Noteworthy Decision Summary

Decision: WCAT 2004-03571 **Panel:** Herb Morton **Decision Date:** July 5, 2004

Reconsideration application - Breach of natural justice - Standard of review - Duty to act fairly – Section 58(2)(b) of the Administrative Tribunals Act - Denial of right to be heard - Failure to receive notice of hearing

Whether an alleged defect in procedure is sufficient to constitute a breach of natural justice almost always depends on all of the circumstances; it requires an assessment of the procedures and safeguards required in a particular situation. On judicial review the test for establishing whether a breach of natural justice had occurred is whether the process was unfair. Although not necessary to its decision, the panel further noted that section 58 of the *Administrative Tribunals Act*, *2004*, stated that in a judicial review proceeding questions about the application of the rules of natural justice must be decided having regard to whether, in all the circumstances, the tribunal acted fairly.

An employer sought a reconsideration of an earlier decision, dated May 2003, alleging a breach of natural justice as a result of the failure to provide it with notice of the oral hearing. The employer had sent a letter expressing interest in participating in the appeal, in lieu of a notice of appearance form, and the letter was received beyond the 21 days specified.

The panel found there was a breach of natural justice involving the respondent's right to be heard. It was not the general practice of the former Review Board to deny a respondent the right to participate, where the respondent expressed a wish to do so, even if this request was received late and contained in a letter rather than utilizing the notice of appearance form. Failure to strictly comply with section 5(6) of the *Workers Compensation Act (Review Board) Regulation* was not a bar to the respondent's later participation in the appeal. The decision was set aside as void and the worker's appeal must be considered afresh without reference to the prior decision.

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WCAT Decision Number: WCAT-2004-03571
WCAT Decision Date: July 5, 2004
Panel: Herb Morton, Vice Chair

Introduction

The employer requests that *Workers' Compensation Appeal Tribunal* (WCAT) *Decision #2003-00363-rb*, dated May 1, 2003, be set aside on the basis of a breach of natural justice. The WCAT panel found that the worker was injured in the course of her employment for the applicant. The employer complains that it was not notified of the oral hearing and did not have the opportunity to be heard, before the WCAT decision was made.

The employer does not dispute the fact that the worker had been hired by it. Rather, the dispute concerns whether, at the time of the worker's accident on July 16, 2001, she was working for it or for a third party. I will refer to the applicant in this case as either the employer or "O" (meaning Outfitter), and will refer to the third party as "F".

The applicant is represented by a lawyer, and the worker is represented by the Workers' Advisers. This application is being considered on the basis of written submissions.

To assist in the consideration of this matter, the following additional materials were disclosed to the parties for comment:

- the file activity notes made in the computer system (CASE) of the Workers' Compensation Review Board (Review Board) and the WCAT, concerning this appeal;

- my memorandum dated May 12, 2004 to the WCAT vice chair, inventory strategist, and former Review Board registrar, and his response of the same date, concerning the general practices of the former Review Board;

- sections 5 and 6 of the *Workers Compensation Act (Review Board) Regulation*; and,

- *Review Board Policy and Procedure Manual* (updated May 23, 1995), pages E-4, E-5.

Issue(s)

Was there a breach of natural justice, involving a denial of the applicant's right to be heard?

Jurisdiction

WCAT uses the broad heading of "reconsideration" to encompass situations both where an applicant seeks to have a decision reconsidered on the basis of new evidence, and where an applicant seeks to have a decision set aside on the basis of the common law ground of an error of law going to jurisdiction. WCAT's authority to reconsider on the basis of new evidence is defined by section 256 of the *Workers Compensation Act* (Act). WCAT also has authority to "reconsider" (i.e., to set aside or void one of its decisions) on the common law ground of an error of law going to jurisdiction, including a breach of natural justice. These grounds are described at items #15.00 to #15.24 of WCAT's *Manual of Rules, Practices and Procedures* (MRPP). A tribunal's common law authority to set aside one of its decisions on the basis of jurisdictional error was confirmed by the British Columbia Court of Appeal in the August 27, 2003 decision in *Powell Estate v. Workers' Compensation Board*, (2003) B.C.C.A. 470, [2003] B.C.J. No. 1985, 2003 B.C.C.A. 470, (2003) 186 B.C.A.C. 83.

In paragraph 28 of *WCAT Decision #1*, "Delegation by the Chair", the chair delegated the authority to WCAT members (upon assignment of the application to the member by the chair):

> (a) under section 256, to refer a WCAT or Appeal Division decision to WCAT for reconsideration, and,
>
> (b) where such authority exists at common law, the authority to set aside a decision as void or to find that a decision is incomplete, and to return the matter to WCAT for completion of the decision.

This delegation was confirmed in *WCAT Decision #6*, at paragraphs 26 and 31. This application has been assigned to me by the chair.

Standard of Review

Section 255(1) of the Act provides that a WCAT decision is final and conclusive and is not open to question or review in any court. In keeping with the legislative intent that WCAT decisions be final, they may not be reconsidered except on the basis of new evidence as set out in section 256 of the Act, or on the basis of jurisdictional error which goes to the question as to whether a valid decision has been provided. The test for determining whether there has been an error of law going to jurisdiction generally requires application of the "patently unreasonableness" standard of review.

The applicant alleges a breach of natural justice, concerning the failure to provide it with notice of the oral hearing. In the text *Administrative Law in Canada*, Third Ed. (Ontario: Butterworths, 2001) at 12, Sara Blake states:

> Essentially, the courts require that decisions made in individual cases be made following procedures that are fair to the affected parties. This requirement is called the "doctrine of fairness" or the "duty to act fairly".
>
> At a minimum, the doctrine of fairness requires that, before a decision adverse to a person's interests is made, the person should be told the case to be met and be given an opportunity to respond. The purpose is twofold. First, the person to be affected is given an opportunity to influence the decision. Second, the information received from that person, should assist the decision maker to make a rational and informed decision.

It is necessary to determine, first of all, the applicable standard of review to apply to consideration as to whether a breach of procedural fairness occurred. Jones and de Villars, *Principles of Administrative Law*, Third Ed. (Ontario: Carswell, 1999) at 513-514, contains the following analysis:

> **(a) The Standard for Determining Whether there has been a Breach of the Principles of Natural Justice and Procedural Fairness**
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> Neither the "correctness" test nor the "patently unreasonable" test really fits this ground for judicial review. Although a breach of natural justice or procedural fairness has the effect of taking the statutory delegate outside its jurisdiction — and so might at first glance engage the "correctness" test — any student of Administrative Law will quickly reply that there is no mathematical formula for determining whether a particular alleged defect in procedure is sufficient to constitute a breach of natural justice; it almost always depends upon all of the circumstances...
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> Perhaps the better way to look at this question is to articulate a separate test for judicial review of alleged breaches of natural justice: namely, would a reasonable person, reasonably knowledgeable about all the facts, reasonably perceive that the process is unfair? This echoes the way the Rule Against Bias is usually articulated, but it can be generalized to apply to all alleged breaches of natural justice. Of course, the reasonable person is the court. If this question is answered affirmatively, then the standard for review has been tripped, and the delegate's proceedings should be quashed.

In a unanimous decision of the Supreme Court of Canada, *Moreau-Bérubé* v. *New Brunswick (Judicial Council)*, 2002 S.C.C. 11, [2002] 1 S.C.R. 249 at paras. 74-75, Justice Arbour applied similar analysis on this issue:

> **(3) Procedural Fairness**
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> **74 The third issue requires no assessment of the appropriate standard of judicial review. Evaluating whether procedural fairness, or the duty of fairness, has been adhered to by a tribunal requires an assessment of the procedures and safeguards required in a particular situation.** (See generally *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, and *Baker*, *supra*.)
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> 75 The duty to comply with the rules of natural justice and to follow rules of procedural fairness extends to all administrative bodies acting under statutory authority (see *Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, [1979] 1 S.C.R. 311; *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, at p. 653; *Baker*, *supra*, at para. 20; *Therrien*, *supra*, at para. 81). Within those rules exists the duty to act fairly, which includes affording to the parties the right to be heard, or the *audi alteram partem* rule. The nature and extent of this duty, in turn, "is eminently variable and its content is to be decided in the specific context of each case" (as *per* L'Heureux-Dubé J. in *Baker*, *supra*, at para. 21). Here, the scope of the right to be heard should be generously construed since the Judicial Council proceedings are similar to a regular judicial process (see *Knight*, *supra*, at p. 683); there is no appeal from the Council's decision (see D.J.M. Brown and J.M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), vol. 1, at pp. 7-66 to 7-67); and the implications of the hearing for the respondent are very serious (see *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105, at p. 1113).
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> [emphasis added]

While not necessary to my decision, I note that the *Administrative Tribunals Act, 2004* received Royal Assent on May 20, 2004. Section 182 of the *Administrative Tribunals Act, 2004* lists the provisions of that Act which will amend the *Workers Compensation Act*, and which will therefore apply to WCAT. Section 58 of that Act (which has not yet been brought into force by regulation) will apply in relation to WCAT decisions. Section 58 provides as follows:

Standard of review if tribunal's enabling Act has privative clause

58 (1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.

(2) In a judicial review proceeding relating to expert tribunals under subsection (1)

(a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,

(b) **questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly**, and

(c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

(3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion

(a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

[emphasis added]

The standard of review specified in section 58(2)(b) appears to codify the test described in the Supreme Court of Canada decision in *Moreau-Bérubé*. For the purposes of my decision, I will follow the reasoning expressed by the Supreme Court of Canada in the *Moreau-Bérubé* decision. The central issue is whether the procedures followed by WCAT, in this case, were fair.

Background

The worker was injured in a fall from a horse on July 16, 2001. By decision dated October 25, 2001, the worker's claim was denied by a case manager of the Workers' Compensation Board (Board) on the basis that at the time of her injury she was "not covered by the *Workers Compensation Act*". In a further decision dated March 27, 2002, a client services manager accepted that there were grounds for reconsidering the earlier decision. Upon doing so, however, the client services manager reached the same conclusion on the merits. The client services manager found that the worker had been hired by "O". However, the client services manager further found that, at the time of the worker's accident, she was riding a horse belonging to a third party, "F". The client services manager found that "F" was paying the worker directly for the service of riding "F"'s horse. The client services manager found that "F" was not obliged to register as an employer with the Board, as this employment did not exceed eight hours per week. The client services manager found that the worker was not eligible under "O"'s workers' compensation coverage, as her accident occurred while she was in the employment of "F". Accordingly, the client services manager confirmed the denial of the worker's claim.

On May 21, 2002, the worker's notice of appeal was received by the Review Board. Her appeal was brought within the 90-day time frame for appealing the March 27, 2002 decision, but was outside this time frame for appealing the October 25, 2001 decision. The worker requested an extension of time to appeal the October 25, 2001 decision.

On July 11, 2002, the Review Board senior deputy registrar wrote to "O", advising that "O" was shown as the employer and had the right to participate in the appeals of the October 25, 2001 and March 27, 2002 decisions. He further advised:

> To do so, you must send the enclosed Notice of Appearance to the Review Board within **twenty-one (21)** days from the date of this letter.
>
> [emphasis in original]

The senior deputy registrar also invited "O" to provide comments concerning the application for an extension of time to appeal, together with the notice of appearance. The letter concluded:

> If you do not send us the Notice of Appearance, we will send you no further information about the appeals except a copy of the decision.

"O" did not respond within 21 days of the July 11, 2002 letter. On July 15, 2002, the worker's notice of appeal – part 2 was received by the Review Board, together with reasons for her request for an extension of time to appeal. These documents were submitted by the workers' adviser.

By letter dated August 28, 2002 (stamped as received on August 29, 2002 by the Review Board), "O" advised as follows:

> We are responding to your letter of July 11/02. Although your letter was mailed July 15/02, we did not receive it until August 23rd. It was returned to you as the address was incorrect and you re-addressed it to our accountant, [name]. By telephone we have had our address corrected in your file.
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> Your letter contains several pages of the [worker's] file. As a result of the mailing delay, we have not responded within the 21 days to the original notice of appearance or to the appeal for extension of time.
>
> As originally contended by us and found by the Board, neither ["O"] nor [related name] are the employers. Therefore, we submit rejection of either an extension of time for an appeal or the appeal itself.
>
> [reproduced as written]

The August 28, 2002 letter also provided "O"'s new mailing address.

That letter was received by the Review Board on the 49th day following the July 11, 2002 letter. That was beyond the 21 days specified for providing a notice of appearance, but well before arrangements were undertaken for scheduling a hearing of the appeal.

In an August 29, 2002 log entry in the Review Board's computerized CASE system, the supervisor for oral hearing scheduling referred the August 28, 2002 letter to a deputy registrar, for guidance. The scheduling supervisor made a further CASE entry on October 10, 2002 indicating that, according to the deputy registrar, the letter from "O" dated August 28, 2002 would be placed on file, as "O" had now been deemed as not being the employer. No reply was provided by the Review Board to the employer's August 28, 2002 letter.

On November 20, 2002, the Review Board senior deputy registrar advised the worker than an extension of time was granted for her appeal of the October 25, 2001 decision. A copy of that letter was sent to "O". That was the last letter sent to "O" by the Review Board or WCAT before the WCAT decision was issued.

On March 3, 2003, the Review Board and the Appeal Division of the Board were replaced by WCAT pursuant to the amendments to the appeal structures contained in the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63). The worker's appeal(s) were transferred to WCAT for completion under section 38 of the transitional provisions in Part 2 of Bill 63.

On March 21, 2003, the scheduling supervisor wrote to the worker to advise that the WCAT oral hearing was scheduled for April 24, 2003. A copy of this letter was not sent to "O".

An oral hearing was held by WCAT, on April 24, 2003, in Kelowna. By decision dated May 1, 2003, the WCAT panel allowed the worker's appeal. The panel concluded that "O" was the employer for whom the worker was working at the time of her accident. The panel found, at page 5, that "the worker's relationship with the outfitter remained substantially that of a worker to an employer when she rode F.'s horse."

The cover page of the WCAT decision listed "O" as the respondent employer, and a copy of the decision was mailed to "O". Notwithstanding the earlier August 28, 2002 letter from "O" concerning the change of address, the decision was mailed to its former address and then returned to WCAT on May 12, 2003.

On January 9, 2004, a lawyer for "O" wrote to WCAT to request reconsideration of the WCAT decision, on the basis that "O" had not been notified of the oral hearing.

Submissions

By submission of February 18, 2004, the employer's lawyer requested reconsideration on the basis of a breach of natural justice involving the failure to notify the employer of the oral hearing, and on the basis of the new evidence the employer would be able to provide. He submitted that the employer's failure to provide evidence at the WCAT oral hearing did not involve any lack of due diligence on the employer's part, but stemmed from WCAT's failure to give the employer the opportunity to provide evidence at the hearing.

A submission dated April 13, 2004 was provided by the workers' adviser. He submitted that the lack of notice to the employer was the result of the employer's failure to complete a notice of appearance within 21 days, as required by the former Review Board. When the employer wrote to WCAT on August 28, 2002, it still failed to complete the required notice of appearance. Accordingly, the workers' adviser submitted that the employer was not entitled to any further information or notice concerning the worker's appeal.

Following disclosure of the additional materials listed in the "Introduction" section above, by letter of May 18, 2004 the workers' adviser argued that the employer had made a conscious decision that it was not the employer and thereby established its intent not to participate. He submitted that the October 10, 2002 log entry in CASE was nothing more than a typographical error, as WCAT's subsequent action of sending a copy of the decision to the employer confirms that it was the employer of record. The workers' adviser submitted there was no beach of natural justice.

The lawyer representing the employer provided further letters dated May 25, 2004 and June 7, 2004. He submitted that in the August 28, 2002 letter from "O", "O" was attempting to express interest in attending or participating in the appeal. As the general practice of the former Review Board was not to require that the notice of appearance form be used, the employer's failure to complete that form should not be determinative. He submitted there was a breach of natural justice.

Analysis

The employer's application for reconsideration initially relied upon both the common law ground of a breach of natural justice and new evidence. The lawyer representing the employer submits that there was no failure of "due diligence" on the part of the employer, with respect to the failure to submit this evidence. I will first consider whether there was a breach of natural justice.

As the WCAT decision had been sent to the wrong address, the lawyer's submissions concerning the lack of notice initially assumed that a hearing notice had been sent to "O", bearing the wrong address. It is clear from WCAT's records, however, that this was not the case. Rather, this was a situation where WCAT did not invite "O" to participate in the oral hearing.

I have considered whether the failure to notify "O" of the oral hearing may be defended on the basis that the employer failed to respond to the request that it complete the notice of appearance within the 21 days specified. While "O" explained the reasons for its late response in its August 28, 2002 letter, it still failed to complete the notice of appearance form.

Subsections 5(5) and (6) of the *Workers Compensation Act (Review Board) Regulation*, B.C. Reg. 32/86 ("the Regulation"), provided:

> (5) The registrar shall acknowledge receipt of every appeal made to the review board and provide a copy to the respondent together with a notice of appearance.
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> (6) A respondent, who wishes to participate in the appeal, shall file the notice of appearance with the registrar within 21 days from the date of dispatch of the notice under subsection (5).

The wording of section 5(6) appears mandatory in nature, in stipulating that a notice of appearance shall be filed within 21 days.

Subsections 6(2) and (3) of the Regulation further provide:

> (2) The review board shall consider relevant information and argument submitted to it by or on behalf of a worker, employer or dependant, whether made orally or in writing.
>
> (3) The review board may require and receive medical or other evidence and information on oath, affidavit or otherwise as in its discretion it considers proper to make a fair decision.

The *Review Board Policy and Procedure Manual* (updated May 23, 1995) provided at page E-5 as follows:

> The Review Board will provide a copy of a Notice of Appeal – Part 1 to respondents, along with a blank Notice of Appearance. If that form is not filed, the Review Board will not provide the respondent with any further information about the appeal. However, a respondent who fails to file a Notice of Appearance within the prescribed time period is not necessarily precluded from participating in the appeal. For example, any respondent who attends an oral hearing will be permitted to participate in it, based on the requirement that panels consider relevant information and arguments submitted by a worker, employer or dependent (section 6(2) of the *Regulation*).
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> . . .
>
> Respondents who have filed a Notice of Appearance will receive copies of all correspondence relating to the appeal, including notice of the hearing, and copies of new evidence and submissions.

Similarly, item #4.30 of WCAT's MRPP provided, effective March 3, 2003:

> Failure to complete a *Notice of Participation* would not preclude a WCAT panel from hearing from the respondent. For example, if the respondent appeared at an oral hearing, they would have the right to be heard. However, WCAT will not notify respondent(s) of the oral hearing date unless the respondent completed the *Notice of Participation*.

By memorandum of May 12, 2004, I made inquiries to the former Review Board registrar concerning the general practice of the former Review Board. The first question was whether the former Review Board required that the notice of appearance form be utilized or whether a letter expressing interest in participating would suffice. The former registrar advised that a letter was considered sufficient to meet the intent of the legislation. With respect to late responses (received after the 21 days, but before the

oral hearing was scheduled), he advised that the general Review Board practice would have been to notify the respondent of the hearing date if it had demonstrated an intent to participate.

It was not the general practice of the former Review Board to deny a respondent the right to participate, where the respondent expressed a wish to do so, even if this request was received late and contained in a letter rather than utilizing the notice of appearance form. Failure to comply strictly with the technical requirements of section 5(6) of the Regulation was not a bar to the respondent's later participation in the appeal. There was a general practice of providing notice of an oral hearing to respondents, and providing an opportunity to participate, even where the respondent's expression of interest was not provided on the designated form and was received beyond the specified 21-day period.

Upon consideration of the foregoing, I do not consider that the timing or form of the employer's August 28, 2002 letter can be used as a basis for defending the failure to provide notice to "O" of the oral hearing. No decision was communicated to "O" by the former Review Board, or by WCAT, that "O's" participation would be limited for those reasons. Furthermore, to the extent there was any communication to "O", it was contained in the November 20, 2002 letter from the Review Board senior deputy registrar advising the worker that an extension of time was granted for her appeal of the October 25, 2001 decision. As a copy of that letter was sent to "O", this might have signalled to "O" that it would be notified of the further steps in the appeal.

"O"'s letter of August 28, 2002 asserted that it was not the employer. In effect, it was asserting a position on the central issue in the worker's appeal.

The log entry in the CASE computer system suggests an administrative determination was made that "O" was not the employer. I suspect that such an action would not be intended to constitute an adjudication of the merits of such an issue. Such action might reasonably be taken if, for example, it appeared that mail had inadvertently been sent to a third party with no interest in the proceeding.

The fundamental issue in this case is whether the procedures followed by WCAT were fair. The general approach of the former Review Board (and of WCAT) was to accept a letter expressing interest in participating in an appeal, in lieu of the form provided for that purpose. In this case, "O"'s letter of August 28, 2002 contained an explanation as to why it was late and, in expressing a position on the central issue raised by the worker's appeal, by logical inference showed the employer's interest in actively participating in the appeal.

The error which occurred in this case may well have stemmed from a misunderstanding as to the effect of "O"'s August 28, 2002 letter. However, neither the former Review Board nor WCAT responded to "O"'s August 28, 2002 letter, to indicate that "O" would

not be given the opportunity to participate in the appeal. As well, when the WCAT panel was contemplating finding that "O" was the employer with responsibility for the worker's injury, the panel appears not to have considered whether adequate notice had been provided to "O". In consideration of the foregoing, I find that there was a breach of natural justice involving the respondent's right to be heard.

Staff in the WCAT Registry have responsibility for the preliminary handling of very large volumes of appeals. While staff will endeavour to apply fair procedures, it will sometimes be the case that an error may occur. Ultimately, responsibility for ensuring compliance with the requirements of natural justice rests with the WCAT panel making the decision. The panel is in the best position, and has the last opportunity, to ensure that the parties are treated fairly. If an error has occurred in the preliminary handling of an appeal, it is the panel's responsibility to determine what remedial action is required to ensure that a fair process is followed, before proceeding with a decision. Failure to do so puts the WCAT decision at risk for being set aside as involving a breach of natural justice.

Accordingly, I find that *WCAT Decision #2003-00363-rb* must be set aside as void, based on the breach of natural justice which occurred. As that decision is a nullity, the worker's appeal must be considered afresh without reference to the prior decision. In view of my conclusion on this basis, I need not consider this application under the requirements for "new evidence" set out in section 256 of the Act.

Review Board Extension of Time to Appeal

This application for reconsideration has been brought in relation to *WCAT Decision #2003-00363-rb*. In view of the sequence of events set out above, I have also noted the possibility that an objection might be raised concerning the fact that the Review Board invited comments from the employer concerning the worker's application for an extension of time to appeal on July 11, 2002. That was before the worker's reasons for requesting an extension of time to appeal were provided to the Review Board on July 15, 2002. It appears that these reasons were not disclosed to "O" for comment before the worker's request was granted on November 20, 2002.

That matter is not before me for consideration in this application. If there is an objection to a prior Review Board finding, and the time for appealing to the Appeal Division expired before March 3, 2003, the current avenue for seeking redress is to request an extension of time to appeal to WCAT under section 2(2) of the *Transition Review and Appeal Regulation,* B.C. Reg. 322/02. Section 2(2) provides that a party can apply to the WCAT chair pursuant to section 243(3) of the Act, as amended by Bill 63, for an extension of time to appeal.

I would, however, offer the following comments by way of *obiter* (i.e., which is not part of the matter being decided). The March 27, 2002 decision on the worker's claim involved

a full reconsideration of the issues addressed in the earlier decision of October 25, 2001. A timely appeal was brought from the March 27, 2002 decision. Accordingly, the question as to whether an extension of time should be granted for an appeal of the October 25, 2001 decision was moot. The merits of the worker's appeal were fully before the Review Board (and WCAT) in connection with the appeal of the March 27, 2002 decision. While the granting of an extension of time to appeal the earlier decision may have provided a measure of reassurance to the worker that her appeal would be fully considered, this does not appear to have any significance in terms of the issues which were before WCAT in this appeal. Thus, it appears irrelevant (and moot) whether the October 25, 2001 decision is considered part of the appeal.

Conclusion

The employer's application for reconsideration is allowed. *WCAT Decision #2003-00363-rb* is set aside as void. The worker's appeal will be considered afresh. The WCAT Registry will contact the parties (the worker and "O") concerning the further handling of this appeal. Consideration may also be given to inviting participation by "F".

Herb Morton
Vice Chair

HM/jy

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