The petitioner had been employed as a powerline technician. Conflicts developed between the petitioner and some co-workers. The petitioner believed that his co-workers were engaged in unsafe practices and that it was his duty to ensure that safe work practices were followed.

The petitioner filed bullying and harassment complaints against some co-workers, and some co-workers filed complaints against him. His employer subsequently suspended him with pay. A few weeks later they had a meeting with him for the purpose of investigating his behaviour. The petitioner had a panic attack and walked out. Eight days later his employer terminated his employment, claiming that he had abandoned it.

The petitioner filed a prohibited action complaint under section 49 of the *Workers Compensation Act* against his employer. He reported that his raising of safety concerns and his raising of bullying and harassment concerns were factors in his employer's decision to first suspend, and later to dismiss him. The Workers' Compensation Board, operating as WorkSafeBC, found that his suspension was not a prohibited action but that his dismissal was. WCAT denied the employer's appeal and allowed the petitioner's cross-appeal in respect of the Board's remedy, increasing the compensation his employer was required to pay him.

The petitioner also made a mental disorder claim for compensation under s.135 of the Act. He alleged that his co-workers bullied and harassed him because he raised safety concerns at work. The Board dismissed his claim, the Review Division upheld the Board's decision, and WCAT dismissed his appeal. WCAT found that events at work

were not traumatic events nor significant work-related stressors and that even if they were they were captured by the employment decision exclusion set out in section 135(1)(c) of the Act.

WCAT then dismissed the petitioner's application for reconsideration of the original WCAT mental disorder decision. WCAT found that the original decision was not procedurally unfair and that the information that the petitioner had submitted as new evidence did not satisfy the criteria for new evidence in section 310 of the Act.

The petitioner sought judicial review of the mental disorder reconsideration decision only.

The Court dismissed the petition, finding that the original decision was not procedurally unfair, and that the reconsideration decision was not patently unreasonable. The Court also found that certain findings in the original decision were not patently unreasonable, such as those relating to whether there was a traumatic event or significant stressor, that it is for a panel and not a medical expert to determine whether a stressor is significant under the Act, and that the employer decision exclusion is not limited to for-cause dismissal of an employee.

The Court rejected the petitioner's argument that the reconsideration panel was biased because the decision was allegedly inconsistent with the prohibited action decision. The Court agreed with the reconsideration panel that disagreeing with another panel on a point of law is not evidence of bias. The Court also found that, more fundamentally, a successful prohibited action does not mean that a mental disorder claim must also be successful as both kinds of complaints are subject to different statutory provisions and legal analyses.

The petitioner also made various other allegations of bias, including the fact that the employer was represented by a law firm which lists a former premier on its website. The petitioner submitted that the premier created WCAT and appointed the vice chair, and that this gave rise to an apparent conflict of interest. The Court found that the fact that a person associated with the employer's law firm may have appointed a decision maker twenty years ago does not give rise to a reasonable apprehension of bias.

In respect of the new evidence aspect of the reconsideration decision the Court found that WCAT was not patently unreasonable. In respect of each document that had been submitted as new evidence the panel made a reasoned determination of whether the evidence in question was new or could have been obtained with reasonable diligence. Where appropriate, she also considered whether the evidence was material or substantial to the questions in issue. Further, the reconsideration panel had the authority to consider those threshold questions because the chair's power in section 310 has been delegated to vice chairs.