

Fraser Health Authority v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	B.C. Supreme Court
Citation	2013 BCSC 524
Result	Judicial Review Allowed
Judge	Mr. Justice Savage
Date of Judgment	March 28, 2013
WCAT Decisions Reviewed	WCAT-2010-03503 WCAT-2011-03079 And WCAT-2010-03507 WCAT-2011-03080 And WCAT-2010-03509 WCAT-2011-03081

Keywords:

Judicial review – Occupational Disease – Cancer Cluster – No Evidence – Causation – Common Sense Inferences

Summary:

In three separate decisions, the majority of a panel of the Workers' Compensation Appeal Tribunal (WCAT) found that three hospital laboratory workers were entitled to compensation for their breast cancer on the basis that it was at least as likely as not that the breast cancer was an occupational disease due to the nature of their employment. The majority relied, in part, on the fact that there was a higher than expected rate of breast cancer amongst laboratory workers at the hospital and that they had been exposed to carcinogens. WCAT denied a reconsideration request from the employer, Fraser Health Authority.

The employer sought judicial review of the WCAT decisions and the court determined that there was no positive evidence to support them and that they were therefore patently unreasonable. The court found that the expert opinions before WCAT were unambiguous and uncontradicted in that there was no evidence that workplace factors caused the workers' cancers. The court found that a higher than expected rate of cancer in a workplace cannot alone provide evidence that the cancer was caused by occupational factors because cancer clusters are statistically certain to arise in various places and times. While some expert evidence did leave open the possibility that workplace factors played some role in the workers' cancer, it was only a possibility. There was no objective evidence supporting that possibility. In finding that this possibility did in fact occur and that the cancer was caused by workplace factors, WCAT was

speculating into an area in which it has no expertise. In this case, the cause of the breast cancers could not be determined by the application of common sense inferences.

The decisions were set aside and a new WCAT hearing ordered. The court rejected the employer's request that the court determine the matter in favour of the employer by confirming the original decision of the Workers' Compensation Board that the workers were not entitled to compensation. The employer had argued that having found no evidence to support entitlement WCAT would have no choice but to decide in favour of the employer. The court found that the appropriate remedy was to return the matter to WCAT as it was open to WCAT or the parties to adduce new evidence at a new hearing.