

Chapman v. Workers' Compensation Appeal Tribunal

Decision Summary

Court	BC Supreme Court
Citation	2023 BCSC 499
Result	Petition dismissed
Judge	Girn
Date of Judgment	30 March 2023
WCAT Decision Reviewed	A2002856

Keywords:

Reconsideration – patent unreasonableness – setting long term wage rate – permanent versus temporary employment - interpretation of contracts – presumption of permanent employment not applied

Summary:

The worker had been hired by the employer less than 12 months before he became injured. In setting his long-term wage rate, the Board ruled that he was a permanent employee, and set his rate based on a class average, rather than his earnings in the 12 months preceding the injury.

The worker appealed to the Review Division, and argued that the class average was unfair because it was too general, and should have been restricted to unionized and fully qualified carpenters. However, the Review Officer ruled that the worker was actually a temporary employee, and therefore his long-term wage rate should be based on his 12-month earnings.

As his 12-month earnings were relatively low and supported a far lower long-term wage rate than the class average, the worker appealed to WCAT. Following an appeal by written submissions, the panel issued a decision confirming the decision of the Review Division. The panel's decision was partly based on her finding that the worker had been hired through his union hall, rather than directly by the employer.

The worker applied to WCAT for a reconsideration based on new evidence, which included documentation to show that in fact he had been hired directly by the employer. The application was referred to the same panel as had conducted the appeal. The panel held that the evidence was material and, in the circumstances, not reasonably discoverable by the worker, who had been misled by his union and the employer. Accordingly, the panel allowed the first stage of the application.

At the second stage, an oral hearing was held. Following post-hearing written submissions, the panel issued her decision dismissing the application. In brief, she found that the worker Petitioner had been hired directly by the employer, and that he was a regular rather than casual employee. However, she also found that he had been hired for a particular project that was 30 months into its expected duration of four years. Even though he inferred that he had secured

employment for four years rather than about 18 months, he and the employer understood that his employment would be of limited duration.

On judicial review, much of the worker's argument relied on *Sherstobitoff v WCAT*, 2019 BCSC 1659, which also considered the interpretation of employment contracts. In that case, the Court found that WCAT had not ascertained the words exchanged by the contracting parties and instead based its decision on the surrounding circumstances. In the present case, however, the judge found that the panel examine the words exchanged as well as the surrounding circumstances. The Court also noted that *Sherstobitoff* states that the common law presumption of permanent employment does not necessarily apply in a workers' compensation context. Accordingly, it was not patently unreasonable for the panel to conclude on the available evidence that that the worker was a temporary rather than permanent employee.