IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mardones v. British Columbia (Workers' Compensation Appeals Tribunal),* 2023 BCSC 385

Date: 20230315
Docket: S170916
Registry: New Westminster

Between:

Salomon Mardones

Petitioner

And

Workers Compensation Appeal Tribunal and Fairlane Repairs Ltd.

Respondent

Before: The Honourable Mr. Justice Gibb-Carsley

On judicial review from: An order of the Workers' Compensation Appeal Tribunal, dated March 17, 2015 (WCAT-2015-00880).

Reasons for Judgment

The Petitioner, appearing in person:	S. Mardones
Counsel for Workers Compensation Appeals Tribunal:	T. Martiniuk
Place and Date of Hearing:	Port Coquitlam, B.C. February 9, 2023
Place and Date of Judgment:	New Westminster, B.C. March 15, 2023

Table of Contents

I. INTRODUCTION

[1] On February 22, 1999, the petitioner, Mr. Salomon Mardones, was injured in a workplace accident at an autobody shop when he slipped on a tool or piece of metal and injured his shoulder and lower back. His main dispute with the respondent, the Workers' Compensation Appeal Tribunal ("WCAT"), is that he says his lower back is still injured from the accident, while WCAT says the injuries have resolved. During this judicial review, the petitioner argued strenuously that his back remains injured. However, the question of the nature or extent of the petitioner's back injury is not the issue before the Court on this judicial review.

[2] The sole issue before the Court is whether WCAT's decision dated March 17, 2015 (WCAT-2015-00880) (the "Reconsideration Decision") was patently unreasonable. In the Reconsideration Decision, WCAT concluded that the petitioner failed to meet the test to obtain a reconsideration of an earlier WCAT decision of October 25, 2013 (WCAT-2013-02959) (the "2013 Decision") because he did not exercise reasonable diligence in ensuring that the "new" evidence he sought to adduce was provided to the tribunal that decided the 2013 Decision.

[3] The "new" evidence that the petitioner says should warrant a reconsideration of the 2013 Decision is an August 5, 2013, report prepared by his physician, Dr. Gidon Frame (the "Frame Report"). As I will describe below, I conclude that the Reconsideration Decision is not patently unreasonable because there was no basis for the Vice Chair hearing the reconsideration to find that the petitioner exercised reasonable diligence in putting the Frame Report before WCAT.

[4] Accordingly, I dismiss the petitioner's application for judicial review without costs to either party.

II. BACKGROUND FACTS

[5] Before setting out my findings of fact, I note that the petitioner represented himself in this judicial review. Further, English is not the petitioner's primary

language, and so an interpreter was used during the proceeding. While being self-represented and the language barrier made it more difficult for the petitioner to articulate his position to the Court, it was clear to me that his submissions were focused on the fact that he believes his back injury suffered in the 1999 workplace accident has not resolved. His submissions were not focused on the reasons he failed to take steps to have the Frame Report put before WCAT in advance of the 2013 Decision. However, I am satisfied that the relevant information was before the Court on this judicial review—in large measure due to the even-handed submissions of respondent's counsel—such that I am able to determine whether the Reconsideration Decision was patently unreasonable.

A. Injury and Procedural History

[6] The petitioner and respondent have been engaged in proceedings under the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 [*WCA*], for over two decades, and the procedural history is complicated. I will provide a brief summary of the procedural history relevant to this judicial review.

[7] On February 22, 1999, the petitioner suffered a work-related injury when he slipped and fell at an auto body shop. The Workers' Compensation Board (the "Board") determined that the petitioner was entitled to compensation. However, the petitioner and the Board disagreed on the nature and duration of the injuries. On May 10, 2002, the Board issued a decision that denied the petitioner further benefits (the "2002 Board Decision"). The Board determined that the petitioner's wage loss benefits should have terminated on December 31, 1999, because his injuries had resolved at that time. The petitioner appealed that decision of the Board to WCAT.

[8] On May 3, 2005, WCAT denied the petitioner's appeal of the 2002 Board Decision (the "2005 Decision"). WCAT found that the petitioner was not temporarily disabled due to his shoulder injury to such an extent that he was unable to participate in a rehabilitation program sponsored by the Board.

[9] In 2011, the petitioner sought reconsideration of the 2005 Decision, in part on the basis of new medical evidence, including a new 2011 opinion provided by Dr. Frame. On May 29, 2013, WCAT granted the petitioner's reconsideration application. It determined that the original WCAT panel had missed an appealable issue related to the petitioner's lower back injury contained in the 2002 Board Decision, and so found that the appeal must be returned to WCAT to reconsider the petitioner's appeal.

[10] In the course of the new WCAT appeal, the petitioner was represented by Trevor Morrison, a Workers' Adviser. Workers' Advisers provide workers with free advice, assistance, and representation. The original deadline for the petitioner to file submissions for the new WCAT appeal was July 4, 2013. Upon request of the Workers' Adviser, WCAT extended the deadline for submissions to August 8, 2013. In response to another request for an extension from the Workers' Adviser, WCAT extended the deadline for submissions to September 9, 2013.

[11] The petitioner's Workers' Adviser provided submissions to WCAT dated August 26, 2013, which were copied to the petitioner. Dr. Frame was not mentioned in the submissions made to WCAT nor was the Frame Report attached to the submissions. I note that, importantly, the Frame Report is dated August 5, 2013, and predated the date that the Workers' Adviser provided his submissions to WCAT by 21 days.

[12] On August 30, 2013, WCAT wrote to the Workers' Adviser to advise that submissions were considered complete and the appeal was ready to be sent to a WCAT Vice Chair for determination. WCAT's letter advising that the submissions were complete was copied to the petitioner.

[13] On October 25, 2013, the WCAT Vice Chair issued the 2013 Decision, in which the Vice Chair considered the appealable issues that had been missed by WCAT in the 2005 Decision. In the 2013 Decision, the Vice Chair determined that the petitioner had recovered from the lower back strain by December 31, 1999, the

date that the Board had terminated his wage loss benefits. The Vice Chair also decided that the petitioner's diagnosed shoulder injury was caused by the work accident.

B. The Reconsideration Application

[14] On December 23, 2013, the petitioner submitted an application for reconsideration of the 2013 Decision on both procedural fairness and new evidence grounds. On his application form, the petitioner indicated he would be representing himself. His application for reconsideration did not mention the Frame Report, but attached it. The petitioner also attached another report of Dr. Frame dated December 2013. The petitioner did not provide any submissions to WCAT giving reasons why the Frame Report (August 5, 2013) - which, to reiterate, predated the submission deadline of September 9, 2013 and the 2013 Decision of October 25, 2013 - was not provided to WCAT during the appeal process.

[15] Sometime after filing his initial application for reconsideration on December 23, 2013, the petitioner again became represented by Mr. Morrison, the same Workers' Adviser that represented him during appeal process leading to the 2013 Decision.

[16] On March 7, 2014, the Workers' Adviser provided a brief addendum to the petitioner's application materials, copied to the petitioner. The addendum did not mention Dr. Frame or the Frame Report or provide any reasons why the Frame Report was not provided to WCAT in advance of the 2013 Decision.

[17] On May 14, 2014, the Workers' Adviser provided a further submission to WCAT, which he characterized as complementary to the earlier submissions. In the May 2014 submissions, the Workers' Adviser argued that the 2013 Decision was patently unreasonable in ruling that the petitioner's chronic low back pain was not a compensable condition. This further submission did not mention Dr. Frame or the Frame Report, or provide any reasons for why the Frame Report was not provided to

WCAT in advance of the 2013 Decision. The submission was copied to the petitioner.

[18] On February 25, 2015, the Workers' Adviser wrote to WCAT arguing that the previous submission alleging a patently unreasonable error should be read to be alleging a true jurisdictional defect, which is an issue WCAT could determine. Again, this submission did not mention Dr. Frame or the Frame Report, or provide any reasons for why the Frame Report was not provided to WCAT in advance of the 2013 Decision.

C. The Reconsideration Decision

[19] The Reconsideration Decision was decided by the same Vice Chair who issued the 2013 Decision. The Vice Chair determined that the matter could be properly considered on the basis of written submissions without an oral hearing because the issues were of a legal nature.

[20] The Reconsideration Decision addressed two issues. The first was whether grounds had been established to reopen or set aside the 2013 Decision on the basis of a true jurisdictional defect. The second was whether a reconsideration of the 2013 Decision should be ordered on the basis of new evidence that was substantial and material to the 2013 Decision and that either: (a) did not exist at the time of the decision; or (b) if it did exist, was not discovered and could not have been discovered through the exercise of reasonable diligence. It is the second issue alone that is the subject of the judicial review now before this Court.

[21] In respect of the second issue described above, the Vice Chair concluded that the petitioner did not exercise reasonable diligence in putting the Frame Report before WCAT as part of his submissions in the appeal process. The Vice Chair observed that the Frame Report predates the 2013 Decision, and that he was provided with no explanation for why the Frame report had not been provided to WCAT during the appeal.

[22] Given his conclusion that the petitioner failed to exercise reasonable diligence in providing the Frame Report to WCAT in the appeal process that led to the 2013 Decision, the Vice Chair denied the petitioner's application for reconsideration.

III. LEGAL FRAMEWORK

A. Reconsideration

[23] Under the *WCA*, a WCAT chair may order reconsideration of a tribunal decision in certain circumstances, including if new evidence is discovered that is substantial and material to the decision and: (a) did not exist at the time of the appeal; or (b) if it did exist, could not have been discovered through the exercise of reasonable diligence in advance of the appeal.

[24] Section 256 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 (now reproduced with slight variation in s. 310 of the *WCA*) was the operative section dealing with reconsideration in 2015. Section 256 provides as follows:

> Reconsideration of appeal decision
>
> 256 (1) This section applies to a decision in
>
> (a) a completed appeal by the appeal tribunal under this Part or under Part 2 of the *Workers Compensation Amendment Act (No. 2), 2002*, and
>
> (b) a completed appeal by the appeal division under a former enactment or under Part 2 of the *Workers Compensation Amendment Act (No. 2), 2002*.
>
> (2) A party to a completed appeal may apply to the chair for reconsideration of the decision in that appeal if new evidence has become available or been discovered.
>
> (3) On receipt of an application under subsection (2), the chair may refer the decision to the appeal tribunal for reconsideration if the chair is satisfied that the evidence referred to in the application
>
> (a) is substantial and material to the decision, and
>
> (b) did not exist at the time of the appeal hearing or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered.
>
> (4) Each party to a completed appeal may apply for reconsideration of a decision under this section on one occasion only.
>
> [Emphasis added.]

[25] Given that the Frame Report existed before the deadline for the petitioner to make submissions and the issuance of the 2013 Decision, the Vice Chair considered whether the report could have been discovered by the petitioner through the exercise of reasonable diligence. On the basis that the petitioner provided the Vice Chair with no explanation why the Frame Report was not provided to WCAT in advance of the 2013 Decision, the Vice Chair concluded that the petitioner did not exercise reasonable diligence and so dismissed the application for reconsideration.

B. Standard of Review

[26] In British Columbia, for the judicial review of decisions made by some tribunals, including WCAT, the common law approach to determining the standard of review has been displaced by the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*]. Section 296 of the *WCA* lists the provisions of the *ATA* that apply to WCAT, including Part 9 of the *ATA*, which includes s. 58. That provision establishes the standard of review in respect of legislation which contains a privative clause:

> Standard of review with privative clause
>
> 58 (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
>
> > (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
> >
> > (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
> >
> > (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
>
> (3) For the purposes of subsection (2)(a), a discretionary decision is patently unreasonable if the discretion:
>
> > (a) is exercised arbitrarily or in bad faith,

(b) is exercised for an improper purpose,

(c) is based entirely or predominantly on irrelevant factors, or

(d) fails to take statutory requirements into account.

[Emphasis added.]

[27] Section 1 of the *ATA* defines "privative clause" as follows:

> "privative clause" means provisions in the tribunal's enabling Act that give the tribunal exclusive and final jurisdiction to inquire into, hear and decide certain matters and questions and provide that a decision of the tribunal in respect of the matters within its jurisdiction is final and binding and not open to review in any court.

[28] The *WCA* contains two provisions which jointly constitute WCAT's privative clause as defined by the *ATA*. Those two provisions of the *WCA* are ss. 308 and 309:

> 308 The appeal tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under this Part and to make any order permitted to be made …
>
> 309 (1) Any decision or action of the chair or the appeal tribunal under this Part is final and conclusive and is not open to question or review in any court.
>
> (2) Proceedings by or before the chair or appeal tribunal under this Part must not
>
> (a) be restrained by injunction, prohibition or other process or proceeding in any court, or
>
> (b) be removed by *certiorari* or otherwise into any court.
>
> [Emphasis added.]

[29] As the reconsideration provision of the *WCA* (currently, s. 310) falls under the same Part of the *WCA* protected by the privative clause, WCAT has exclusive jurisdiction to make decisions about whether new evidence satisfies the statutory test. As such, s. 58(2)(a) of the *ATA* sets out that the standard of review for a reconsideration decision is patent unreasonableness: see also *Maloney v. British Columbia,* 2022 BCSC 957 at para. 4.

[30] The patently unreasonable standard of review is the most deferential standard of review known to Canadian law. This standard of curial deference has been described by courts in different ways, but each description cautions a reviewing court to exercise high deference to the original tribunal.

[31] For a decision to be patently unreasonable, it must be "clearly irrational", "evidently not in accordance with reason", or "so flawed that no amount of curial deference can justify letting it stand": *Campbell v. The Bloom Group*, 2023 BCCA 84 at para. 13, quoting from *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52. In *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal),* 2018 SCC 22, the Court articulated the standard as follows:

> [28] A legal determination like the interpretation of a statute will be patently unreasonable where it "almost border[s] on the absurd": *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92,* 2004 SCC 23, [2004] 1 S.C.R. 609, at para. 18. In the workers' compensation context in British Columbia, a patently unreasonable decision is one that is "openly, clearly, evidently unreasonable": *Speckling v. British Columbia (Workers' Compensation Board),* 2005 BCCA 80, 46 B.C.L.R. (4th) 77, at para. 33; *Vandale v. British Columbia (Workers' Compensation Appeal Tribunal),* 2013 BCCA 391, 342 B.C.A.C. 112, at para. 42 (emphasis deleted).

[32] Thus, by stipulating the standard of patent unreasonableness, the Legislature has indicated that courts should accord the utmost deference to the tribunal's interpretation of the legislation and its decision.

IV. PETITIONER'S POSITION

[33] The petitioner argues that the decision of the Vice Chair in the Reconsideration Decision is patently unreasonable. He asserts that the Frame Report is vitally important for a fair and just decision of WCAT to determine the nature and extent of his workplace injuries, and that without the Frame Report, WCAT's decision cannot be justified. The petitioner asserts that he submitted the Frame Report to WCAT in advance of the 2013 Decision, and says that the report was either lost or purposely ignored by WCAT in making its 2013 Decision. The

petitioner describes WCAT as "manipulating" the process in an unfair manner to deny him compensation for his workplace injury.

[34] In his Petition, the petitioner sets out his factual basis for seeking this judicial review as follows:

> The Worker' Compensation Appeals Tribunal (WCAT) disregarded Dr. Frame's medical report of August 5, 2013 when reconsidering my case on March 17, 2015.
>
> But, in Dr. Frame's Report of August 5, 2013, the first paragraph clearly states, "[t]he deadline of July 25, 2013 was not feasible due to my annual holidays, I am making this submission as soon as feasible."

[35] I note that this above submission illuminates a flaw in the petitioner's argument. WCAT, at the request of the Workers' Advisor, extended the submission deadline to September 9, 2013. WCAT did not close the submissions process until August 30, 2013, after the Workers' Advisor provided submissions on August 26, 2013. Clearly, the deadline and submission dates postdate the date of the Frame Report and the deadline of July 25, 2013, that the petitioner expressed as problematic for Dr. Frame.

[36] The petitioner's main grievance appears to be that he disagrees with the decisions of the Board and WCAT that his back injury resolved by December 31, 1999. He argues he still suffers debilitating pain from the workplace injury and believes WCAT is treating him unfairly.

[37] The petitioner also argued that he has not been compensated as required by the WCAT decision dated December 7, 2015 (WCAT-2015-03875). However, the December 7, 2015 decision is unrelated to the issue of the judicial review of the Reconsideration Decision. As such, it is not relevant to the decision before me.

V. RESPONDENT'S POSITION

[38] The respondent submits that despite the petitioner's allegations of WCAT ignoring his injury claims, this application for judicial review involves a narrow issue—namely, whether the Reconsideration Decision was patently unreasonable.

The respondent argues that based on the information before the Vice Chair, it is not patently unreasonable for him to conclude that the petitioner failed to exercise reasonable diligence in attempting to put the Frame Report before WCAT prior to it issuing the 2013 Decision.

[39] The respondent argues that the Vice Chair's decision made in the Reconsideration Decision cannot be patently unreasonable because neither the petitioner nor the Workers' Adviser provided any explanation why the Frame Report was not provided to WCAT. In the absence of providing reasons why the Frame Report was not provided, the Vice Chair has no basis to conclude that the petitioner exercised reasonable diligence.

[40] The respondent also asserts that the other issues raised by the petitioner regarding his ongoing back pain or the fact he has not been paid compensation he says is due to him, are not relevant to the matters before the Court, because this judicial review is only in respect of the Reconsideration Decision.

VI. ANALYSIS AND DETERMINATION

A. Was the Reconsideration Decision Patently Unreasonable?

[41] In reviewing the reconsideration decision, I must look to the evidence before the Vice Chair and determine whether, based on that evidence, the decision to deny the petitioner's application for reconsideration was clearly irrational or bordered on the absurd.

[42] The evidence before the Vice Chair to determine whether the petitioner exercised reasonable diligence in putting the Frame Report before WCAT includes the following:

a) the Frame report is dated August 5, 2013 – 21 days before the petitioner's Workers' Adviser made submissions to WCAT on August 26, 2013;

b) WCAT had on three occasions extended the deadline for the petitioner to make submissions all at the request of the Workers' Adviser. The final extension offered by WCAT was that the petitioner could make submissions by September 9, 2013;

c) based on the date stamp on the Frame Report, the petitioner's Workers' Adviser, who was making submissions on behalf of the petitioner, received the Frame Report on August 13, 2013 – 13 days before the Workers' Adviser sent in his final submissions on August 26, 2013;

d) WCAT received submissions from the Workers' Adviser on August 26, 2013. Those submissions did not refer to the Frame Report or to Dr. Frame;

e) the August 26, 2013 submissions to WCAT were copied to the petitioner and so he would be aware that his submissions did not reference the Frame Report or Dr. Frame; and

f) the 2013 Decision was not made until October 25, 2013 – 81 days after the Frame Report was completed.

[43] This evidence indicates that the petitioner and the Workers' Advisor had the Frame Report available to them before the submission deadline, but did not reference or submit the report as part of the submissions made to WCAT.

[44] However, even though it appears on its face that the petitioner had the Frame Report and did not submit it as part of his submissions on August 26, 2013, it was still open to him, as part of the reconsideration hearing, to provide an explanation why the he did not, or could not, submit or reference the Frame Report in the 2013 appeal process. However, in his reconsideration submissions, the petitioner did not provide any reasons to the Vice Chair for the Frame Report not being provided to WCAT or otherwise referenced in the submissions.

[45] The relevant sections of the Reconsideration Decision demonstrate the evidence considered by the Vice Chair and his conclusions:

> [69] As noted, the worker's application for reconsideration attached copies of Dr. Frame's reports of August 5, 2013 and December 9, 2013. However, these reports are not mentioned in the worker's December 23, 2013 application, or in the March 7, 2014, May 14, 2014, and February 25, 2015 submissions by the workers' adviser. No comments were provided as to how these reports meet the requirements of section 256 of the Act. Dr. Frame's August 5, 2013 report pre-dated the October 25, 2013 decision, and his December 9, 2013 report does not refer to the worker's low back problems.
>
> …
>
> [74] On July 26, 2013, the WCAT appeal coordinator extended the time for the worker's submissions until September 9, 2013. The worker's adviser provided a submission on August 26, 2013, which contained no reference to Dr. Frame's report of August 5, 2013 (despite the fact that Dr. Frame's report was stamped as having been received by the Workers' Advisers Office on August 13, 2013).
>
> …
>
> [80] Dr. Frame's report of August 5, 2013 existed prior to the WCAT decision, but was not submitted to WCAT. In WCAT–2003–01116–A.D., noteworthy, published at 19 W. C. R. 163, the former WCAT chair concluded:
>
> > Such evidence was obviously germane to the question before the appeal division panel and a reasonable appellant would've provided all evidence related to the injury prior to the issuance of the appeal division decision. The reconsideration process is generally intended for rather extraordinary circumstances. It is not intended to be a vehicle by which appellants' can re-– argue the appeal and provide evidence that ought to have been provided to the original appeal division panel. While the worker has not provided witness statements, she has stated they could be available. It seems to me that the same analysis would be applicable to witness statements. That is, a reasonable appellant would've provided the appeal division panel with all available evidence relevant to the acceptance of the claim at the time of the appeal to the appeal division.
>
> [81] As Dr. Frame's August 5, 2013 report was evidence which existed at the time of the WCAT decision, the test to be met is whether it "was not discovered and could not through the exercise of reasonable diligence have been discovered." No comments or explanation have been provided by the worker or his representative as to why Dr. Frame's report of August 5, 2013 was not provided to WCAT in connection with the worker's appeal. I find that reasonable diligence would have required that Dr. Frame's report of August 5, 2013 be provided to WCAT as part of the worker's submission to WCAT. Accordingly, I find the reasonable diligence requirement of section 256(3)(b) of the Act is not met in relation to this report. [Emphasis added]

[46] Based on the information before the Vice Chair, I am satisfied that the Reconsideration Decision is not patently unreasonable. As set out above, it was open to the petitioner or the Workers' Adviser to provide a justification why the Frame Report was not put before WCAT. They provided none.

[47] In this regard, I note that the Vice Chair considered that the petitioner's original application for reconsideration was made on December 23, 2013. While the petitioner attached the Frame Report to his application, he provided no explanation or justification as to why the Frame Report was not put before WCAT in connection with his appeal process that resulted in the October 2013 decision. Further, there were three additional submissions made by the petitioner's Workers' Adviser during the reconsideration process on March 7, 2014, May 14, 2014, and February 25, 2015. None of the additional submissions provided reasons why the Frame Report or its contents were not provided to WCAT during the 2013 appeal proceeding.

[48] The Vice Chair also addresses the point raised by Dr. Frame in his report that he was unable to complete the report by the deadline of July 25, 2013, due to holiday commitments. I note that this was not an argument raised by the petitioner to the Vice Chair, but the Vice Chair, nonetheless, notes that Dr. Frame communicated his concern regarding meeting the July 25, 2013 deadline. The Vice Chair references that the WCAT appeals coordinator extended the deadline for the petitioner to make submissions to September 9, 2013—i.e., more than a month after Dr. Frame ultimately completed his report on August 5, 2013, and three weeks after the Worker's Adviser made submissions to WCAT on August 26, 2013. As such, Dr. Frame's comment that he could not meet a July 25, 2013 deadline, provides no support for the petitioner's argument as to why the Frame Report could not be submitted to WCAT.

[49] Given the Vice Chair was provided with no basis upon which to find that the petitioner exercised reasonable diligence in putting the Frame Report before WCAT in advance of the 2013 Decision, his decision to refuse reconsideration cannot be considered patently unreasonable.

[50] It is speculative to posit reasons for why the Frame Report was not before WCAT in the petitioner's appeal. It may be that the petitioner believed that the Workers' Adviser would submit the Frame Report to WCAT. It may be that the petitioner believed that by providing the Frame Report to the Workers' Adviser he was providing it also to WCAT. It may be that the Workers' Adviser made a strategic choice to withhold the Frame Report from WCAT because it did not advance the petitioner's argument. My purpose for articulating these hypotheticals is only to demonstrate that the petitioner could have made an argument in an attempt to persuade the Vice Chair that the petitioner had exercised reasonable diligence in having the Frame Report before WCAT. Instead, the petitioner provided no justification for not submitting the report. The Vice Chair's decision was therefore not patently unreasonable.

B. The Petitioner's Allegation that the Frame Report Was Lost or Ignored by WCAT during the Original Appeal

[51] I wish to comment on the petitioner's allegation that he submitted the Frame Report to WCAT prior to the 2013 Decision. In argument, the petitioner alleges that WCAT either lost the Frame Report or purposely decided to ignore the report in the 2013 Decision and that the decision was "manipulated".

[52] On this judicial review, the petitioner produced three affidavits dated March 29, 2022, June 20, 2022, and January 31, 2023, all containing the following passage:

> Dr. Frame's report was delivered by myself to the WCAT, and to Mr. Morrison, who was representing me at the time.

[53] Although the affidavit does not provide when specifically the petitioner delivered Dr. Frame's report to WCAT, the context of the affidavit implies that the petitioner delivered the Frame Report to WCAT in advance of the 2013 Decision. However, these sworn statements are contradicted by three pieces of evidence in the record before me.

[54] First, a stamp on the Frame Report attached to the petitioner's affidavit of May 26, 2016, indicates only that it was provided to the Ministry of Labour and Citizens' Services on August 13, 2013, which is the office of the petitioner's Workers' Adviser, Mr. Morrison. The first WCAT stamp on the Frame Report is December 23, 2013, the date that the petitioner submitted his application for reconsideration.

[55] Second, in the petitioner's affidavit of May 26, 2016, he swears:

> Dr. Frame's report was delivered by myself to the worker's adviser Mr. Morrison, who was representing me at the time. Mr. Morrison failed to forward the report to the WCAT for consideration in its decision of October 25, 2013.

[56] Third, there is no record in the WCAT file of the tribunal having received the Frame Report. The first record of WCAT receiving the Frame Report was when it was attached to the petitioner's application for reconsideration on December 23, 2013.

[57] Based on the foregoing, I find as fact that the petitioner did not provide the Frame Report to WCAT before December 23, 2013, and I disbelieve his affidavits to the contrary. While not completely relevant to whether the Reconsideration Decision is patently unreasonable, the petitioner's decision to shift his story in an attempt to cast unfounded blame upon WCAT for intentionally ignoring a document is, in my view, unsavoury.

VII. COSTS

[58] The respondent does not seek costs in this proceeding based upon the usual practice that in judicial review proceedings, costs are generally not awarded to or payable by the statutory decision maker whose decision is being reviewed. I am satisfied that, following our Court of Appeal in *Laursen v. Director of Crime Victim Assistance,* 2017 BCCA 8 at para. 95, costs should not be awarded in this matter: see also *Lang v. British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244 at paras. 45–46; see also the discussion regarding discretion in awarding costs on judicial review and the general rule that costs are not awarded in the review of

quasi-judicial decisions: *Servatius v. Alberni School District No. 70*, 2022 BCCA 421 at paras. 263-266.

VIII. DISPOSITION

[59] I dismiss the petition. No costs are awarded to either party. Respondent's counsel shall draft the order and the petitioner's signature is dispensed with on the order.

"Gibb-Carsley J."