

J. T. v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Supreme Court
Citation	2024 BCSC 994
Result	Petition allowed
Judge	Madam Justice Lyster
Date of Judgment	June 7, 2024
WCAT Decision Reviewed	WCAT Decision No. A2001878 (April 13, 2022)

Keywords

Judicial review – Section 135 of the Workers Compensation Act [RSBC 2019], c. 1 – Policy item # C3-24.00 of the Rehabilitation Services and Claims Manual Vol. II – Mental disorder claim – Patent unreasonableness – Procedural Unfairness

Background

The worker was employed as a security guard for approximately five months. His employment was terminated in March 2019. He applied to the Workers' Compensation Board (the "Board") for compensation for a mental disorder, on the basis of workplace incidents that he described as bullying and harassment.

The Board requested a psychological assessment of the worker. In the referral letter to the psychologist, the Board officer summarized 11 incidents of bullying and harassment that the worker had reported to the Board.

Dr. Pappas, psychologist, provided a report dated January 3, 2020. Dr. Pappas diagnosed the worker with unspecified adjustment disorder that was mild in severity.

The Board denied the worker's claim for mental disorder. The worker subsequently provided the Board with a letter that described 89 workplace incidents that he believed constituted bullying and harassment. The worker argued that Dr. Pappas had not been provided with these additional events, thus, her opinion could not be relied upon.

The Review Division confirmed the Board's decision. The worker appealed to the Workers' Compensation Appeal Tribunal ("WCAT").

The WCAT Decision

WCAT held an oral hearing. WCAT accepted that the diagnostic criterion in section 135(1)(b) of the *Workers Compensation Act* [RSBC 2019], c. 1, was met (para 43). The panel also accepted that the 89 events described by the worker occurred (paras 30, 36) and that a number of the 89 events constituted “significant work related stressors” (para 50). This included incidents where the worker was mocked and teased about his prior history of alcohol abuse and rehabilitation (para 49). The employer’s failure to pay the worker’s back pay at the termination of his employment, and the subsequent process with the Employment Standards Branch (“ESB”) for the worker to obtain that back pay constituted decisions by the worker’s employer with respect to his employment, and the employer’s communication and conduct in relation to these events was not problematic. Thus, the employer’s back pay decision and the subsequent Employment Standards Branch process fell under the section 135(1)(c) exclusion (paras 54-55).

In her report, Dr. Pappas concluded that workplace incidents of bullying and harassment were unpleasant for the worker, but they were only minor factors in the development of his unspecified adjustment disorder. The worker’s lengthy delay in obtaining back pay from the employer, along with the associated interactions with the ESB were the major factors (para 58).

The WCAT panel found that, while Dr. Pappas did not have information about all of the 89 workplace events described in the worker’s letter, she had sufficient evidence in order to provide a valid opinion on causation of the worker’s mental disorder. She had interviewed the worker, assessed him, tested him, and had the Board’s summary of the 11 most significant events relied upon by the worker (para 57).

The WCAT panel accepted Dr. Pappas’ opinion on causation. It concluded that the worker’s unspecified adjustment disorder was not predominantly caused by the significant work-related stressors (para 59). Thus, the causation requirement under section 135(1)(a)(ii) of the *Act* was not met. The panel denied the worker’s appeal (para 60).

The court’s decision

The court found that it was “clearly irrational” for the panel to accept Dr. Pappas’ opinion on causation of the worker’s mental disorder, when Dr. Pappas had not been provided with complete information, namely, the 89 incidents that the panel accepted had occurred (paras 64, 66). The Board advised Dr. Pappas of 11 of those incidents, but the account of one of the most serious incidents of those 11 was not complete. Dr. Pappas’ conclusion on causation of the worker’s adjustment disorder was fatally undercut by the fact that she was not informed of all of the 89 events. It was patently unreasonable (or, in the alternative, procedurally unfair) for WCAT to accept and rely upon Dr. Pappas’ opinion on causation in these circumstances (paras 67, 75). WCAT should have obtained an updated opinion from Dr. Pappas, or an opinion from another health professional that took all 89 events into account (paras 74, 75).

WCAT held a pre-hearing conference on December 1, 2021. In a letter to the worker dated December 13, 2021, WCAT summarized the pre-hearing conference. At the January 12, 2022 oral hearing, the WCAT panel started to refer to the letter. The worker said that he had not received this letter (para 28). The panel offered to read the letter to the worker at the oral hearing, and did so. The letter included the panel's decision not to obtain additional evidence from the worker's employer. It also advised the worker that he could provide evidence and information in support of his position that the mental disorder presumption applied to his claim, as well as any medical or psychological clinical records relevant to his diagnosis and the cause of that disorder, at the oral hearing (para 92).

The court found that the letter provided the worker with important information about what evidence WCAT was prepared to receive from him at the hearing, and what evidence it would not be soliciting from the employer. It was procedurally unfair for the WCAT panel to continue with the appeal hearing once it learned that the worker had not received the December 13, 2021 letter in advance of the hearing. It is no answer that the worker chose to continue the appeal hearing. The panel should have offered to adjourn the hearing to allow the worker to receive the letter, digest its contents, and prepare for the hearing in accordance with WCAT's directions (para 94).

In the result, the court set the WCAT Decision aside, and remitted the matter to WCAT for a new oral hearing.

WCAT had dismissed an application for reconsideration of the WCAT Decision, in its decision numbered A2201455 (July 4, 2023). The court set aside WCAT's reconsideration decision also, simply as a consequence of setting aside the WCAT Decision.