

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

Summary Decision

Court	B.C. Supreme Court
Citation	2026 BCSC 1048
Result	Petition Dismissed
Justice	Justice A. Ross
Date of Judgment	June 8, 2026
WCAT Decision Reviewed	A2202410 (December 19, 2023)

Keywords:

Judicial review – Reopening of a matter previously decided (section 125 of the Act) – Scope of appeal - Independent health professional assistance (section 302(1.1) of the Act)

Summary:

The Court dismissed the worker's petition, finding that the Workers' Compensation Appeal Tribunal (WCAT) panel was not patently unreasonable when it determined that the scope of the petitioner's appeal, which related to a decision refusing to reopen a matter previously decided, was limited to considering only the medical condition already accepted on the claim. Consequently, it was also not patently unreasonable for the panel to decline to request assistance from an independent health professional under section 302(1.1) of the *Workers Compensation Act* to determine whether the reason for the petitioner's ongoing disability related to a different medical condition.

Section 125(1) of the Act permits the Workers' Compensation Board, operating as WorkSafeBC, (Board) to "reopen a matter that has been previously decided" if there has been a recurrence of a worker's injury or a significant change in the medical condition the Board had previously decided was compensable.

The petitioner was injured while working as a licenced practical nurse. The Board accepted her claim for a lumbar sprain and provided her wage-loss benefits until she returned to work. Several months after those benefits ended, the petitioner requested more wage-loss benefits. The Board considered this as a request to reopen the decision ending the wage-loss benefits arising from her lumbar sprain. Relying on an expert medical report concluding that the accepted lumbar sprain had resolved and that the petitioner was experiencing mechanical back pain, the Board denied the request for a reopening. The Review Division of the Board confirmed the Board's reopening decision. The Board later accepted a chronic pain condition on the claim.

On appeal, the petitioner submitted to WCAT two medical reports from a physician that suggested that the work incident may have caused more than a back sprain, specifically sacroiliitis or an inflammatory facet condition. However the expert could not provide a definitive diagnosis and suggested further investigation. The petitioner requested that WCAT retain an independent health professional (IHP) under section 302(1.1) of the Act to determine the full extent of the petitioner's condition.

As it was the Board's reopening decision that was before WCAT and the expert's opinion was speculative, the WCAT panel determined that the issue on appeal should be limited to whether the petitioner's condition at the time of the reopening request was caused by the accepted lumbar sprain. The panel accepted that the petitioner was still experiencing back pain but agreed with the Board and the Review Division that the evidence established that the petitioner's lumbar sprain had resolved. The panel noted that the Board had the authority to decide whether the petitioner had a new or different condition and that it was open to the petitioner to ask the Board to do so.

Given the scope of the appeal, the panel determined that an IHP report would not assist in deciding the appeal. The panel rejected the petitioner's argument that as long as the first two requirements of section 302(1.1) are met, namely that a party requests the panel retain an IHP and that the "medical condition of the worker is at issue in the appeal", a panel is obligated to retain an IHP. WCAT concluded that the petitioner's interpretation would render meaningless the final statutory condition that requires the panel to conclude that an IHP opinion would assist in reaching a decision on the appeal.

On judicial review, the Court found that WCAT was not patently unreasonable because the panel followed a permissible train of logic in deciding to keep the scope of appeal narrowly focused on whether the original accepted condition had recurred or significantly changed. For this reason, a request for an IHP to investigate a different and speculative condition identified by the petitioner's expert as potentially the cause of the petitioner's ongoing disability was not patently unreasonable. The Court said, "it was logical to conclude that any opinion from an IHP could only answer questions that were not before the panel (and which had not been before the Board)."