

## ***Edwards v. British Columbia (Workers' Compensation Appeal Tribunal)***

### Decision Summary

Court	B.C. Supreme Court
Citation	2023 BCSC 1277
Result	Petition allowed
Judge	Justice A. Saunders
Date of Judgment	July 25, 2023
WCAT Decision Reviewed	WCAT Decision No. A1801060 (February 25, 2019)

### **Keywords**

*Judicial review – Patent unreasonableness – Aggravation of pre-existing condition – Board policy C3-16.00 “Re: Pre-Existing Conditions or Diseases”*

### **Background and the WCAT decision**

In February 2017, Mr. Edwards (the petitioner) slipped and fell on ice while working. The Workers' Compensation Board (the “Board”) accepted his claim for a back strain injury. The Board paid the petitioner temporary wage loss benefits for the back strain until June 19, 2017. The Board also found that the accident had not aggravated his pre-existing spondylolisthesis and degenerative disc changes. The Review Division confirmed the payment of temporary wage loss benefits for the back strain until June 19, 2017, and agreed that the petitioner's pre-existing degenerative condition had not been aggravated. The petitioner appealed the Review Division's decision to the Workers' Compensation Appeal Tribunal (“WCAT”).

WCAT issued decision numbered A1801060, on February 25, 2019, the “WCAT Decision”.

The issues before WCAT included whether the petitioner was entitled to temporary wage loss benefits for the back strain beyond June 19, 2017, and whether he had aggravated his pre-existing spondylolisthesis and degenerative disc changes as a result of the February 2019 work incident.

WCAT found that the petitioner's low back strain had neither resolved nor stabilized as of June 19, 2017, but continued to cause temporary disability beyond that date. Thus, the petitioner was entitled to continuing temporary wage loss benefits beyond that date. WCAT allowed the petitioner's appeal from the Review Division's decision on this point. The panel said that the petitioner's underlying pre-existing conditions, his prior injuries,

and his fearfulness regarding medical treatment were all factors which may have been less than ideal for promoting rapid recovery (of his strain injury).

With respect to the question of aggravation of the petitioner's pre-existing condition, WCAT referenced Board policy C3-16.00 ("Re: Pre-Existing Conditions or Diseases"). It accepted an opinion by a Board medical advisor that there was no objective evidence of aggravation or acceleration of the petitioner's pre-existing condition. In other words, there was no radiological evidence of aggravation or acceleration. WCAT concluded that the petitioner had not aggravated his pre-existing degenerative back condition, in the workplace accident. WCAT confirmed the Review Division's decision on this point.

### **Reasons of the B.C. Supreme Court**

The petitioner sought judicial review of WCAT's decision (in the WCAT Decision) that he had not aggravated his pre-existing degenerative condition in the workplace accident.

The Court found that the WCAT Decision was patently unreasonable for treating the lack of objective findings of physical changes to the petitioner's degenerative condition as conclusory, instead of at best as only one piece of the puzzle. The WCAT panel should have considered the petitioner's pre-accident condition (which included chronic back pain, based on the medical evidence) more holistically, and should have weighed all the medical evidence relevant to the aggravation issue.

Dr. Jiwa had opined that the petitioner's pre-existing condition predisposed him to further injury. The panel did not consider Dr. Jiwa's opinion. That is, it did not consider whether the petitioner's ongoing signs and symptoms were manifestations of such further injury. The panel also failed to consider Dr. Bulger's diagnosis of "acute on chronic back pain" in June 2017.

In such a case, WCAT's responsibility was to determine whether increased signs and symptoms, and changes in function, are causally related to the workplace injury, or whether they were mere manifestations of the natural history of the underlying disease.

Requiring objective evidence of accelerated physical degeneration as a precondition to compensation for aggravation of a pre-existing condition subjected the petitioner to an impossibly high standard.

A rational engagement with the medical evidence and policy item C3-16.00 would have led the panel to consider holistically the petitioner's pre-accident condition, and to weigh all the medical evidence relevant to the aggravation issue.

The Court allowed the petition. It set the WCAT decision that the petitioner did not sustain an aggravation of his pre-existing degenerative condition aside, and remitted the matter to WCAT for reconsideration.