

## Currie v. British Columbia (Workers' Compensation Board)

### Decision Summary

Court	B.C. Court of Appeal
Citation	2011 BCCA 445
Result	Appeal Allowed
Judges	<b>Madam Justice Neilson</b> , Madam Justice Saunders, Mr. Justice Chiasson
Date of Judgment	November 4, 2011
WCAT Decision Referenced in the Judgment	WCAT-2003-01744-RB

### **Keywords**

*Judicial review – Vocational rehabilitation benefits – Section 16 of the Workers Compensation Act – Retroactive payment of vocational rehabilitation benefits – Basis for retroactive payment of vocational rehabilitation benefits*

### **Summary**

#### **Supreme Court**

The Board terminated the petitioner's benefits at a certain point in time. She then participated in a training program on her own initiative and without vocational rehabilitation assistance from the Board. She did not complete this program as she found it be physically beyond her. Subsequently, WCAT found that the petitioner's injuries had not resolved as of the date the Board had terminated her benefits and remitted the matter back to the Board to consider further, including the question of any vocational rehabilitation entitlement (the "WCAT Decision"). The Board eventually paid the petitioner vocational rehabilitation benefits retroactively, but only from the date of this WCAT Decision. The Petitioner sought retroactive vocational rehabilitation benefits to cover the time period, prior to the date of the WCAT Decision, when she had engaged in the training program on her own initiative.

The Review Division agreed with the Board that it should not pay retroactive vocational rehabilitation benefits for the petitioner's training program, because it was not a program that the Board would have authorized. WCAT denied the petitioner's appeal on a summary basis, as it does not have jurisdiction over vocational rehabilitation matters.

The Court agreed with WCAT that the Review Division decision was the proper subject of judicial review. It found this decision to be unreasonable and remitted the matter back to the Review Division with direction to consider the reasoning in *WCAT-2003-*

01744-RB, a WCAT decision in an unrelated appeal. That decision said that when considering retroactive vocational rehabilitation benefits, the sufficiency of a worker's efforts must be assessed in context and one must consider "the extent of effort exerted by the worker in the context of available resources, the nature of the effort expended, the duration of the effort, and whether the effort was undertaken in good faith".

## **Court of Appeal**

The Court found that it was inappropriate for the chambers judge to treat the decision in WCAT-2003-01744-RB as having precedential value, and to conclude that the Review Division's decision was unreasonable in part because it failed to follow the WCAT holding.

Given the discretionary nature of section 16 benefits, and the parameters of "reasonableness" established in the case law, the Review Division's approach, and the result in this case, was entirely reasonable: the Review Officer examined the main objective of vocational rehabilitation benefits, which is to allow workers to re-enter the workforce in a position that overcomes the impact of their injury. The Review Division's conclusion that in this case, the Board had exercised its discretion in accordance with this objective, was reasonable. Ultimately, the vocational rehabilitation benefits received by Ms. Currie allowed her to re-enter the workforce in a position that overcame the impact of her injury.

In accepting the Board's view that Ms. Currie's own efforts at rehabilitation did not merit retroactive vocational rehabilitation benefits, the Review Division did not subject Ms. Currie to a more demanding standard than workers in receipt of vocational rehabilitation assistance. The Board had assessed the nature and extent of her efforts at vocational rehabilitation, and found that, while undertaken in good faith, these failed to establish "meaningful and purposeful rehabilitation efforts" that would justify retroactive vocational rehabilitation benefits.

The Court noted that first, this was in fact the process employed in WCAT-2003-01744-RB, with the same result. Second, given that Ms. Currie had chosen a training program that she ultimately found to be physically beyond her, the result in this case was reasonable.

Finally, contrary to the chambers' judge's finding, the Review Division did provide a "reasonable justification" for the denial of retroactive vocational rehabilitation benefits prior to the date of the WCAT Decision. The date of the WCAT Decision was the earliest possible date that Ms. Currie could have undergone an initial vocational rehabilitation consultation that would have led to the initiation of such benefits.

Overall, the Review Division's decision was supported by the evidence; its decision-making process was justified, transparent, and intelligible; and the result fell within the range of acceptable and rational conclusions.

The Court allowed the appeal and restored the Review Division's decision.