

Noteworthy Decision Summary

Decision: WCAT-2005-05280 **Panel:** Marguerite Mousseau **Date:** October 5, 2005

Dismissing Appeal – Substance of the Application Appropriately Dealt With in Another Proceeding – Section 31(1)(g) of the Administrative Tribunals Act

A decision of the Workers' Compensation Board (Board) constitutes a "proceeding" under section 31(1)(g) of the *Administrative Tribunals Act*, therefore an application for appeal to the Workers' Compensation Appeal Tribunal (WCAT) may be dismissed if an intervening decision of the Board makes the issue before WCAT moot.

The worker was injured in a motor vehicle accident. The Board accepted his claim and paid him benefits. The worker also pursued a civil action which resulted in a negotiated settlement. He signed an agreement to repay the Board its subrogated interest in the settlement funds.

The Board's legal department sought information from the worker's then legal representative regarding the terms of settlement to determine if there was money owing to the Board. The representative did not provide the necessary information and the Board suspended the worker's benefits. The Workers' Compensation Review Division confirmed this decision. Before the appeal was heard by WCAT, the Board received the information it was seeking, and reinstated the worker's benefits. The Board considered the appeal moot, but the worker still requested WCAT "to decide the validity of the suspension on the merits."

The Board's decision to reinstate the worker's benefits constituted a proceeding under section 31(1)(g) of the *Administrative Tribunals Act*. The reinstatement of benefits by the Board fully addressed the "substance of the application" so it was "appropriately dealt with" in that "proceeding."

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Panel: Marguerite Mousseau, Vice Chair

Introduction

The worker's benefits were suspended as of April 22, 2004 because the Legal Department of the Workers' Compensation Board (Board) had been unable to obtain information from the worker's then legal representative.

The decision to suspend the worker's benefits was confirmed by a review officer in *Review Division Decision #19395*, dated February 28, 2004. The worker appeals that decision to the Workers' Compensation Appeal Tribunal (WCAT).

WCAT has jurisdiction to consider this appeal under section 239(1) of the *Workers Compensation Act* as an appeal from a final decision made by a review officer under section 96.2 of the Act.

The worker is represented by legal counsel on this appeal. The employer is not participating, though notified of the appeal.

Issue(s)

A preliminary issue on this appeal is whether the worker's appeal should be dismissed pursuant to section 31(1) of the *Administrative Tribunals Act* (Act). Subject to that decision, the issue is whether the worker's benefits should have been terminated as of April 22, 2004.

Background

In May 2000 the worker, while on a sales call, witnessed a very serious motor vehicle accident which resulted in four fatalities. The worker's claim was accepted for a psychological disorder that stemmed from his having witnessed this accident and benefits were paid accordingly. In the meantime, the worker had also pursued a civil action which resulted in a negotiated settlement. The worker signed an agreement with the Board to repay the Board its subrogated interest from the funds received in the settlement. The Board's Legal Department sought information from the worker's then counsel regarding the terms of the settlement in order to determine whether there was money owing to the Board. Counsel did not provide the necessary information. In a claim log entry dated April 22, 2004, counsel in the Board's Legal Department said that the worker's benefits should cease until the outstanding issues respecting the legal issues had been resolved. Once this was resolved, a determination would be made as to whether the worker had any further entitlement to benefits.

The decision to suspend his benefits was communicated to the worker in a decision letter dated May 18, 2004. This decision was confirmed in *Review Division Decision #19395*. The worker appealed this decision to WCAT. In his notice of appeal, dated March 18, 2005, he described the outcome he was seeking as follows:

Full reinstatement of my benefits with compensation for my temporary total disability benefit payments and treatment for medical expenses retroactive to the date of suspension.

A claim log entry by the Board's legal counsel, dated July 18, 2005, states that the Board has now received the information it was seeking when the worker's benefits were suspended. Counsel stated that the suspension could now be lifted and that the Board should proceed with adjudication of the worker's entitlement to any further benefits. He stated that, if the worker was entitled to any further compensation benefits, the first \$5000 should be attributed to the Board as a third party recovery.

In a letter to the worker dated July 18, 2005, legal counsel confirmed that the Board had obtained the necessary information and stated the amount of money sought from the worker. Counsel said that he had advised the case manager that the information had now been received and that they could proceed to adjudicate his claim. Counsel said that he was not aware of any appeal to WCAT but, if there was an appeal, he thought it had been rendered moot because the case manager would now proceed to adjudicate the claim.

In a claim log entry dated July 28, 2005, the case manager states that the worker's benefits are reinstated and it has been determined the worker is entitled to wage loss benefits for the period April 12 to June 27, 2004.

Decision

Section 245(1) of the *Workers Compensation Act* provides that certain sections of the Act apply to WCAT. Section 31 of the Act is applicable to WCAT. Section 31 of the Act sets out circumstances in which an application may be dismissed by an administrative tribunal. It provides, in part:

31(1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

...

(g) the substance of the application has been appropriately dealt with in another proceeding.

(2) Before dismissing all or part of an application under subsection (1), the tribunal must give the applicant an opportunity to make written submissions or otherwise be heard.

By letter dated September 14, 2005 and an appended memorandum, the worker's counsel was informed of the tribunal's discretion to dismiss the appeal under section 31(g) of the Act and provided with the opportunity to make a submission in response.

By letter dated September 1, 2005, counsel advised that the worker did not wish to have the appeal dismissed. He submitted that section 31(g) of the Act is not intended to apply to the circumstances before the panel. He submits that the decision to reinstate some benefits is an administrative decision which, in his view, should not be considered a "proceeding" under section 31(g) of the Act. He submits that this is intended to refer to judicial or quasi-judicial proceedings. He noted that there does not appear to be a WCAT precedent panel on this point.

In prior correspondence with WCAT, dated September 1, 2005, counsel had advised that the worker wanted the WCAT panel "to decide the validity of the suspension on the merits" and that the worker did not wish to withdraw his appeal.

It is generally recognized in administrative law that decisions respecting the rights of an individual are quasi-judicial in nature. The Board views its decisions as quasi-judicial and establishes certain of its procedures accordingly. Policy item #97.10 of the *Rehabilitation and Services Claims Manual, Volume II*, for example, provides, in part: "The Board, as a quasi-judicial body, must make its decisions according to the evidence or lack of evidence received, not in accordance with speculations unsupported by evidence."

I am satisfied that the decision to reinstate the worker's benefits as set out in the claim log entry of July 28, 2005, constitutes a proceeding under section 31(1)(g) of the Act. This action involves an adjudication of one of the most fundamental rights under the *Workers Compensation Act*: the entitlement to compensation.

I also consider that the issue of reinstatement of benefits was "appropriately dealt with" in the adjudication. In this regard, I have taken into account the authority of the person who adjudicated the entitlement issue and the adjudicative process. I consider that the decision to reinstate benefits was made by a person with the authority to make such a decision, that is, an officer of the Board. I also note that the decision to reinstate benefits flowed from a review of psychological opinion evidence which occurred at a team meeting held on June 22, 2004, while the worker's benefits remained suspended.

I consider that the decision set out in the claim log entry of July 28, 2005 fully addresses the "substance of the application" as required under section 31(1)(g) of the Act. The substance of the worker's appeal is his entitlement to benefits as of the date his benefits were suspended. The issue of whether it was appropriate to suspend the benefits is a question which must be asked in order to determine whether the worker's benefits should be reinstated. This question is not the substance of the worker's appeal; it is a step in the analytical process necessary to determine whether the worker's benefits

should be reinstated as of the date of suspension. Since the worker's benefits have been reinstated as of that date, the "substance" of his appeal "has been appropriately dealt with in another proceeding".

I note that this decision to dismiss the worker's appeal is not intended to confirm the duration of the worker's benefits as described in the claim log entry of July 28, 2005. The sole issue before WCAT is the reinstatement of the worker's benefits as of the date they were suspended. My decision to dismiss the worker's appeal does not curtail or in any way affect his rights of review and appeal with regard to the extent of his benefits.

Conclusion

The worker's appeal of *Review Division Decision #19395* is dismissed.

Marguerite Mousseau
Vice Chair

MM/gw