

# Grewal v. Workers' Compensation Appeal Tribunal

## Decision Summary

Court	B.C. Supreme Court
Citation	2022 BCSC 594
Result	Judicial Reviews Dismissed
Judge	Madam Justice Morellato
Date of Judgment	April 12, 2022
Decisions Reviewed	Appeal Division No. 2001-1399 WCAT-2016-01209 WCAT Decision #A1601926

### **Keywords:**

*Judicial review – Reconsideration – Procedural Fairness (Right to be Heard) – New Evidence - Jurisdiction (Interest) – Delay in Seeking Judicial Review*

### **Summary:**

This judicial review proceeding involved review of two WCAT decisions and one former Appeal Division decision. All three petitions were dismissed.

### **WCAT Reconsideration Decision (Petition #1)**

This petition was a review of a 2016 WCAT reconsideration decision based on procedural unfairness, namely an alleged failure to be heard, and new evidence. An oral hearing was held during the process that led to the original WCAT decision. The petitioner argued that he was denied opportunities to provide relevant documentary evidence. The Court agreed with the reconsideration panel that the petitioner was given several opportunities to provide any evidence that he wished and found that neither the WCAT reconsideration decision nor the WCAT original decision were procedurally unfair. On the new evidence issue, the petitioner had submitted to WCAT medical reports that were already on file, reports that the panel found were not material or substantial to the issues before the original panel, and reports or documents that could have been obtained earlier with reasonable diligence. The Court found the reconsideration panel's findings that the evidence submitted did not satisfy the criteria in section 256 of the *Workers Compensation Act* were not patently unreasonable.

### **WCAT Interest Jurisdiction Decision (Petition #2)**

This petition was a review of a 2016 WCAT decision in which WCAT determined that it did not have jurisdiction to consider the petitioner's claim for interest on his retroactive income continuity benefits as a prior Board and two 2001 appellate decisions denying such interest had already been made (including the 2001 Appeal Division decision which was the subject of petition #3). WCAT cancelled the 2014 Board decision that was before WCAT on the basis that

it also did not have jurisdiction to issue a new decision on the matter, given the earlier decisions. The Court found that WCAT's decision was not patently unreasonable. The Court rejected the petitioner's argument that WCAT was patently unreasonable for having found that the earlier Board decision was a clear decision on interest. The Court noted that the Board decision was clear and provided adequate notice to the petitioner. Furthermore, the petitioner had failed to address WCAT's finding that an appellate body had confirmed the Board decision. The petitioner attempted to raise new issues on judicial review that were not raised before the WCAT panel and the Court found it would not be appropriate to consider them for that reason.

### **Appeal Division Interest Decision (Petition #3)**

This petition was a review of the 2001 Appeal Division decision in which the Appeal Division decided that the petitioner was not entitled to interest on his retroactive income continuity benefits. The Court dismissed the judicial review on the basis of delay in filing the petition, relying on the fact that the Appeal Division no longer exists and that the petitioner had failed to provide an adequate explanation for the lengthy delay in filing the petition. It found that allowing a delay of this magnitude, within the context of workers' compensation claims would support a result that seriously compromises the timely resolution of this, and perhaps other, workers' compensation disputes.