

# ***C.A.S. v. British Columbia (Workers' Compensation Appeal Tribunal)***

## Decision Summary

Court	BC Supreme Court
Citation	2024 BCCA 315
Result	Appeal dismissed
Judge	Madam Justice DeWitt-Van Oosten
Date of Judgment	6 September 2024
WCAT Decision(s) Reviewed	[Redacted]

### **Keywords:**

*Appeals – Extension of time – Bona fide intention to appeal – Merit of proposed appeal – Standard of review on appeal – Standard of review on judicial review – Findings of fact – Credibility - Procedural fairness – Oral hearing*

### **Summary:**

The worker appealed a decision to deny wage loss benefits. She provided a written submission to the Review Division in which she described her symptoms gradually improving until they resolved about five months post-injury. The Review Division accepted her submission, and granted her wage-loss benefits accordingly.

Despite her success, the worker further appealed to WCAT. On her notice of appeal, she requested that the appeal proceed by written submissions rather than an oral hearing. Her submission stated that her symptoms had improved only slightly and temporarily, and were still ongoing and serious. The Vice Chair found that the worker's differing accounts called her credibility into question. While the Vice Chair considered holding a hearing, she found that this was not necessary. Considering the evidence as a whole, she held that the worker's account to the Review Division was more likely to be true than the one she gave to WCAT.

On judicial review, the worker argued that WCAT should not have negatively assessed her credibility without holding a hearing. She also claimed that she did not know that an oral hearing was an option or that her credibility would be in question. However, the Court noted that the Notice of Appeal form requires the user to select the mode of appeal, and the worker selected written submissions. The Court could not accept that WCAT was unfair for using the mode of appeal that the worker chose, or that the worker could not have known that her inconsistent statements would draw her credibility into question.

The worker filed a Notice of Appeal over a year after the 30-day deadline expired. On her application for an extension of time, she asserted that several misfortunes and difficult personal circumstances had prevented her from filing earlier. As for the grounds for appeal, the worker argued that the Vice Chair in assessing credibility had paid insufficient heed to the fact that she

had been on medication and under financial pressure. Even if her statements lacked credibility, she added, this was insufficient to undermine the subsequent medical evidence. As for the lack of an oral hearing, she argued that this prevented her from responding to the Vice Chair's concerns regarding credibility.

While accepting that there was a *bona fide* intention to appeal, the court ruled against the application on the grounds that the worker's appeal was bound to fail. On an appeal of a judicial review decision, there are two issues: did the Supreme Court judge identify the correct standard of review, and did they apply it correctly? In answering the second question, the Court of Appeal steps into the shoes of the Supreme Court judge and accords no deference to their decision, though it may be instructive and worthy of respect. As with the judicial review, the proposed appeal would consider only the evidence before WCAT, not evidence obtained subsequently.

In assessing the Vice Chair's findings of fact, the appeal judge noted that the standard of patent unreasonableness means that it is not for the court on review or appeal to reweigh evidence or second guess conclusions drawn from the evidence and substitute different findings. In deciding that the worker's explanations for her inconsistent statements strained credulity, the Vice Chair considered a number of different factors, including documentation from the worker's family physician, and explained the reasons for her conclusions. Thus, it was clear that the Vice Chair considered the evidence as a whole.

As for an oral hearing, the worker chose not to ask WCAT for one, even though the material and position that she was advancing was plainly inconsistent with those advanced at the Review Division level. There was no merit to the suggestion that she and her representative could not have anticipated the credibility and reliability issues. The Vice Chair expressly considered whether these issues could be reasonably determined on the basis of the written evidence and looked to the case law for guidance before exercising her discretion to continue by way of written submissions as per the worker's choice. Accordingly, the appeal judge found that there was no prospect that the court would find this exercise of discretion to be unprincipled, unreasonable, or unwarranted.