Pion v. British Columbia (Workers’ Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2022 BCSC 1112
Result	Judicial Review Dismissed
Judge	Madam Justice Hughes
Date of Judgment	June 29, 2022
WCAT Decision Reviewed	A1901653 (July 23, 2020)

Keywords:

Judicial review – Personal Injury – Arising out of Employment – Pre-Existing Condition - Patent Unreasonableness – Expert Evidence – Independent Health Assessment – Procedural Fairness – Method of Hearing

Summary:

The petitioner felt pain in his right shoulder after forcefully throwing his work gloves onto a table. The Workers’ Compensation Board, operating as WorkSafeBC, accepted that the petitioner experienced symptoms following the incident but denied the petitioner’s claim for compensation, relying upon a report from a Board Medical Advisor (BMA) that the motion was a natural body motion and that it was unlikely that the forces involved could have caused an injury. The BMA had concluded that if it had not been one thing it would have been another that would have caused the injury. The Review Division confirmed the Board’s decision, but on the ground that the incident had not occurred in the course of his employment.

WCAT denied the petitioner’s appeal, finding that the incident had not arisen out of the petitioner’s employment. Therefore, WCAT did not need to address whether the incident had occurred in the course of the petitioner’s employment. WCAT requested the Board further investigate the incident by interviewing the petitioner and witnesses. As further medical imaging evidence had indicated that the petitioner had a significant pre-existing shoulder condition, WCAT also requested a second report from the BMA. The BMA reported that the petitioner had advanced long standing degenerative changes in his shoulder and her conclusion remained that the incident was not of such force or intensity to advance the pre-existing condition, and that the incident may have brought a certain tendon instability to his attention. The BMA reports were the only expert evidence before WCAT.

WCAT accepted that the condition had been asymptomatic prior to the incident and that the incident had caused an onset of significant symptoms. WCAT agreed with the petitioner that the motion was not a natural body motion. However, WCAT concluded, relying on the BMA reports, that the incident was not of causative significance to an acceleration, advancement, or activation of the pre-existing degenerative pathology because the mechanism of injury did not involve the external force, impaction, or resistance sufficient to cause injury.

On judicial review, the Court concluded that WCAT's decision was neither patently unreasonable nor procedurally unfair.

In relation to the substance of the WCAT decision, the petitioner argued that all of the medical evidence from treating health professionals supported the position that the injury could not have happened but for the incident. The Court found that the petitioner was conflating medical records (such as ultrasound and MRI reports) with medical opinions as to causation and thus was ignoring the second BMA report. These types of evidence are not on equal footing. The Court noted that the only opinion evidence before WCAT did not support his claim but instead supported the conclusion that the injury was inevitable regardless of any employment activity. Further, the Court rejected the petitioner's argument that WCAT ignored certain medical evidence that contradicted the BMA's opinion as the evidence had been expressly considered by the BMA. WCAT was not required to conduct its own review and interpretation of the clinical and diagnostic imaging reports and properly requested the BMA do so. WCAT does not have medical expertise and is not entitled to reject a medical opinion in the absence of an appropriate opinion to the contrary. WCAT was entitled, if not obligated, to rely on the BMA report.

The Court also found that WCAT was not required to determine whether the petitioner's pre-existing condition was at a "critical point" (as that phrase is used in item C3-16.00 of the Board's *Rehabilitation Services and Claims Manual*) as it was not a deteriorating condition. The finding that the petitioner's injury would have occurred in any event such that the incident was not of causative significance was open to WCAT on the evidence before it. The Court then rejected the petitioner's argument that WCAT allowed the BMA to makes findings about the mechanism of injury and other matters that WCAT was required to make, finding that WCAT accepted the petitioner's evidence, made its own findings, and ensured that the second BMA report was based upon those findings.

Lastly, the Court determined that WCAT did not exercise its discretion in a patently unreasonable way when it did not request independent health advice. The question of whether the evidence is sufficiently complete and reliable is a matter for WCAT to determine. WCAT is not required to evaluate the appeal and notify the parties in advance of any deficiencies. A court will only interfere if the tribunal failed to investigate "obviously crucial evidence". Here no such evidence was missing and WCAT appears to have made every appropriate effort to base its decision on the best and most reliable evidence.

In relation to WCAT's procedure, the court concluded that it was not unfair to proceed without an oral hearing. WCAT was entitled to conclude that the expert opinion was determinative and a detailed examination of the petitioner's credibility was unnecessary. Moreover, no issue of credibility arose as WCAT accepted his evidence on the matters upon which he was capable of giving evidence. The petitioner's own evidence on causation was not capable of creating a conflict in the evidence sufficient to require an oral hearing. Further, the petitioner did not explain why fairness required permitting him to repeat before WCAT under oath the same evidence that he had already given under oath during the investigation stage. Lastly, the petitioner did not request an oral hearing and a finding of unfairness would invoke the policy concern that arises if a party is permitted to challenge the fairness of a process only after WCAT has decided against them. Opting for a written proceeding should not provide a free ground of judicial review.