COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Baun v. British Columbia (Workers' Compensation Appeal Tribunal),* 2024 BCCA 195

Date: 20240522
Dockets: CA46444; CA46447

Docket: CA46444

Between:

Bonnie-Gale Baun

Appellant
(Petitioner)

And

Workers' Compensation Appeal Tribunal and WorkSafeBC and Dr. Giles

Respondents
(Respondents)

– and –

Docket: CA46447

Between:

Bonnie-Gale Baun

Appellant
(Petitioner)

And

Workers' Compensation Appeal Tribunal and WorkSafeBC

Respondents
(Respondents)

Before: The Honourable Chief Justice Marchand
The Honourable Mr. Justice Grauer
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated May 8, 2019 (*Baun v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2019 BCSC 836, Kelowna Dockets S121431 and S115202).

The Appellant, appearing in person:	B.G. Baun
Counsel for the Respondent, Workers' Compensation Appeal Tribunal:	K. Koles
Counsel for the Respondent, WorkSafeBC:	B. Parkin R.E. McCardell
Place and Date of Hearing:	Vancouver, British Columbia May 2, 2024
Place and Date of Judgment:	Vancouver, British Columbia May 22, 2024

Written Reasons of the Court

Summary:

The appellant appeals the order of a chambers judge striking two petitions she filed seeking judicial review of decisions of the Workers' Compensation Appeal Tribunal and Workers' Compensation Board. The appellant says the judge made legal errors, including in hearing the petitions together, and also that the hearing was procedurally unfair because it proceeded in her absence.

Held: Appeal dismissed. There is support in the record for the judge's findings that the appellant was aware of the hearing and chose not to appear. In the circumstances, the appellant's failure to attend the hearing did not result in procedural unfairness. The judge properly exercised his discretion to hear the petitions at the same time, and he was correct to strike the petitions on the basis that they did not disclose a proper claim for judicial review.

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Reasons for Judgment of the Court:

1. Introduction

[1] The appellant, Ms. Baun, appeals an order of a chambers judge striking two petitions she filed challenging decisions of the Workers' Compensation Appeal Tribunal ("WCAT") and Workers' Compensation Board, also known as WorkSafeBC ("Board") concerning her claim for compensation for workplace injuries. The appellant says the judge erred in his analysis on the strike application. Additionally, she says the application hearing was procedurally unfair because it proceeded in her absence.

[2] The chambers judge also struck a third related petition. The appellant filed a notice of appeal in relation to this petition as well (under CA46143). All three appeals ended up on the inactive list. On June 10, 2022, Justice Butler allowed the appellant's application to remove CA46447 and CA46444 from the inactive list, but dismissed her application to remove CA46143. On June 13, 2022, the appeal in CA46143 was dismissed as abandoned pursuant to s. 23 of the *Court of Appeal Act*, S.B.C. 2021, c. 6. The appellant's application to vary Justice Butler's decision was dismissed by a division of the Court: *Baun v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 322, leave to appeal refused [2024] S.C.C.A. No. 508.

[3] In light of the foregoing, the only remaining two appeals are CA46447 and CA46444.

[4] At the conclusion of her oral submissions on appeal, the appellant stated that she had not been served with final versions of the respondents' factums on appeal, which were filed in 2022. We granted leave to the respondents, following the hearing, to file affidavits of service. We are satisfied on the basis of the evidence that has now been provided that respondents served filed copies of their factums on the appellant in accordance with the *Court of Appeal Rules*, B.C. Reg. 120/2022.

2. The legislative framework

[5] At the time the relevant decisions of the Board and WCAT were issued, and at the time of the filing of the petitions, the governing legislative framework was set out in the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 (the "*Former Act*"). There have been subsequent revisions to the statute, effective April 6, 2020, that have resulted in a renumbering of its parts, divisions, and section numbers. Following the revision, the statute is now cited as *Workers Compensation Act*, R.S.B.C. 2019, c. 1. As the relevant events in these proceedings occurred pre-amendment, we will refer to the numbering in the *Former Act* in describing the legislative framework.

[6] The Board is the first-level decision maker on matters arising under the statute, including a worker's claim for compensation for a workplace injury. Pursuant to s. 96.2(1)(a) of the *Former Act*, most Board compensation decisions are reviewable by the Review Division of the Board upon request. Section 96(1) provides that, subject to rights to appeal to WCAT, the Board has the exclusive jurisdiction to inquire into and determine all matters and questions of fact or law arising in an adjudication of a claim, and decisions of the Board are final and conclusive and not open to question or review in any court.

[7] WCAT is an appeal tribunal that is independent from the Board. It is established under s. 232(1) of the *Former Act*. Section 239(1) provides a right of appeal to WCAT from a decision of the Review Division, subject to limited exceptions that are not relevant here. On appeal, WCAT may confirm, vary, or cancel the decision under appeal: *Former Act*, s. 253(1). Pursuant to s. 254, WCAT 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". The privative clause in s. 255 provides that WCAT decisions are "final and conclusive", and not open to question or review in any court. Because decisions of WCAT are final and conclusive, the implementation of WCAT decisions falls to the Board.

[8] Section 245.1 of the *Former Act* lists the provisions of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*] that apply to WCAT. These include s. 57 (providing a 60-day time limit for commencing an application for judicial review), s. 58 (directing that the standard of review on judicial review is patent unreasonableness), and s. 31 (allowing for summary dismissal of an application on any of the prescribed grounds).

3. Procedural history

3.1 Overview

[9] The appellant has been engaged in protracted proceedings before the Board and WCAT in relation to a workplace injury she suffered in October 2012. While working at a hospital, the appellant was struck and pinned by a set of heavy double doors. The Board accepted that she suffered compensable workplace injuries to her finger, right shoulder, and upper right arm. The appellant disagrees with the Board's assessment of the nature and extent of her injuries, whether they have resolved, and the amount of reimbursement she should receive for treatment and other expenses. This has resulted in numerous applications by the appellant to the Board, requests for internal review by the Review Division of the Board, and then appeals from the Review Division to WCAT.

[10] For the purposes of this appeal, it is unnecessary to set out the procedural history in detail. We will review the proceedings before the Board, the Revision Division, and WCAT only to the extent necessary to address the issues relevant to each appeal.

3.2 Appeal in CA46447 (BCSC No. 115202)

[11] On May 4, 2017, the appellant filed a petition "for reconsideration and Judicial Review at the same time". We will refer to this as the "2017 Petition". The 2017 Petition seeks wide-ranging orders and directions against the Board and WCAT concerning their decisions to date on her claim for compensation. While the 2017 Petition appears to challenge both the decisions of the Board and WCAT—despite the fact that decisions of the Board can be, and were, appealed to WCAT—we

understand the appellant's focus, in particular, to be on the four WCAT decisions that are referenced in the petition.

3.2.1 The WCAT decisions

[12] The four WCAT decisions, issued between October 24, 2014 and March 6, 2017, may be summarized as follows:

1. Decision No. 03111, issued October 24, 2014

[13] This decision addressed five appeals by the appellant from decisions of the Board, affirmed by the Review Division, addressing various aspects of her claim for compensation for injuries she alleged she suffered in the October 2012 workplace accident. WCAT made the following findings:

a) the appellant did not sustain a compression fracture at the T6 level of her spine in the accident;

b) the appellant did not sustain an injury to the T4 or T6 level of her spine, a right rotator cuff tear, or a right hip injury in the accident;

c) the appellant was entitled to an MRI scan of her left hand in order to cure and relieve the effect of the injury;

d) the appellant was entitled to up to six weeks further physiotherapy treatment for her right shoulder injury after mid-May 2013;

e) the appellant was entitled to reimbursement for chiropractic treatments she received after mid-May 2013 in relation to her right shoulder injury; and

f) the Board was required to reimburse the appellant's expenses for travelling to attend the oral hearing in January 2014.

[14] The Board subsequently implemented WCAT's decision. The appellant was unhappy with the Board's implementation of the decision, and she pursued further

appeals. The appellant's appeal in relation to WCAT's direction that she be reimbursed for travel expenses is the focus of the appellant's appeal in CA46444.

2. Decision No. 02440, issued August 5, 2015

[15] This decision addressed four appeals by the appellant from decisions of the Board, affirmed by the Review Division, addressing other aspects of her claims for compensation in relation to the October 2012 accident. WCAT made the following findings:

a) the appellant's entitlement to a left-hand MRI was confirmed, and the Board was ordered to provide the MRI on an expedited basis;

b) the appellant did not suffer injuries to any finger other than her left third finger in the accident;

c) the appellant did not suffer a left-hand median nerve injury as a result of the accident;

d) the calcific tendonitis in the appellant's right shoulder was not caused or aggravated by the accident; and

e) the appellant was entitled to reimbursement for travel expenses, and the cost of a medical report, but not for reimbursement for facsimile and photocopying charges.

[16] The Board subsequently implemented WCAT's decision. The appellant was also unhappy with the Board's implementation of this decision, and she pursued further appeals.

3. Decision No. A1602101, issued March 6, 2017

[17] This decision addresses the appellant's appeal of Board decisions, confirmed by the Review Division, that implemented the 2014 and 2015 WCAT decisions. As observed by WCAT in the decision, the evidentiary record, by this time, spanned

eight thousand pages. WCAT's decision includes the following observations and findings:

a) the Board properly implemented the 2014 and 2015 WCAT decisions;

b) WCAT could not address matters already adjudicated in other WCAT decisions;

c) the appellant's reliance on "ICD" codes was unsound because these codes are not intended to be precise descriptions of injuries, but rather are used to classify injuries for statistical or billing purposes; and

d) the appellant was not entitled to reimbursement for travel or other expenses in relation to the appeal.

4. Decision No. A1604589, issued March 6, 2017

[18] This decision addressed two appeals by the appellant from decisions of the Board, confirmed by the Review Division, that the appellant did not have compensable chronic pain flowing from her right shoulder injuries or her third left finger injury. WCAT found:

a) the appellant did not have compensable chronic pain, and therefore was not entitled to medical treatment in the form of chronic pain classes; and

b) the appellant was not entitled to reimbursement of travel expenses or other expenses in relation to the appeal.

3.2.2 The 2017 Petition

[19] The 2017 Petition was filed on May 4, 2017, and amended on April 9, 2019. The petition is, as accurately described by the chambers judge, prolix. In Part 1 of the petition, the appellant seeks over 130 different forms of orders against the Board, WCAT, individual WCAT adjudicators, and medical experts who provided opinions to the Board and/or WCAT regarding the nature and extent of the appellant's injuries. The vast majority of the relief sought is clearly beyond the

jurisdiction of a judge to order on judicial review. By way of illustrative example only, the appellant requests orders: compelling medical experts to "prepare or create and produce records" relating to her injuries; setting aside implementation decisions by the Board that were appealed to WCAT; allowing the appellant to adduce further evidence from medical practitioners that she considers supportive of her claims; requiring the Board to pay the appellant a disability award, disability pension, and the costs of various medical treatments; requiring the Board and WCAT to use ICD codes to adjudicate her claims; and requiring the Board and WCAT to assist the appellant with medical healthcare.

[20] It is evident that what the appellant seeks through the 2017 Petition is a complete re-adjudication of her claims for compensation for injuries she believes she suffered in the October 2012 workplace accident. In her final paragraph of Part 3 of the amended petition, the appellant states her request in these terms:

> 17. WSBC policy of Review division Practices and Procedures manual A4.4 indicates that an issue may be referred back to the Board where a significant further investigation assessment is required that would be beyond the scope of the review divisions. I am asking this [to] be sent back to the WCAT who can maintain jurisdiction and for this mess to go back to the Board please and have my injuries adjudicated properly with paid medical treatment **and please fix them.**
>
> [Emphasis in original.]

[21] As originally filed, the 2017 Petition named a long list of respondents, including individual WCAT adjudicators and medical experts who provided opinions on the appellant's injuries. In April 2019, the appellant filed an amended petition. The amended petition removes the individual respondents as parties, although it does not remove the appellant's request for various orders against these individuals in the body of the petition. The Attorney General of British Columbia, although initially named as a respondent, successfully applied to be removed from the style of cause: *Baun v. British Columbia (Attorney General*), 2018 BCSC 1694.

[22] Although the 2017 Petition challenges WCAT decisions that were issued in 2014 (Decision No. 03111) and 2015 (Decision No. 02440), the appellant did not

seek an extension of time to commence the judicial review pursuant to s. 57(2) of the *ATA*.

3.3 Appeal in CA46444 (BCSC No. 121431)

[23] On November 16, 2018, the appellant filed a separate petition challenging two WCAT decisions: Decision No. 1702093, dated September 13, 2018, and Decision No.1802356, dated November 8, 2018. We will refer to this as the 2018 Petition.

3.3.1 Background to the WCAT decisions

[24] The background to the WCAT decisions is, briefly stated, as follows.

[25] As we have reviewed, in its October 24, 2014 decision (Decision No. 03111), WCAT made a number of findings in relation to five appeals brought by the appellant from decisions of the Board. Among the orders made by WCAT was an order that the Board must reimburse the appellant for travel expenses because WCAT had convened the appeal hearing in a location that was not nearest to the appellant. The travel expenses were not quantified in the WCAT decision.

[26] The Board split up its implementation of WCAT's 2014 decision into three different decisions. Of relevance to the present petition is the Board's decision of July 25, 2016, implementing the order regarding reimbursement of travel expenses. The Board determined that the appellant was entitled to reimbursement for two nights' accommodation to attend the WCAT hearing in January 2014. The appellant provided a receipt for $950. The Board did not accept the receipt because it appeared to relate to rental of a private residence for the entire month of January.

[27] The appellant sought a review of the Board's decision by the Review Division. The Review Division confirmed that the appellant was entitled to two nights' accommodation, which it quantified at $61.30 (calculated as a two-day portion of a monthly rental fee of $950).

[28] The appellant appealed the decision of the Review Division to WCAT. In a decision dated December 13, 2017 (No. A1700530), WCAT allowed the appeal in

part, and found that the appellant was entitled to two nights' accommodation in the amount of $271.43. WCAT found it likely that the appellant had paid $950 for accommodation for a week rather than a month, and adjusted her reimbursement for two nights of that accommodation accordingly.

[29] By letter dated January 2, 2018, the Board provided the appellant with written confirmation of the implementation of the WCAT decision, and confirmed that she would receive reimbursement of $271.43 to cover two nights of accommodation.

[30] The appellant sought an internal review of the Board's January 2, 2018 implementation decision. She continued to maintain that she was entitled to reimbursement of travel expenses beyond two nights' accommodation. In a decision dated July 20, 2018, the Review Division dismissed the review request. The Review Officer concluded that the question of the amount of the appellant's reimbursement of travel expenses had been finally and conclusively determined in prior decisions of the Review Division and WCAT, and the Review Officer had no jurisdiction to revisit those decisions. The Review Division's only role was to consider whether the Board had correctly implemented WCAT's decision. The Review Officer found that the implementation was done in accordance with the very clear direction given by WCAT in its December 13, 2017 decision.

[31] The appellant filed an appeal of the Review Division's decision to WCAT. It is WCAT's decisions on this appeal that are challenged in the petition at issue in the second appeal before the Court: CA46444.

3.3.2 The WCAT decisions

[32] In a letter dated September 17, 2018, WCAT advised the appellant of its preliminary determination that the appellant's appeal of the July 20, 2018 decision of the Review Division had no reasonable prospect of success. This was because the appeal appeared to be an attempt to circumvent the final and binding conclusions of WCAT in its December 13, 2017 decision, which quantified the appellant's compensable travel expenses. WCAT cited s. 31(1) of the *ATA*, which permits the tribunal to dismiss an appeal summarily if the appeal is frivolous, vexatious or trivial

or gives rise to an abuse of process, or has no reasonable prospect of success. WCAT advised the appellant of its preliminary view that the appeal had no reasonable prospect of success and was an abuse of process. The appellant was provided with an opportunity to provide submissions before a final decision would be made.

[33] In response to WCAT's letter of September 17, 2018, the appellant provided lengthy written submissions. The submissions outlined the appellant's disagreement with WCAT's December 13, 2017 decision, rather than addressing the preliminary issues raised by WCAT regarding the propriety of her attempt to relitigate matters that were previously, and conclusively, decided by WCAT.

[34] By letter dated November 8, 2018, WCAT advised the appellant of its final decision dismissing her appeal under ss. 31(1)(c) and (f) of the *ATA* because it had no reasonable prospect of success and gives rise to an abuse of process.

3.3.3 The 2018 Petition

[35] The 2018 Petition alleges that WCAT exceeded its jurisdiction in not awarding the travel costs that the appellant considers she is entitled to under the 2014 WCAT decision. It is alleged that WCAT has "no legislated right" not to entertain her appeal. The 2018 Petition also repeats many of the allegations covered by the appellant's 2017 Petition, going far beyond the topics actually addressed in the 2018 WCAT decisions. The relief sought includes orders: requiring the collection of medical information to show that the appellant's injuries have not resolved; compelling the Board and WCAT to "consider my injuries as I reported them not as [the Board] and WCAT would like them to be"; compelling the production of medical records; and requiring the Board to pay medical expenses for the injuries the appellant believes she suffered in the October 2012 accident.

4. The chambers judgment

[36] On November 30, 2018, the Board and WCAT each filed applications to strike the appellant's petitions pursuant to R. 9-5(1) of the *Supreme Court Civil Rules*, B.C.

Reg. 168/2009 [*SCCR*]. The applications were served on the appellant in early December 2018. The applications were originally set for hearing on the assize week of January 7, 2019. The respondents agreed to adjourn that hearing date when the appellant indicated she was unavailable until after February 28, 2019. The respondents rescheduled the applications for the assize week of May 6, 2019. Although the appellant advised the respondents she was also unavailable to attend during the week of May 6, the respondents refused to consent to a second adjournment in the absence of any explanation by the appellant of the reasons for her unavailability.

[37] In late April and early May, 2019, the appellant filed application responses to the application to strike, which included statements regarding the appellant's lack of consent to the applications being heard. Her application response in Petition No. 115202 included the following statement:

> 51. I have advised WSBC and WCAT I was not available until after February 2019. I had other legal matters to attend, in addition a death threat by a provincial government employee on me, a failing mom and a bad car accident and my friend died and I was unable to respond until now. It was too much and it takes me a long time to type and gather my thoughts.

[38] The applications then came on for hearing before the judge on May 8, 2019. The Board and WCAT each appeared on that day. The appellant did not appear at the hearing. The judge was satisfied on the basis of evidence provided by the Board and WCAT that the appellant's non-attendance was deliberate. Given that the appellant raises procedural unfairness in the court below as a ground of appeal, it is useful to quote the judge's reasons in full:

> [7] It was initially unclear to me why Ms. Baun did not attend today's hearing and I spent some time this morning trying to understand why. Counsel took me through various communications between them and Ms. Baun from November 2018 to the present. This application, for example, was set initially January 7, 2019, and was adjourned at Ms. Baun's request stating that she was not available until February 28, 2019. She did not explain the reason for her unavailability. However, respondents' counsel all agreed to accommodate her and made arrangements to reset the matter for the week of May 6, 2019. Those communications are in the form of the affidavit of Linda Baek, sworn May 3, 2019, and filed May 8, 2019.

> [8] After reviewing these communications, I am satisfied that Ms. Baun knew this matter was set for this week, but simply took the position that she could not be dictated to when and whether the applications would be heard. Without giving any reasons, she simply stated that she was not available for the month of May. She requested the matter be adjourned, but this time the respondents' counsel all did not agree and made it clear to her that the matter would be proceeding today. I was advised by counsel that they made it clear to her that the matter would be proceeding unless she provided reasonable reasons why it could not. She has not provided those or any reasons.
>
> [9] Despite what seemed on first blush to be an attempt by Ms. Baun to have the matter adjourned by failing to attend, I still wondered this morning if there was a valid reason for her non-attendance. I communicated with Ms. Benson of Trial Scheduling who informed me that she made a number of attempts to contact Ms. Baun by telephone without success. She advised that previous efforts to communicate to Ms. Baun using the telephone number Ms. Baun provided were also not successful. The phone simply rings and is not answered. I, too, attempted to contact Ms. Baun by telephone during court. I had the same experience.
>
> [10] I conclude that Ms. Baun, likely knowing that the writing was on the wall respecting these applications, simply decided to ignore today's hearing in the hopes that it would not proceed and would be adjourned.
>
> [11] I am satisfied that Ms. Baun's suggestion that she was not available for court today is disingenuous. She made herself available to attend court to seek orders from this Court in October and November 2018 when it was convenient to her. It would appear that she is able to attend court when she wants an order, but does not attend court when it is not supportive of her cause. Her response to counsels' communication to her making it clear that they were proceeding with their applications today by saying simply that she is not available with no further explanation, without letting the Court know why she is not here and her failure to communicate her reasons to anyone today, in my view, speaks volumes. Essentially, the recurring theme through her correspondence is that the respondents must have her permission to proceed with their applications and, because she did not consent to them being heard today, she can dictate the process. That, of course, is not the case. I conclude that she simply did not want to deal with the applications and her non-attendance was deliberate and willful without a valid excuse.
>
> [Emphasis added.]

[39] Accordingly, the hearing proceeded in the appellant's absence.

[40] The judge stated his view that the oral and written submissions provided by the Board and WCAT exhaustively and fairly summarized the history leading to the applications. WCAT's written submission argued that the petitions should be struck under R. 9-5(1)(a), (b) or (d) of the *SCCR*. The judge directed that a copy of WCAT's written submission be filed in the proceedings, because he accepted them "in whole"

as a clear articulation of the reasons why the strike applications must succeed: at para. 4.

[41] The judge found that the appellant's perceptions are "ill-conceived and misguided", and that she has "misapprehended the judicial review process": at para. 15. The judge noted that, despite the strong privative clause in the *Former Act*, the appellant simply sought to reargue the matters that were before the Board and WCAT. He stated:

> [17] It is not open to this Court to direct the [Board] or WCAT to make a particular decision or to pay benefits. This Court cannot substitute its decision for that of the [Board] and WCAT unless there is some overriding error which is not present here.

[42] The judge concluded that the petitions "are doomed to fail", and that it serves no purpose to allow them to continue. He described the petitions as "confusing, disorganized, incomplete", and found that they failed "to raise any errors related to the applicable standard of review": at para. 21. The judge issued orders striking each of the three petitions. He did not expressly address the question of whether the appellant should be given leave to file amended petitions. The entered order is silent on this point.

5. On appeal

[43] The appellant's factum is lacking in focus. Her complaints about the process in the court below, and before the Board and WCAT, are numerous and difficult to understand. The appellant's grounds of appeal appear to fall, very broadly, into two categories:

a) Procedural fairness complaint: the appellant argues that the application hearing in the court below was procedurally unfair because she did not appear. As we understand the appellant's argument, she maintains that she was not personally served with the requisition resetting the hearing date, and therefore did not have notice of the hearing.

b) Complaint about the substance of the judge's reasons. The appellant maintains that the judge erred in, among other things, dealing with the three petitions together, failing to assume the facts she pleaded in the petitions were true, and failing to consider the evidence.

[44] In her factum on appeal, the appellant repeats her lengthy critique of the Board and WCAT decisions, and the respondents' treatment of her during their various adjudications of her claims. She asserts her belief that the medical evidence supports her claim that she has unresolved injuries. She says that "[t]he 47 decisions before the court should be dismissed and sent back to WCAT for reconsideration": Appellant's Factum, Part 2 at para. 59. The appellant requests 28 different forms of orders from this Court, including orders: requiring the Board and WCAT to produce documents; requiring WCAT to reconsider all of the appellant's injuries; requiring the Board to pay the appellant's medical expenses; requiring the Board to pay $950 towards her travel expenses; and requiring the Board to pay her photocopying costs. The relief sought by the appellant is not limited to CA46444 and CA46447, but also extends to CA46143, which has been dismissed as abandoned.

6. Discussion

6.1 Procedural fairness

[45] We will first address the appellant's complaint that the hearing in the court below was procedurally unfair because she did not receive sufficient notice of the hearing, and, therefore, was deprived of an opportunity to participate. This issue is addressed by the judge in paras. 7–11 of his reasons, which are quoted above.

[46] It is not clear from the appellant's submissions on appeal whether she is asserting that: (1) the service of the requisitions resetting the hearing date for the week of May 6, 2019 was not technically compliant with the requirements of the *SCCR* because the requisitions were not personally served, or (2) regardless of whether the service requirements of the *SCCR* were met, the appellant did not, in fact, receive notice of the hearing date. We will, therefore, address each of these arguments.

[47] Rule 8-1(21.1) of the *SCCR* requires a party, in resetting an adjourned application, to file a requisition setting out the date and time of the hearing, and to serve a copy of the filed requisition on the application respondents at least two business days before the hearing. Here, the evidence is that the respondents filed requisitions resetting the application hearing date for the week of May 6, 2019, and delivered the filed requisitions by courier to the appellant's address for service in early January 2019. Rule 4-2(1) of the *SCCR* provides that, subject to R. 4-3(1) and unless the court otherwise orders, a document to be served on a party under the *SCCR* may be served by ordinary service. Delivery of a document via courier to a party's address for service is a method of ordinary service. There is no requirement in the *SCCR*, including in R. 4-3(1), that a filed requisition resetting an adjourned application must be personally served. As such, the respondents' service of filed requisitions was compliant with the requirements of the *SCCR*.

[48] There is also ample evidence in the record to support the judge's finding that the appellant did, in fact, have notice of the rescheduled hearing date for the strike applications. As reviewed by the judge, the correspondence exchanged between the parties after the service of the filed requisitions reflects the appellant's resistance to, but clear knowledge of, the new hearing date. The appellant wrote to the respondents' counsel to request that they "withdraw" the requisitions because she considered the respondents' conduct to be "vexatious". The appellant would not specify the reason for her unavailability the week of May 6, other than to state she had "another issue to deal with": Respondent's Appeal Book at 426–427.

[49] As the judge notes, the respondents had agreed to adjourn the first scheduled hearing date in January 2019 after the appellant insisted she was not available until after February 28, 2019. On the prior occasion, the appellant also declined to provide reasons for her unavailability. She wrote to WCAT's counsel: "please provide me with the rule of the Supreme court that confirms I must answer to you for my whereabouts and unavailability and how I spend my time": Respondent's Appeal Book at 419. In these circumstances, it is entirely understandable that the respondents would take the position that they would not consent to a further

adjournment without a reasonable explanation from the appellant as to why she could not attend court on the scheduled date.

[50] Accordingly, there is no basis for appellate interference with the judge's finding that the appellant knew of the hearing date, and that her non-attendance at the hearing was "deliberate and willful without a valid excuse": at para. 11. It is true that, as a general proposition, an order made in the absence of one of the parties who had an acceptable explanation for their non-attendance will amount to a breach of procedural fairness: *Boone v. Jones*, 2023 BCCA 215 at para. 44; *Richards-Rewt v. Rushchyna*, 2019 BCCA 143 at para. 7. However, that principle has no application on the facts of this case. The appellant has never provided an acceptable explanation for her non-attendance at the application hearing. On the contrary, she appears to have proceeded on the assumption that the respondents could not set a hearing date without her permission, which she declined to give.

[51] The appellant had every opportunity to either attend the application hearing, or to provide an adequate explanation for her inability to attend. Her deliberate decision to absent herself from the hearing process is not a breach of procedural fairness. Therefore, we do not accede to this ground of appeal.

6.2 Did the judge err in his analysis of the applications?

[52] The appellant next says the judge erred in striking her petitions because, in doing so, he failed to consider the evidence and failed to treat the facts pleaded as true. She also says that he should not have dealt with the three petitions in one judgment because the petitions raise different issues.

[53] Although it appears that the judge considered that the petitions could be struck under multiple subrules of R. 9-5(1), the focus of his judgment is on R. 9–5(1)(a). The judge's decision to strike the petition under R. 9–5(1)(a) is subject to a standard of review of correctness on appeal: *Situmorang v. Google LLC*, 2024 BCCA 9 at paras. 48–52. For the reasons that follow, we are of the view that the judge was correct to strike the 2017 Petition and the 2018 Petition under R. 9-5(1)(a) on the basis that the petitions disclose "no reasonable claim". As such, it is

unnecessary to address the question of whether the judge erred in relying on any other subrule of R. 9–5(1).

[54] A petition may be struck under R. 9-5(1) if it does not provide a proper foundation for a petition proceeding: *E.B. v. Director of Child, Family and Community Services*, 2016 BCCA 66 at paras. 41–42. In a petition for judicial review, a proper foundation is not provided if the petition fails to state a ground for judicial review or any legitimate basis for the relief sought: *Morriss v. British Columbia*, 2021 BCCA 145 at para. 8. For the following reasons, we are of the view that the 2017 Petition and the 2018 Petition fail to state a proper ground for judicial review.

[55] Both petitions purport to challenge not only decisions of WCAT, but also decisions of the Board. This runs afoul of the principle that a party must generally exhaust all statutory administrative review procedures before bringing a petition for judicial review: *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2014 BCCA 329 at paras. 39–40. The procedure adopted by the appellant is all the more problematic because the appellant has, consistently and repetitively, appealed the Board decisions to WCAT, and is simply unhappy with the outcome of the appeals. The petitions seek not only to circumvent the specialized appeal structure established under the *Former Act*, but also to engage the Court in directly supervising the Board and its advisors in its assessment of the nature and extent of the injuries suffered by the appellant, and her compensable medical expenses.

[56] While the decisions of WCAT are, subject to the issue of the time limit in s. 57 of the *ATA*, theoretically amenable to judicial review, the petitions fail to identify any comprehensible grounds of challenge to the decisions. It must be remembered that WCAT decisions are subject to judicial review on the highly deferential standard of review of patent unreasonableness. A patently unreasonable decision is one that is "openly, clearly, evidently unreasonable" and "almost borders on the absurd": *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28. Where the decision involves the exercise of discretion, it must be shown that the discretion was exercised arbitrarily, in bad faith or for an improper

purpose, that it was based entirely or predominantly on irrelevant factors, or that the tribunal failed to take statutory requirements into account: s. 58(3) *ATA*.

[57] In relation to the 2017 Petition, we note that the WCAT decisions that are referenced in the petition are detailed and factually intensive. The WCAT adjudicators had to weigh a substantial body of evidence, and resolve conflicting evidence, including on the question of causation. The 2017 Petition reflects, although in unfocussed terms, the appellant's dissatisfaction with the WCAT decisions, and the decisions of the Board that led to the hearings before WCAT, as well as with the opinions expressed by various medical advisors to the Board. What the petition does not do is identify in any comprehensible way any flaw in the WCAT decisions that could be said to render them patently unreasonable. It is apparent that the appellant views judicial review as her opportunity for a complete re-adjudication of her claims for compensation, untrammeled by the usual limits on the role of the court on judicial review. This is evident in the wide-ranging relief sought in the petition, almost all of which is beyond the jurisdiction of a court to grant on judicial review.

[58] Many of the same observations may be made of the 2018 Petition. As noted, although the petition purports to challenge two discrete WCAT decisions rendered in 2018, it repeats many of same arguments in the 2017 Petition regarding the merits of the underlying adjudication of the appellant's workplace injury claims. Furthermore, the two WCAT decisions that are the most direct focus of the 2018 Petition involve an exercise of discretion by the tribunal to dismiss the appellant's appeal pursuant to s. 31(1) of the *ATA* on the basis that the appeal has no reasonable prospect of success and is an abuse of process. This was because the appeal sought to relitigate an issue (quantification of reimbursement for travel) that was finally and conclusively decided in the prior WCAT decision of December 13, 2017. The 2018 Petition does not identify any grounds on which it could be said that this exercise of discretion was patently unreasonable. Instead, the petition simply repeats the substance of the appellant's claim for additional compensation for travel,

without addressing WCAT's determination that this issue had been conclusively decided in a prior decision.

[59] Put simply, we agree with the judge that the 2017 Petition and the 2018 Petition, as drafted, do not provide a proper foundation for judicial review. The petitions do not differentiate in any comprehensible way between matters that might legitimately engage the court's role on judicial review in relation to the WCAT decisions, and the appellant's general unhappiness with the entire process of adjudication by the Board and WCAT since the commencement of her claim for compensation. That process, in turn, has been complicated by the appellant's pattern of seeking to revisit issues that were finally and conclusively decided by WCAT in prior decisions by way of appeals of the Board's implementation decisions. The circularity of the process before the Board and WCAT renders it particularly challenging to isolate any legitimate grounds for judicial review in the petitions, or to identify the precise decisions to which those grounds relate. It would simply be impossible for a court to adjudicate the petitions in their current form.

[60] Contrary to the appellant's submission, it was not necessary for the judge, in order to decide the strike applications, to review voluminous material relied on by the appellant in support of the petitions. This included, in addition to nine affidavits filed by the appellant in the B.C. Supreme Court (comprising over 1300 pages), a disc containing all of the evidence filed before the Board, and medical records from all of the appellant's health care providers. There was no purpose in the judge reviewing the lengthy evidentiary record in the absence of a petition that set out proper grounds for judicial review, relief that was within the jurisdiction of the court to grant, and a legitimate basis for the relief sought.

[61] The judge was also not required to accept as true the bare, and scandalous, allegations advanced in the petitions that the Board, WCAT, and individual adjudicators and medical advisors committed "fraud", created "false information", made "misrepresentations" and "falsehoods", and engaged in deliberate "concealment" and "spoliation" of evidence. These sweeping allegations can only be

viewed as speculation, and, therefore, they need not be presumed true on a motion to strike: *Harun-ar-Rashid v. British Columbia (Human Rights Tribunal)*, 2023 BCCA 276 at para. 31; *Young v. Borzoni*, 2007 BCCA 16 at paras. 30–32.

[62] Finally, we see no basis upon which it can be said that the judge erred in his exercise of discretion to order that the strike applications in the three petitions be heard at the same time. Such a procedural order was clearly supported by the overlapping issues on the three petitions, and the common basis for the strike applications. Our conclusion that the judge was correct to strike the two petitions at issue on these appeals on the basis that they suffered from the same defects effectively disposes of this ground of appeal.

6.3 Remedy

[63] Where a petition or pleading is struck, a judge exercises discretion in deciding whether to dismiss the proceeding or to permit an amendment. The exercise of discretion may require consideration of such factors as the degree to which the petition or pleading is deficient, whether the deficiency can be cured by an obvious amendment, the apparent merit of the amended claim, and the prejudice that may result from dismissing the proceeding. The exercise of discretion also requires consideration of the object of the *SCCR*, as set out in R. 1–3, to "secure the just, speedy and inexpensive determination of every proceeding on its merits": *Jones v. Bank of Nova Scotia*, 2018 BCCA 381 at para. 35.

[64] In the present case, the entered order provides that the petitions are struck, but not that they are dismissed. Nevertheless, the parties appear to have proceeded on the assumption that the judge did not intend to allow the appellant to have an opportunity to amend the petitions to cure the deficiencies. This seems a fair assumption given that the appellant did not attend the application hearing, and did not seek an opportunity to amend the petitions before they were struck. In these circumstances, this Court will permit an amendment to the petition only where it is necessary to avoid an injustice: *Jones* at para. 36.

[65] In our view, an order dismissing the petitions, rather than granting the appellant an opportunity of amendment, would not cause an injustice to the appellant, who has had every opportunity to amend her petitions in response to the respondents' challenge. It has been over five years since the respondents served their applications to strike, setting out in compelling terms the flaws in the petitions. In the intervening period, the appellant has shown no willingness to amend her petitions to attempt to focus on matters that could properly be subject of a petition for judicial review. Instead, the appellant has persisted in her view that it is properly the court's role to reweigh the evidence that was before the Board and WCAT, order parties and non-parties to create and produce records, decide on the extent of the appellant's compensable injuries, and order the payment of medical expenses to which the Board and WCAT has determined she is not entitled. Notably, on appeal, the appellant has not requested an opportunity to amend her petitions, but rather maintains that they are acceptable in their current form.

[66] For these reasons, we conclude that the appropriate remedy in this case is an order dismissing the 2017 Petition and the 2018 Petition, rather than an order permitting the appellant an opportunity to amend.

7. Disposition

[67] We dismiss the appeal, and order that the 2017 Petition and the 2018 Petition stand dismissed.

"The Honourable Chief Justice Marchand"

"The Honourable Mr. Justice Grauer"

"The Honourable Madam Justice Horsman