NOTEWORTHY DECISION SUMMARY

Decision: WCAT-2015-1946 **Panel:** Herb Morton **Decision Date**: June 19, 2015

Reconsideration – Section 253.1(5) of the Workers Compensation Act – Section 238 of the Workers Compensation Act – Necessity - Appointment of a different panel

This decision is noteworthy for its conclusion that on an application for reconsideration on the grounds of jurisdictional defect, the chair of WCAT may appoint a different panel than the panel that heard the original appeal when the original panel is no longer available.

The worker requested a reconsideration of a decision, on the grounds that the WCAT panel failed to decide an issue that was before it, specifically, whether an L4-5 disc herniation was a compensable injury. At the time the request for reconsideration was made, the panel that made the original decision (Original Panel) was no longer a vice chair of WCAT. The chair of WCAT appointed a different panel (Reconsideration Panel) to hear the reconsideration application.

As a preliminary matter, the Reconsideration Panel considered whether the decision in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499 precluded the chair from appointing a panel other than the Original Panel to hear the application to reconsider the decision.

The Reconsideration Panel considered the conclusion of the majority in *Fraser Health* that it was patently unreasonable for the chair to appoint a different panel to reopen an appeal pursuant to the common law authority preserved by section 253.1(5) of the *Workers Compensation Act* because only the panel that decided an appeal was authorized to amend its decision to cure a jurisdictional defect. The Reconsideration Panel found that conclusion was limited to the context of the case before the court in Fraser Health, and did not consider the situation where the panel that made the initial decision was no longer available. The Reconsideration Panel stated that where a party sought reconsideration of a decision on the grounds that it contained a curable jurisdictional defect, it would be unfair and unnecessary to require the party to pursue a petition for judicial review in the Supreme Court of British Columbia, simply because the original panel was no longer available. Consequently, the Reconsideration Panel concluded that since the Original Panel was no longer available, necessity required that a different panel could be appointed to hear and decide the reconsideration application, and that the chair of WCAT was authorized to appoint such a panel.

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WCAT Decision Number: WCAT-2015-01946
WCAT Decision Date: June 19, 2015
Panel: Herb Morton, Vice Chair

Introduction

[1] The worker requests reconsideration of the June 27, 2012 Workers' Compensation Appeal Tribunal (WCAT) decision (*WCAT-2012-01715,* or the WCAT decision) on the basis of a true jurisdictional defect.

[2] The worker is represented by her union. The worker submitted an application for reconsideration dated June 21, 2013. A letter of June 21, 2013 was attached from the worker's union representative, to provide additional information.

[3] By letter of October 25, 2013, a WCAT appeal coordinator invited any further submission the worker wished to provide. She described the "one time only" limitation on reconsideration applications. A submission dated November 8, 2013 was provided by the worker's representative.

[4] The employer is participating in this application, and is represented by an employers' adviser who provided a submission on December 5, 2013. Although invited to do so, the worker did not provide a rebuttal.

[5] On March 6, 2015, WCAT's legal counsel wrote to the parties regarding the December 18, 2014 decision of the British Columbia Court of Appeal (BCCA) in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499. The BCCA found that WCAT has no authority to review one of its decisions to determine if it was patently unreasonable. WCAT only has the power to review its decisions to address true questions of jurisdiction, and procedural fairness grounds (or to reconsider a decision on the basis of new evidence under section 256 of the *Workers Compensation Act* (Act)). WCAT's legal counsel invited further submissions from the worker to clarify the basis for her application, in light of the decision in *Fraser Health*.

[6] The worker's representative provided a submission dated March 28, 2015, in which he submitted that the original WCAT panel made a jurisdictional error (in not providing a decision concerning the worker's L4-5 disc herniation, despite the worker's request that the WCAT panel do so). He further submitted:

> In terms of the reconsideration being heard only by the original Panel, the BCCA did not address what would be done if the original panel was no longer employed by the WCAT. It is our position that as this was not

> addressed by the court this reconsideration should be assigned to another Panel. We submit this would be a reasonable solution and to deny the reconsideration from being reassigned would be a great injustice to the worker.

[7] On April 10, 2015, WCAT's legal counsel noted that the employers' adviser had telephoned to advise she would not be providing a submission in response. WCAT's legal counsel confirmed that submissions were considered complete.

[8] I find that the issues in this application (as to whether WCAT has jurisdiction to consider this application in the absence of the original WCAT panel, and if so, whether the WCAT decision involved a true jurisdictional defect), involve questions of a legal nature which can be properly considered on the basis of written submissions without an oral hearing.

Issue(s)

[9] In the absence of the original WCAT panel, can a party's application to reopen the appeal to cure a true jurisdictional defect be assigned to a different WCAT vice chair? If so, did the original WCAT decision involve a true jurisdictional defect?

Preliminary – Jurisdiction – Panel reassignment

[10] Section 255(1) of the Act provides that WCAT decisions are final and conclusive, and are not open to question or review in any court. However, section 256 of the Act permits reconsideration of a WCAT decision on the basis of new evidence. As well, WCAT has an implied common law authority to set aside a WCAT decision if that decision reveals a true jurisdictional defect (as described by the BCCA in *Fraser Health*).

[11] The original WCAT vice chair left WCAT at the end of 2014. This reconsideration application was assigned to me by the WCAT chair on April 13, 2015.

[12] Section 253.1 of the Act sets out WCAT's authority to amend a final decision to correct certain inadvertent errors. It further provides:

> (5) This section must not be construed as limiting the appeal tribunal's ability, on request of a party, to reopen an appeal in order to cure a jurisdictional defect.

[13] In *Fraser Health*, the BCCA found that WCAT has no authority to review one of its decisions to determine if it was patently unreasonable. The BCCA further held, in the context of that case, that it was patently unreasonable for the WCAT chair to appoint

another vice chair to reopen the appeal pursuant to the common law authority preserved by section 253.1(5) of the Act:

> [176] Similarly, s. 253.1(5) preserves the common law power to reopen a panel's appeal to cure a jurisdictional defect. There is nothing in s. 238 to suggest that the chair could appoint a panel to reopen an appeal that has been assigned to a panel. **In the context of the present case, there is nothing to suggest that the chair has the authority to appoint a vice-chair under s. 238 to reopen an appeal pursuant to the common law authority preserved by s. 253.1(5).** Section 234(4) does give the chair the authority to appoint a vice-chair to determine whether there is new evidence warranting reconsideration by the appeal tribunal pursuant to s. 256. That is not what occurred in this case.
>
> [177] Section 253.1(1) permits the amendment of a final decision to correct non-substantive errors – typographical, accidental or inadvertent, arithmetical. Logically, this is within the purview of the original panel entrusted with the authority of the appeal tribunal to determine the appeal. The panel otherwise would be *functus officio* once it has made a decision. The authority to amend is very limited. The common law power to reopen must be considered in that context.
>
> [178] **The appeal in question was assigned to a panel. In my view, it was authorized to amend its decision in limited circumstance and to cure a jurisdictional defect in its proceedings. It would make little sense to authorize another panel to undertake either of these tasks and I see nothing in the legislation that does so**.
>
> [179] In my view, the contention of the WCAT that the tribunal chair had the authority under s. 238(4) to appoint a vice-chair to reopen the appeal that resulted in the Original Decision is patently unreasonable.
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> [emphasis added]

[14] In paragraph 176, the BCCA prefaced its findings concerning the limitations on the WCAT chair's authority to appoint a different vice chair to reopen an appeal, with the phrase: "In the context of the present case." In the context of the case before the BCCA, the three vice chairs who made the original WCAT decision remained at WCAT. Accordingly, it was not necessary to the BCCA decision to address the situation where a WCAT vice chair had left WCAT prior to the application to reopen being considered.

[15] It is easy to imagine a situation in which there was a clear breach of procedural fairness, which was not addressed before the departure of a WCAT vice chair from WCAT. For example, if the appellant's submissions were received at WCAT but not provided to the WCAT panel through inadvertence, it would be a breach of procedural fairness if the appeal was decided on the basis that the appellant had not provided any submission. This would be a breach of the appellant's right to be heard. If the WCAT vice chair left WCAT before the misplaced submission was discovered, or before an application to reopen the appeal could be heard, it would necessarily be the case that another WCAT vice chair would need to be assigned to consider the matter (unless WCAT were to take the position that notwithstanding any such procedural unfairness, the party would have to pursue a petition for judicial review in the British Columbia Supreme Court to seek a remedy). It would seem unfair, and unnecessary, for the appellant to have to bring a petition for judicial review in order to seek a remedy in such a situation.

[16] The worker asserts that the original WCAT decision involved a jurisdictional error. Necessity requires that the worker's application be considered by a different WCAT panel, as the original WCAT vice chair is no longer available. This application has been assigned to me by the WCAT chair. I accept that I have jurisdiction to address the worker's application, on the basis that the BCCA decision in *Fraser Health*, in relation to its finding that the WCAT chair did not have authority to assign a new WCAT panel to hear an application for reopening, did not concern the situation in which the original WCAT vice chair was no longer available. I have, therefore, proceeded to consider the worker's application.

Background and Evidence

[17] The worker was employed as a shipper/receiver and truck driver for a library. Her claims for back injuries on June 19, 2007 and November 6, 2008 were accepted by the Workers' Compensation Board, operating as WorkSafeBC (Board).

[18] The worker underwent a CT scan of her lumbar spine on August 31, 2007, and an MRI on January 22, 2010. The MRI report set out the following findings:

> At L2-3 there is a moderate sized, broad based right far lateral disc protrusion. This does extend into the intervertebral foramen but most of the protrusion is extraforaminal in location and there is no significant nerve root impingement.
>
> At L4-5 there is a small broad based left posterior/posterolateral disc protrusion. This extends into the left intervertebral foramen but does not result in impingement upon the exiting L4 nerve root. However, there may be mild impingement upon the traversing left L5 nerve root.
>
> Mild degenerative facet joint changes are seen at L5-S1.
>
> IMPRESSION: Small disc protrusion on the left at L4-5 which may be resulting in mild impingement upon the left L5 nerve root as described.

[19] By letter dated February 2, 2010, the worker wrote to the case manager. She enclosed a copy of the MRI report and stated:

> After several months of waiting, I finally got an MRI done and from this I have new evidence concerning my original injury. The MRI shows that there is a protrusion in the L5 - S1 area of the spine. I believe that this was a result of my original injury….
>
> Therefore, I would like a new decision letter written please.

[20] On April 7, 2010, the Board case manager requested a medical opinion. He noted:

> The client has submitted a MRI report (attached).
>
> Would you kindly review the client's file and address the following questions:
>
> 1) Are the findings in the MRI a result of the incident of November 26, 2008 or prior work accidents through causation, aggravation or as a consequence of accepted injuries?
>
> 2) If the findings of the MRI are as a result of the incident of November 26, 2009 through causation, aggravation or as a consequence of accepted injuries, is there evidence of a permanent functional impairment aside from chronic pain?
>
> Any other comments would be appreciated and thank you.

[21] In an opinion dated April 7, 2010, Dr. Kotzé, Board medical advisor, commented:

> The worker has submitted a report of an MRI done on 22 January 2010. **This shows a right-sided disc herniation at L2-3. The worker has no symptoms or clinical signs that can be associated with this herniation, and therefore this finding must be considered incidental (similar herniations can be found in up to 25% of adults who have no back pain).**
>
> **The MRI also shows a left-sided disc herniation at L4-5 that may possibly impinge on the left L5 nerve root. However, given the lack of objective clinical findings of radiculopathy, there is no evidence that this herniation is responsible for her symptoms.** (Similar herniations can be seen in up to 63% of adults who have no back pain).
>
> I reviewed the images of the CT scan done on 31 August 2007. The L2-3 interspace was not imaged, and therefore it cannot be confirmed whether the herniation noted at this level is acute or chronic.

> The CT images of the L4-5 interspace were viewed. The disc was poorly imaged, but although reported as normal, essentially appeared the same as it did on the 22 January 2010 MRI.
>
> Finding disc herniations, bulges or annular tears on imaging does not indicate an "abnormal" or "injured" spine. Age-related degenerative changes are very common, even in the majority of adults who have no back pain at all.
>
> The majority of lumbar disc herniations are caused not by trauma, but by age-related degeneration. When they occur at multiple levels such as in this case, they are most likely degenerative in nature.
>
> Given clinical reports of low back pain radiating down to the left leg prior to the first injury indicates the existence of a pre-existing condition. This condition would have been temporarily aggravated by the two injuries, but clearly on each occasion, aside from subjective pain reports, the worker's objective assessment at the conclusion of each claim was the same or better than it was on 7 March 2007, before the injuries occurred.
>
> In addition, the images of the L4-5 interspace on the CT scan of 31 August 2007 do not differ appreciably from those on the MRI of 22 January 2010.
>
> The mechanism of injury in 2008 would not have been capable of causing a disc herniation de novo, and the likelihood that either injury caused a permanent aggravation of any pre-existing degenerative changes are less than 50%.
>
> [emphasis added]

[22] On May 3, 2010, the case manager provided the worker with a decision letter. The letter commenced by noting:

> The purpose of this letter is to provide you with a decision as to whether WorkSafeBC shall be accepting the findings of an MRI dated January 22, 2010 as acceptable under either of your claims.

[23] The case manager summarized the background to the worker's claim, and noted:

> On January 22, 2010, you underwent an MRI, which demonstrated a right-sided disc herniation at L2-3.

[24] The case manager defined the issue(s) to be addressed in her decision as follows:

> **Issues**
>
> Should the results of the MRI, specifically, a right-sided disc herniation at L2-3 be accepted under either of your claims through causation, aggravation or as a consequence of your accepted injuries?

[25] The case manager quoted the opinion by the Board medical advisor concerning the worker's right-sided disc herniation at L2-3, and left-sided disc herniation at L4-5, and concluded:

> After weighing the evidence on file and considering the above sections of law and policy, it is my decision that the incident of June 13, 2007 and November 6, 2008 were not responsible for the MRI findings of January 22, 2010 through causation, aggravation or as a consequence of the accepted injuries. Therefore, it is my decision that the findings of the January 22, 2010 are not accepted under either claim.

[26] The worker submitted a request for review of the May 3, 2010 decision. Her request for review stated:

> The worker believes that the herniated disc is a result of the original injury of November 6 2008. We would like the claim to be accepted for herniated disc.

[27] In support of the worker's request for review, the worker's representative requested a medical opinion from the worker's attending physician, Dr. Colborne. The worker's request was for a medical opinion regarding the cause of "the herniated disc." Dr. Colborne provided an opinion on April 20, 2010 in which he advised:

> The subsequent MR scan demonstrated this herniated disc. Therefore I feel that there is a greater than 50% chance that the herniated disc was a consequence of the original injury in 2007, and was also caused or aggravated by the injury in November 2008.

[28] In the November 24, 2010 Review Division decision, the review officer defined the issue as follows:

> This review is with respect to whether the worker's diagnosed right-sided L2-3 disc herniation is compensable.

[29] The review officer obtained a medical opinion by Dr. Prat, Review Division medical advisor, dated November 4, 2010. Dr. Prat noted:

> [The worker] had a number of investigations. On January 22nd 2010, she had an MRI. It showed, among other things, a L2-3 disc herniation. I understand that the issue is whether this L2-3 right sided herniation would be causally related to either the 2007 claim or to the 2008 claim.

[30] Dr. Prat concluded:

> Conclusion: With an MRI report showing no impingement on a nerve root, at L2-3, only fleeting symptoms on the right side, the majority of symptoms on the left, and no neurological signs, it is difficult to conclude that the right sided L2-3 disc herniation had clinical significance. Without clinical correlation, I am unable to causally relate it to the 2007 claim or to the 2008 claim. We also know that herniations can appear spontaneously because of progressive degeneration of the discs.
>
> NB [note]: the fact it was not seen on the CT scan of 2007 does not prove it was not already present at the time because a CT scan only reconstruct images from L3 down. The L2-3 disc is not routinely imaged on CT scans. Simply put, we do not know when this disc herniation actually appeared.

[31] Dr. Prat's opinion did not address the L4-5 disc herniation.

[32] Under the heading "Reasons and Decision," the review officer reasoned:

> This review is with respect to whether the worker's diagnosed right-sided L2-3 disc herniation is compensable with respect to her 2007 or 2008 claim.
>
> …
>
> After review of the totality of the medical evidence and opinions, I am unable to conclude that the worker sustained an L2-3 disc herniation, or aggravated an L2-3 disc herniation, as a result of the work incidents of 2007 or 2008. As noted above, I also have no reliable medical evidence before me to support a conclusion that the L2-3 disc herniation is a compensable consequence of the injuries accepted under the worker's 2007 or 2008 claims.
>
> As such, I deny the worker's request

[33] The worker appealed the Review Division decision to WCAT. The WCAT panel acknowledged the worker's request that the WCAT panel address both the L2-3 and L4-5 disc herniations:

> [6] In a letter dated February 23, 2012 to WCAT, the worker's representative stated the WCAT panel has the jurisdiction to address both disc herniations (at L2-3 and L4-5) because both disc herniations were identified in the 2010 MRI scan and were considered in the opinions of the Board medical advisor and the Review Division medical advisor. The employer's representative stated that the issue of the L4-5 disc herniation was raised in the

> May 2, 2010 decision letter of the Board and the November 24, 2010 Review Division decision.
>
> [7] However, I find that neither the original decision letter of the Board nor the Review Division decision decided the issue of the compensability of the L4-5 disc herniation. I leave it open to the worker or her representative to request the Board to adjudicate this issue.

[34] Accordingly, the WCAT vice chair restricted her decision to the issue relating to the compensability of the worker's L2-3 disc herniation.

[35] Although the WCAT panel noted that it was open to the worker or her representative to ask the Board to adjudicate the issue as to whether the worker's the L4-5 disc herniation was causally related to her 2007 or 2008 injuries, the worker did not make such a request to the Board.

[36] In March 2012, the worker reported that she had been experiencing increased back pain over the previous month which had become disabling. Her last day worked was March 8, 2012. *WCAT-2013-02547* dated September 13, 2013 found that the worker suffered a compensable aggravation of her pre-existing degenerative disc disease which had not resolved by March 30, 2012. The WCAT panel directed the Board to make a further determination as to when the worker ceased to be temporarily totally or partially disabled due to the aggravation of her condition. The WCAT panel further noted that the Board would make a further determination as to whether that aggravation had resolved by March 31, 2012 and the nature and extent of the benefits, if any, the worker may be entitled to after that date.

[37] The worker's 2012 claim was accepted for a permanent aggravation of a pre-existing L4-5 degenerative disc disease. By decision dated February 17, 2014, a permanent disability award of 7.75%, plus an age adaptability factor of 0.78%, was granted (for an overall award of 8.53% of total disability) under the worker's 2012 claim. By further decision of March 14, 2014, the disability awards officer accepted that the worker would have worked until age 70, and her award was recalculated on that basis.

[38] In the worker's application, she submitted that the original WCAT panel should have had jurisdiction over the "findings" of the January 22, 2010 MRI report, and should have been able to render a decision on the compensability of both herniations. The worker submitted that the WCAT panel made a jurisdictional error by not considering all of the findings of the MRI. The employers' adviser submitted that the WCAT decision was not patently unreasonable and the worker had not met the threshold for showing that the WCAT decision involved a jurisdictional defect.

Reasons and Findings

[39] I note, at the outset, that there was a possible ambiguity in the case manager's decision of May 3, 2010. Given that the opinion by the Board medical advisor concerned both the L3-2 and the L4-5 disc herniations, the conclusion by the case manager that "the incident[s] of June 13, 2007 and November 6, 2008 were not responsible for the MRI findings of January 22, 2010" could be read as addressing both disc herniations. Alternatively, it might be argued that the case manager should have addressed both disc herniations in her decision.

[40] However, given that the case manager expressly framed the issue(s) being addressed in the decision as concerning whether the results of the MRI, specifically, a right-sided disc herniation at L2-3, should be accepted under either of the worker's claims, and given that the reasons provided by the case manager for her decision contained no reference to the L4-5 disc herniation, the decision letter may reasonably be read as only addressing the L2-3 disc herniation. On its face, the case manager's decision letter was framed as being limited to specifically addressing whether the L2-3 disc herniation was compensable under the worker's 2007 and 2008 claims.

[41] In the November 24, 2010 Review Division decision, the review officer defined the issue under review as concerning whether the worker's diagnosed right-sided L2-3 disc herniation was compensable. The review officer clearly restricted her decision on the review to that issue.

[42] WCAT is an appellate body. Section 239(1) of the Act creates a right to appeal a final decision made by a review officer, in a review under section 96.2 of the Act, to WCAT. Section 253(1) of the Act provides that on an appeal, WCAT "may confirm, vary or cancel the appealed decision or order."

[43] Item #3.3.1 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP) provides the following practice guidance:

> Where a decision of the Review Division is appealed to WCAT, WCAT has jurisdiction to address any issue determined in either the Review Division decision or the Board decision(s) which was under review, subject to the statutory limits on WCAT's jurisdiction.

[44] It is evident, however, that the question as to whether the compensability of the worker's L4-5 disc herniation was properly before WCAT in the worker's appeal turned, at least in part, on whether this issue had been determined in either the May 3, 2010 decision by the case manager or the November 24, 2010 decision by the review officer.

[45] The WCAT panel expressly found that neither the original decision letter of the Board nor the Review Division decision decided the issue of the compensability of the L4-5 disc herniation. This was an issue regarding the interpretation of the case manager's decision, which was at the root of the worker's appeal. That was a question properly before the WCAT panel for determination.

[46] For the reasons set out by the BCCA in *Fraser Health*, it is not open to me to consider whether the WCAT decision was patently unreasonable. I would, however, observe that given the manner in which the case manager identified the issue being decided, and given the lack of any express wording in the case manager's conclusion to show that she had addressed any additional issue, it was a reasonable interpretation of the case manager's decision to read it as being limited to the issue identified at the outset of the decision.

[47] I acknowledge the possible ambiguity in the case manager's decision, as identified above. It is possible that the conclusion set out in the case manager's decision could be read more broadly, as referring to all of the MRI findings addressed in the opinion by the Board medical advisor. Accordingly, it might have been open to the WCAT vice chair, had she interpreted the case manager's decision in such a fashion (notwithstanding the manner in which the case manager defined the issue being decided), to find that she had jurisdiction to address the cause of the L4-5 disc herniation.

[48] It must also be recognized, however, that there are risks inherent to interpreting a decision as addressing issues beyond those expressly identified. For example, if the worker read the decision as only concerning the L2-3 disc herniation, and only requested a review by the Review Division on that issue, there could be an unfairness if the Board subsequently refused to adjudicate whether the L4-5 disc herniation was compensable on the basis that this had been implicitly adjudicated in the May 3, 2010 decision. As decisions give rise to rights of review and appeal, and trigger a 75-day time limit on the Board's reconsideration authority, it is important that decisions be clear in terms of the issues being addressed.

[49] In a similar vein, in the British Columbia Supreme Court decision in *Candeloro v. WCB (BC)* [1988] B.C.J. No. 1574, the court commented, in connection with a Review Board "recommendation":

> Review board decisions define rights and obligations. Findings must be implemented. There is a limited right of appeal from the decisions. For these reasons it is incumbent upon a review board to be precise in its use of the language. If this Review Board intended to bind the Board to provide upgrading and retraining, it did not say so.

[50] Given the express identification of the issue being addressed in the May 3, 2010 decision as concerning the compensability of the L2-3 disc herniation, it would not be unreasonable to read that clear statement as resolving any ambiguity in relation to the scope of the decision. Even if the case manager should have addressed the cause of the L4-5 disc herniation, if this issue was overlooked it remained an issue to be adjudicated at a later date.

[51] The WCAT panel might have found a possible basis to address the issue concerning whether the worker's L4-5 disc herniation was compensable, had it interpreted the May 3, 2010 decision by the case manager differently. However, given that the review officer clearly did not address the cause of the L4-5 disc herniation, and given that the WCAT panel found that the May 3, 2010 decision by the case manager did not address the cause of the L4-5 disc herniation, it necessarily followed that this was an issue which had not been adjudicated in the first instance.

[52] Upon consideration of the foregoing, I find that the worker's application concerns the WCAT panel's interpretation of the May 3, 2010 decision by the case manager. I consider that it was within the WCAT panel's exclusive jurisdiction to determine the effect of the May 3, 2010 decision. This was, in effect, a determination by the WCAT panel regarding the evidence which was before her. That is not an issue within my authority to address in this application, for the reasons set out in *Fraser Health*. In any event, I consider that the WCAT panel's decision was reasonable, and not patently unreasonable, in interpreting the case manager's decision as only addressing the issue which was expressly identified at the outset of the decision. The WCAT decision left it open to the worker to obtain a new decision from the Board on the issue as to whether her L4-5 disc herniation was causally related to her work injuries of June 19, 2007 and November 6, 2008, with subsequent rights to a review by the Review Division and appeal to WCAT, if necessary.

[53] I find that the worker's application for reopening concerns the WCAT panel's interpretation of the evidence (regarding the effect of the May 3, 2010 case manager's decision). As such, it does not raise a true issue of jurisdiction. I find no true jurisdictional error, including a breach of fairness, in the WCAT decision. I deny the worker's application on this basis.

[54] The worker has not requested reimbursement of any expenses, and it does not appear from a review of the file that any reimbursable expenses were incurred related to this application. I therefore make no order regarding expenses.

Conclusion

[55] The worker's application for reopening (reconsideration) of *WCAT-2012-01715* is denied. No true jurisdictional defect has been established. The WCAT decision stands as "final and conclusive" under section 255(1) of the Act.

Herb Morton
Vice Chair

HM/gw

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