

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

Decision Summary

Court	B.C. Supreme Court
Citation	November 14, 2023 - unreported
Result	Petition allowed
Judge	Riley
Date of Judgment	
WCAT Decision Reviewed	A2201223

Keywords:

Judicial review – Epicondylitis – Chronic Pain – Expert Evidence – Non-compensable conditions - Pre-injury occupation

Summary:

The worker, a housekeeper, injured her right elbow at work in 2004. The worker had sustained three previous injuries to the same arm. After unsuccessful attempts to return to work, the worker has been off work since 2006. The worker's claim was accepted for medial epicondylitis and chronic pain. The Board awarded the worker permanent partial disability benefits based on functional impairment of 3.18% of total disability and denied her entitlement to a loss of earnings award, concluding that she could return to work with the pre-injury employer. The Review Division confirmed the Board's decision, concluding that the worker could return to work in a suitable accommodated position. The worker appealed that decision to WCAT.

The WCAT panel reviewed the extensive and complex medical evidence, which included expert evidence from Dr. Salvian, a vascular surgeon, Dr. Prout, a neurologist, Drs. Faraday and Young, Board Medical Advisors, and a panel of three physicians who assessed the worker for a private disability insurer. The panel found there was insufficient medical evidence to conclude that the worker was prevented from returning to work by her compensable conditions. In reaching that conclusion, the panel stated that Drs. Salvian and Prout opined that the worker could not perform her pre-injury occupation because of non-compensable medical conditions and not because of her compensable conditions. The vice chair further stated that Drs. Faraday and Young were the only physicians who provided opinions that considered whether the worker was prevented or limited from returning to work at her previous occupation, and both those physicians agreed the worker could do her pre-injury work with some accommodation.

On judicial review, WCAT acknowledged that the panel had misapprehended some of the medical evidence, in particular the opinions of Dr. Salvian, Dr. Prout, and Dr. Young. Dr. Salvian diagnosed several conditions, some of which had previously been determined to be non-compensable but which included chronic pain and inflammation of the arm. Consequently, it was not accurate to say that Dr. Salvian attributed the worker's inability to return to work solely to non-compensable conditions. Dr. Prout considered several possible conditions but only clearly diagnosed chronic pain. Dr. Prout did not offer an opinion on causation or why the worker could not return to work. Consequently, it was inaccurate to say

that Dr. Prout gave an opinion that the worker could not return to work because of non-compensable conditions. Dr. Young gave an opinion ruling out a number of diagnoses but provided a positive diagnosis of tendinitis. Dr. Young did not provide an opinion on the worker's ability to return to work. Consequently, it was not accurate to say Dr. Young's opinion was that the worker could return to her pre-injury

WCAT consented to setting aside the decision on the basis that the panel made patently unreasonable errors in its interpretation of the expert opinions of Drs. Salvian, Prout, and in attributing to Dr. Young the opinion that the worker could perform her pre-injury duties despite her compensable conditions as long as she was not required to perform the heavier elements of her job.