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# CASE SUMMARY: CLAIM FOR COMPENSATION FOR OCCUPATIONAL SILICOSIS RETURNED TO WCAT FOR REDETERMINATION WITH REGARD TO THE DISEASE AND THE COMPENSATION

The Workers' Compensation Appeal Tribunal ("WCAT") denied a worker's claim for occupational silicosis. The worker ("Goik") applied for judicial review of WCAT's decision and asked for it to be remitted back for redetermination with regard to the disease and the compensation.

**Administrative law – Decisions reviewed – Workers Compensation Boards; Judicial review – Appeals – Standard of review – Patent unreasonableness; Workers compensation – Occupational disease**

Goik v. British Columbia (Workers' Compensation Appeal Tribunal), [2017] B.C.J. No. 1949, 2017 BCSC 1756, British Columbia Supreme Court, September 29, 2017, J.E. Watchuk J. (In Chambers)

Goik is a stone finisher who worked at Atlas Stone Products from 2007 until 2011, where he cut and polished marble, which routinely exposed him to silica dust. While employed by Atlas, Goik began experiencing chest pain and shortness of breath. In July 2011, he took a vacation from work to rest in Israel. Shortly after his arrival there, he was diagnosed with severe respiratory failure due to silicosis. He required a double lung transplant for which he had to wait about one year. The surgery, performed in Israel, was successful. At that time, Goik was 49-years-old.

In March 2013, Goik made a Workers' Compensation claim using a form called "Application of Worker Asbestos-Related Disease". When the case manager could not establish contact with Goik's doctors, the claim was adjudicated based on medical opinion from the internal medical advisor. The medical advisor said that the fibrosis in his lungs was of unknown origin and unknown cause. The lung biopsy did raise a concern about the role of silicosis in causing Goik's lung fibrosis, but the medical advisor also noted that it could be related to rheumatoid arthritis or methotrexate that Goik had taken for his rheumatoid arthritis. The Board then determined that although exposure to silicosis had possibly occurred during his employment in British Columbia, there was insufficient medical evidence to conclude that Goik developed silicosis prior to his lung transplant.

Goik requested an internal review which was denied. The review decision found that Goik's lung disease and the need for bilateral lung transplants was not the result of silicosis.

On the application for judicial review, Goik filed medical opinions from his physicians in Israel.

One of those opinions stated that Goik had worked for many years in an environment which exposed him to silica, and that he had developed severe silicosis causing respiratory failure that required lung transplantation. The medical opinion directly linked Goik's exposure to marble of the Caesar-stone type, which contains high concentrations of silica, to the requirement for a double lung transplant.

The medical opinions noted that Goik developed rheumatoid arthritis as a result of exposure to silica. The combination of silicosis with pulmonary and joint disease was described as "well known" in the medical literature.

Those opinions were provided to WCAT, who then denied Goik's appeal. The vice-chair stated that although it was acceptable that Goik had silicosis and that it was causally related to his employment in British Columbia, the compensation for his double lung transplant did not follow because the procedure was not necessitated by silicosis. The decision said that "accepting silicosis" is "…not what the worker wants from this appeal."

The Court reviewed Workers' Compensation law and policy which contains a presumption that silicosis arises where workers have been exposed to silica dust in the workplace. The standard of review of a WCAT decision is one of patent unreasonableness, under s.58(2) of the *Administrative Tribunals Act*. This matter deals with a question of fact within the WCAT's exclusive jurisdiction. A decision is patently unreasonable if the evidence, viewed reasonably, is incapable of supporting a tribunal's finding of fact or if the decision is openly, clearly, or evidently unreasonable.

The Court found in favour of Goik. There was no evidence to rationally support the conclusion that he was not seeking to have a claim for silicosis accepted. His notice of appeal to WCAT had stated that he was appealing because "silicosis is compensable". The jurisdiction of WCAT is limited. It does not have original jurisdiction, but can confirm, vary or cancel an appealed decision. Here, WCAT chose to confirm the review decision finding that Goik was not entitled to compensation for his double lung transplant. The conclusion did not rationally follow from the accepted finding that Goik had silicosis that was causally related to his employment in British Columbia.

The review decision found the lung disease was not the result of silicosis; however, the WCAT decision accepted that Goik had silicosis causally related to his British Columbia employment. The WCAT decision was therefore internally inconsistent. WCAT considered only whether Goik should receive compensation for the double lung transplant. It did not vary or cancel the review decision regarding whether Goik had silicosis, despite containing language that suggested that a variation or cancellation was being contemplated.

The reasons for the decision are not discernable on the record that was before WCAT. WCAT's decision was set aside and the matter remitted back to WCAT for redetermination. The Court further found that the ultimate issue for WCAT was whether Goik is entitled to compensation in light of a policy indicating that silicosis is compensable even if the worker does not have a lessened capacity for work or is not disabled from earning full wages. To say that WCAT's adjudication about the double lung transplant not being compensable would resolve the issue, and vitiate the need to remit this entire matter back to WCAT, is incorrect. The entire WCAT decision was set aside and returned to WCAT on the basis that the vice-chair failed to reasonably adjudicate Goik's claim for compensation for silicosis. It is not necessary to separately discuss whether it should be set aside because it is patently unreasonable to deny Goik compensation for his double lung transplant, or to deal with Goik's submission regarding the application of a patently unreasonable standard of causation with respect to a double lung transplant. There was no award of costs.

This case was digested by Julie K. Gibson and first posted on Quicklaw and published in the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Julie K. Gibson at jgibson@harpergrey.com.

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