

Under MRPP item #19.2.11, this decision has been summarized to enable public access in a manner that protects the privacy of the parties to the proceedings.

WCAT Decision Number : WCAT-2015-02983
WCAT Decision Date: September 29, 2015
Panel: Randy Lane, Vice Chair

Introduction

- [1] After holding an oral hearing, a one-person panel of the Workers' Compensation Appeal Tribunal (WCAT) allowed the worker's widow's appeal from a decision of a review officer with the Review Division of the Workers' Compensation Board, operating as WorkSafeBC. The review officer found that the worker's death did not arise out of and in the course of his employment.
- [2] The WCAT panel concluded the evidence established the worker's death was due to actions of the president and secretary of the corporation that was the worker's employer.
- [3] The WCAT panel's analysis of whether the worker's death arose out of and in the course of his employment included considering policy items #14.00 and #19.10 of the *Rehabilitation Services and Claims Manual*.
- [4] The WCAT panel found that the location of the actions of the president and secretary should be regarded as a bunkhouse and part of the employer's premises. While the actions that led to the worker's death occurred after regular work hours, those actions of the individuals who were the operating mind of the employer were not personal actions but were actions of the employer. The panel found the worker's death occurred in the course of action taken in response to instructions from the employer, was caused by some activity of the employer or of a fellow employee, and occurred while the worker was being supervised by the employer.
- [5] The WCAT panel found that application of policy item #14.00 does not merely involve determining whether five or more indicators favour compensability. There is no strict formula for determining the matter.
- [6] In the case before it, the WCAT panel attached significant weight to the fact the death occurred on the employer's premises as a result of action taken in response to instructions from the employer and indeed was caused by activity of the employer/co-workers. While the panel was aware that five or more indicators might not favour compensability, it found the ones that favoured compensability provided a basis to conclude the worker's death arose out of and in the course of his employment.