T.B. v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2021 BCSC 610
Result	Petition Allowed
Judge	Mr. Justice Mayer
Date of Judgment	April 6, 2021
WCAT Decision(s) Reviewed	A1703707

Keywords:

Judicial review – Standard of review – Patent unreasonableness – Workers Compensation Act, section 134(1) – Arising out of and in the course of employment – Rehabilitation Services and Claims Manual, Volume II, policy C3-22.00 – Whether a subsequent condition is a compensable consequence of a compensable injury

Summary:

The petitioner experienced sexual dysfunction after suffering a workplace injury to her back. The Workers' Compensation Appeal Tribunal (WCAT or the tribunal) determined that her sexual dysfunction was not a consequence of her injury. WCAT's decision was based on its preference for one doctor's opinion that there is no clear association between the petitioner's spine problems and her sexual dysfunction over that of another doctor whose opinion was that her sexual dysfunction is significantly contributed to by her compensable condition. On judicial review, the court agreed with the petitioner that the reasons given by the tribunal for preferring the first doctor's opinion were not supportable by the facts in the record. The court allowed the petition and set aside the WCAT decision.

Dr. Frangou opined that here was no clear association between the petitioner's spine problems and her sexual dysfunction. He recommended that the Workers' Compensation Board (Board) obtain the opinion of an urologist. Dr. Rapoport, the urologist to whom the petitioner was referred, opined that her sexual dysfunction was contributed to by her workplace injury.

One of the bases upon which the tribunal criticized Dr. Rapoport's evidence was a finding that he had not reviewed all of the relevant information and was unaware of relevant facts. One such fact was the onset of the petitioner's sexual dysfunction.

WCAT found that Dr. Rapoport did not account for the fact that the first reports of sexual dysfunction did not appear in the medical record until months after the injury. The court said that "in the context of a complicated multi-symptom medical case, finding the lack of a symptom based solely on the absence of medical reports of such symptom over a [discrete] period of time, is problematic" and "it should be assumed, in the absence of contradictory evidence, that he took an accurate medical history". Another fact that the tribunal found Dr. Rapoport to have misunderstood was the chronicity of the petitioner's constipation (which was related to her sexual dysfunction). WCAT found that the petitioner had only suffered intermittent bowel problems. The court agreed with the petitioner that constipation may be intermittent and still be chronic.

The court also held that WCAT's finding that Dr. Rapoport had not reviewed relevant medical records was patently unreasonable. The court found that the tribunal's basis for this finding was not clear and that the tribunal had not made any findings contrary to the facts assumed by Dr. Rapoport in his report.

On the issue of whether Dr. Rapoport, as an urologist, was qualified to provide an opinion regarding the neurological condition underlying the petitioner's sexual dysfunction, WCAT conceded on judicial review that this finding was patently unreasonable. It was Dr. Frangou, a neurologist, who recommended that the Board get an opinion from an urologist.

Finally, the court found that Dr. Frangou's report was not clearly contradictory to Dr. Rapoport's report and therefore did not constitute a sufficient basis upon which to reject Dr. Rapoport's expert opinion. The rejection of Dr. Rapoport's opinion was therefore patently unreasonable pursuant to the reasoning of the court in *Page v. British Columbia (Workers' Compensation Appeal Tribunal),* 2009 BCSC 493.