

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

Decision Summary

Court	BC Supreme Court
Citation	2024 BCSC 476
Result	Petition dismissed
Judge	Iyer
Date of Judgment	March 21, 2024
WCAT Decision Reviewed	A2002257

Keywords:

Reconsideration - Mental disorder claims - Patent unreasonableness - Credibility - Relevance of subjective perceptions - Procedural fairness - Oral hearings

Summary:

The Petitioner was an air traffic controller. When some new people joined her work unit in 2016, she developed a very strained relationship with one of them. This coworker filed a harassment complaint against her. The employer investigated the complaint, found that it was substantiated, and imposed disciplinary measures against the Petitioner. Following this, the Petitioner raised concerns about continuing to work on the same team as the coworker. Matters came to a head in April 2017 when she had to attend a team meeting at which the coworker was present. The Petitioner suffered a panic attack, and went on sick leave. The Board denied the Petitioner's claim for compensation for a mental disorder, and the Review Division confirmed the denial.

On appeal, the Petitioner requested an oral hearing, rather than proceeding by written submissions, because there were conflicting versions of key events and credibility was in issue. WCAT granted this request, and a hearing date was set. However, the hearing was adjourned several times for various reasons, none of which were her fault. During this period, the parties provided documentary evidence and written arguments, and the Petitioner consistently affirmed her position that an oral hearing was necessary. Finally, the hearing was set to proceed in April 2020, but this date too was cancelled due to the COVID pandemic. WCAT temporarily stopped holding in-person hearings, but did hold hearings by telephone and videoconference. The Panel ruled that the appeal would proceed by written submissions, following which the Panel would re-evaluate whether an oral hearing was necessary. The parties provided their submissions, and the Petitioner's addressed both the substantive issues and the mode of hearing.

The Panel's decision dismissed the appeal, holding that while the Petitioner had proven most of the elements required for a mental disorder claim, her condition was caused by the employer's investigation and imposition of discipline, which were from excluded from consideration under section 135(1)(c), which is sometimes referred to as the "labour relations exclusion". As for the mode of hearing, the Panel held that an oral hearing was not necessary because there were no

material facts in dispute and no significant issues of credibility. She also noted the delays in the appeal proceedings.

The Petitioner then applied for a reconsideration on procedural fairness grounds, asserting that an oral hearing should have been held. In her decision dismissing the application, the Panel noted that her original decision held that the Petitioner's appeal failed only due to the labour relations exclusion. The Panel held that this point did not engage the Petitioner's credibility, and that her submission on reconsideration did not address how her oral evidence would have advanced her case with respect to the labour relations exclusion.

On judicial review, the Petitioner argued that:

- a. The reconsideration decision was patently unreasonable in finding that her oral testimony was irrelevant to determination of the labour relations exclusion despite her allegations that the employer's actions were tainted by malice or ill intent;
- b. WCAT failed to warn the Petitioner that the procedural issue and substantive issues might be determined in one decision, and so she was deprived of the opportunity to make a fulsome written argument on the substantive issues;
- c. As WCAT had previously decided to hold an oral hearing, the Panel needed to provide more detailed reasons to justify the change; and
- d. The Panel relied upon the outcome of the appeal as the justification for the change in the mode of hearing.

The Court resolved these arguments as follows:

- a. Analysis of the employer's motivations required objective evidence, but the worker's oral evidence could only have addressed her subjective perceptions and beliefs, and therefore could not have made a difference on this issue;
- b. WCAT had in fact given fair notice that a decision on the appeal might be given without a further opportunity to provide arguments;
- c. Deciding not to hold an oral hearing after previously deciding to hold one does not impose a higher bar for the sufficiency of reasons; and
- d. Considered as a whole, it was clear that the Panel's decisions regarding mode of hearing were based on a preliminary assessment of the sufficiency of the evidence, and not on the outcome of the appeal.

In the alternative, the Court held that if there was a breach of procedural fairness, it could not possibly have made a difference to the outcome, and therefore referring the matter back to WCAT would serve no useful purpose.