

Baun v. British Columbia (Workers' Compensation Appeal Tribunal)

Decision Summary

Court	B.C. Court of Appeal
Citation	2024 BCCA 195
Result	Appeal dismissed
Judges	Chief Justice Marchand Mr. Justice Grauer Justice Horsman
Date of Judgment	May 22, 2024
Petitions struck that sought to challenge these WCAT decisions	<p><i>WCAT-2014-03111</i> (issued October 24, 2014)</p> <p><i>WCAT-2015-02440</i> (issued August 5, 2015)</p> <p>A1602101 (issued March 6, 2017)</p> <p>A1604589 (issued March 6, 2017)</p> <p>Summary dismissal decision A1702093 (issued September 13, 2018)</p> <p>Summary dismissal decision A1802356 (issued November 8, 2018)</p>

Keywords

Judicial review – Supreme Court Civil Rules, B.C. Reg. 168/2009, Rule 9-5(1)(a) – Striking petitions as disclosing no reasonable claim – Procedural unfairness in court proceeding

The WCAT decisions and the proceeding in B.C. Supreme Court

The Workers' Compensation Board (the "Board") accepted Ms. Baun's claim for an October 2012 workplace injury. While working at a hospital, Ms. Baun (the appellant) was struck and pinned by a set of heavy double doors. The Board accepted that the appellant suffered compensable workplace injuries to her finger, right shoulder, and right upper arm. The Board, Review Division, and WCAT issued various decisions on various aspects of the appellant's claim. In 2017-2018 the appellant filed three petitions in B.C. Supreme Court.

The first petition (identified as the “2017 Petition” in the B.C. Court of Appeal’s reasons) sought to challenge the following four WCAT decisions:

WCAT-2014-03111 (issued October 24, 2014)

WCAT-2015-02440 (issued August 5, 2015)

A1602101 (issued March 6, 2017)

A1604589 (issued March 6, 2017)

The second petition sought to challenge WCAT’s adjudicative process leading up to its September 13, 2018 summary dismissal decision (which is challenged in the third petition).

The third petition (identified as the “2018 Petition” in the Court of Appeal’s reasons) sought to challenge the following two WCAT decisions:

Summary dismissal decision A1702093 (issued September 13, 2018)

Summary dismissal decision A1802356 (issued November 8, 2018)

WCAT and the Board brought applications to strike each of the three petitions in the B.C. Supreme Court, pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules*. In reasons for judgement indexed as *Baun v. British Columbia (Attorney General)*, 2019 BCSC 836, the chambers judge granted the applications. The judge found that the three petitions had no reasonable prospect of success, were scandalous, frivolous, vexatious, and an abuse of process. The appellant did not attend the hearing in Supreme Court. The chambers judge heard the strike applications in the appellant’s absence. The chambers judge was satisfied that the appellant was aware of the hearing date, but simply chose not to attend. The chambers judge made three orders. Each order struck one of the three petitions.

Proceedings in the B.C. Court of Appeal

The appellant brought appeals from each of the chambers judge’s orders in the Court of Appeal.

The Court of Appeal’s registrar placed each of these three appeals on the “inactive list” at various points in time, due to the fact that the appellant had not filed the materials necessary to move the appeals forward. The appellant brought various applications (in 2021 and 2022) to remove these appeals from the inactive list.

Ultimately, the Court dismissed as abandoned the appellant’s appeal from the order striking the second petition: *Baun v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2023 BCCA 322. The Supreme Court of Canada dismissed the appellant’s application for leave to appeal the Court of Appeal’s order: *Baun v. British Columbia (Workers Compensation Appeal Tribunal)*, [2023] S.C.C.A. No. 508.

Reasons of the B.C. Court of Appeal in *Baun v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2024 BCCA 195

The Court of Appeal found that the chambers judge had correctly struck the two remaining petitions (the 2017 Petition and the 2018 Petition (the first and the third petitions)) as “disclosing no reasonable claim”, pursuant to Rule 9-5(1)(a) of the *Supreme Court Civil Rules*.

The petitions essentially sought to readjudicate the appellant’s claim for compensation. The petitions did not identify in any comprehensible way any flaw in the WCAT decisions that could be said to render them patently unreasonable. The petitions sought wide-ranging relief that was beyond the jurisdiction of the court to grant on judicial review (paras 57-59). For example, the appellant sought orders allowing her to adduce further evidence from medical practitioners, sought orders setting aside Board decisions that were appealed to WCAT, and sought orders requiring the Board to pay her a disability award (para 19).

With respect to the procedural fairness issue, the Court found that the correspondence between the parties reflected that the appellant resisted the hearing date for the strike applications in the Supreme Court, but was clearly aware of it (para 48). The respondents (including WCAT) had set the strike applications for the week of May 6, 2019. The appellant did not specify a reason for her stated unavailability for that hearing date (para 48). Accordingly, there was no basis for appellate interference with the chambers judge’s finding that the appellant knew of the hearing date, and her attendance at the hearing was “deliberate and willful without a valid excuse.” (para 50). No breach of procedural fairness arose in these circumstances (para 51).

The Court of Appeal dismissed the appeal, with the result that the 2017 Petition (the first petition) and the 2018 Petition (the third petition) stand dismissed (para 67).