

## ***Jirasek v. Workers' Compensation Appeal Tribunal***

### Decision Summary

Court	B.C. Supreme Court
Citation	2024 BCSC 2448
Result	Petition dismissed; one portion of petition adjourned generally
Judge	Justice Lamb
Date of Judgment	December 6, 2024
WCAT Decision Reviewed	WCAT Decision No. A1900253 (September 12, 2019)

### **Keywords**

*Judicial review – Sections 23, 23.1(a), of the Workers Compensation Act [R.S.B.C. 1996], c. 492 – Sections 122(1), 195, 196, 201 of the Workers Compensation Act [R.S.B.C. 2019], c. 1 – section 36 of the Workers Compensation Amendment Act (Bill 23) – Court's discretion to refuse to judicially review a decision*

### **Background**

Mr. Jirasek had permanent conditions resulting from a 2015 workplace injury. He could not go back to his pre-injury employment, as a result of these permanent conditions.

In WCAT decision A1900253, dated September 12, 2019, the “2019 WCAT Decision”, the panel found:

- 1) Mr. Jirasek's permanent disability award calculated using the functional impairment method was 4.34%.
- 2) The customer service representative (CSR) occupation was suitable for him, despite his permanent conditions. He would not have a significant loss of earnings in that occupation, so he was not entitled to have his permanent disability award assessed using the loss of earnings method.
- 3) His retirement age, for purposes of duration of his permanent disability award, was 65.

Mr. Jirasek sought to challenge decisions 2) and 3) above, on judicial review, as being patently unreasonable.

A legislative amendment to the *Workers Compensation Act* [R.S.B.C. 2019], c. 1, effective January 1, 2021, permitted the Workers' Compensation Board (the "Board") to make a new decision regarding a worker's retirement age in certain circumstances. The Board made such a decision regarding Mr. Jirasek on October 8, 2021 (the "2021 Board Decision"). The Board concluded that Mr. Jirasek's retirement age was 65.

Mr. Jirasek did not request the Review Division to review the 2021 Board Decision within the 90 day timeline to do so. He finally requested an extension of time from the Review Division in September 2024. The Review Division denied his request in October 2024, and denied his request for a reconsideration of that decision in November 2024 (the "Review Division Time Extension Decisions"). As a result, a review of the 2021 Board Decision will not proceed.

Subsequent to the 2019 WCAT Decision, the Board accepted additional permanent conditions on Mr. Jirasek's claim. Ultimately, WCAT issued a decision in June 2024, in which it found that Mr. Jirasek was competitively unemployable due to all of his accepted permanent conditions: the "2024 WCAT Decision". Thus, Mr. Jirasek's post-injury earnings would be considered to be zero, when calculating his permanent disability award on a loss of earnings basis.

### **The court's decision**

The court accepted that the conclusion in the 2024 WCAT Decision that Mr. Jirasek was competitively unemployable rendered decision 2 in the 2019 WCAT Decision to be moot. Mr. Jirasek had conceded during the hearing that he was no longer challenging decision 2) in the 2019 WCAT Decision, in light of the 2024 WCAT Decision. The court dismissed the challenge to this portion of the 2019 WCAT Decision.

The court exercised its discretion to refuse to judicially review the 2019 WCAT Decision regarding retirement age. Judicial review of the 2019 WCAT Decision on this point would serve no useful purpose. If the court set the 2019 WCAT Decision on retirement age aside, and remitted that matter back to WCAT, WCAT would be bound by the 2021 Board Decision, pursuant to section 122(1) of the *Workers Compensation Act* [R.S.B.C. 2019], c. 1. The 2021 Board Decision concluded that Mr. Jirasek's retirement age was 65.

The court adjourned generally the challenge to the 2019 WCAT Decision regarding retirement age. There was a very slim possibility that the 2019 WCAT Decision could affect Mr. Jirasek's rights in the following way. If a review, and then an appeal to WCAT of the 2021 Board Decision proceeded (which would only be possible after a successful petition for judicial review of the Review Division's Time Extension Decisions), WCAT could find that the 2019 WCAT panel's finding regarding Mr. Jirasek's pre-injury retirement intention was binding upon it. Thus, the court adjourned generally the petition challenging the 2019 WCAT Decision regarding retirement age, but dismissed the remainder of the petition.