IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *J.T. v. British Columbia (Workers' Compensation Appeal Tribunal),* 2024 BCSC 994

Date: 20240607
Docket: 22275
Registry: Nelson

Between:

J. T.

Petitioner

And

Workers' Compensation Appeal Tribunal

Respondent

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Appearing on his own behalf:	J.T.
Counsel for the Respondent, Workers' Compensation Appeal Tribunal:	K. Koles
Place and Dates of Hearing:	Nelson, B.C. November 28 and 29, 2023
Written Submission Received from Workers' Compensation Appeal Tribunal:	December 6, 2023
Place and Date of Judgment:	Nelson, B.C. June 7, 2024

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Introduction

[1] J.T. seeks judicial review of a decision of the Workers' Compensation Appeal Tribunal ("WCAT"). In brief, WCAT denied J.T's appeal of a decision of the Workers' Compensation Board denying his claim for compensation for a mental disorder (the "Decision").

[2] J.T. seeks to have the Decision set aside on the grounds that it was patently unreasonable and that WCAT breached procedural fairness.

[3] At the hearing of the petition, J.T. sought and I granted an order anonymizing him for the purposes of this decision.

[4] The other party to the dispute, J.T.'s employer, Scarlet West Coast Security Ltd., did not respond to his petition. It had also not participated in WCAT's hearing. WCAT did respond to the petition and, in accordance with *C.S. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2019 BCCA 406 at paras. 47–48, it appeared through counsel at the hearing to defend the merits of the Decision.

[5] For the reasons that follow, I have concluded that the Decision must be set aside and the matter remitted to WCAT for a new oral appeal hearing.

Statutory Framework

[6] The Workers' Compensation Board ("WCB" or the "Board") is the first level decision-maker on matters arising under the *Workers Compensation Act*, R.S.B.C. 2019 c. 1 [*Act*]. Most Board compensation matters are reviewable by the Review Division of the Board: s. 268(1)(b). Most Review Division decisions are, in turn, appealable to WCAT.

[7] WCAT is separate and independent from the WCB. It is an expert tribunal and constitutes the highest level of appeal in the workers' compensation system.

[8] J.T.'s claim is for a mental disorder. Section 135 of the *Act* governs mental disorder claims. Section 135 sets out the criteria which must be met for a mental disorder claim to be accepted, as follows:

> **Mental disorder**
>
> **135** (1)Subject to subsection (3), a worker is entitled to compensation for a mental disorder, payable as if the mental disorder were a personal injury arising out of and in the course of a worker's employment, if that mental disorder does not result from an injury for which the worker is otherwise entitled to compensation under this Part, and only if all of the following apply:
>
> (a) the mental disorder is either
>
> (i) a reaction to one or more traumatic events arising out of and in the course of the worker's employment, or
>
> (ii) predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment;
>
> (b) the mental disorder is diagnosed by a psychiatrist or psychologist as a mental or physical condition that is described, at the time of diagnosis, in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association;
>
> (c) the mental disorder is not caused by a decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment.
>
> (2) If a worker who is or has been employed in an eligible occupation

> > (a) is exposed to one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, and
> >
> > (b) has a mental disorder that, at the time of the diagnosis under subsection (1) (b), is recognized in the manual referred to in that subsection as a mental or physical condition that may arise from exposure to a traumatic event,
>
> the mental disorder must be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation, unless the contrary is proved.
>
> (3) The Board may require that a psychiatrist or psychologist appointed by the Board review a diagnosis made for the purposes of subsection (1) (b) and may consider that review in determining whether a worker is entitled to compensation for a mental disorder.
>
> (4) Section 163 *[duties of physicians and qualified practitioners]* applies to a psychiatrist or psychologist who makes a diagnosis referred to in this section.
>
> (5) In this section:
>
> "**correctional officer**" means a correctional officer as defined by regulation of the Lieutenant Governor in Council;
>
> "**eligible occupation**" means the occupation of correctional officer, emergency medical assistant, firefighter, police officer, sheriff or, without limitation, any other occupation prescribed by regulation of the Lieutenant Governor in Council;
>
> "**emergency medical assistant**" means an emergency medical assistant as defined in section 1 of the *Emergency Health Services Act*;
>
> "**police officer**" means an officer as defined in section 1 of the *Police Act*;
>
> "**psychiatrist**" means a physician who is recognized by the College of Physicians and Surgeons of British Columbia, or another accredited body recognized by the Board, as being a specialist in psychiatry;
>
> "**psychologist**" means a person who is
>
> > (a) a registrant of the college responsible for carrying out the objects of the *Health Professions Act* in respect of the health profession of psychology, or
> >
> > (b) entitled to practise as a psychologist under the laws of another province;
>
> "**sheriff**" means a person lawfully holding the office of sheriff or lawfully performing the duties of sheriff by way of delegation, substitution, temporary appointment or otherwise.

[9] The board of directors of the Board is required under s. 319 to set policy respecting various matters under the *Act*, including compensation. It has done so in the Board's *Rehabilitation Services and Claims Manual*, Volume 11 (the "RSCM").

[10] Board policy is binding on WCAT pursuant to s. 303(2) of the *Act*: *Shamji v. Workers' Compensation Appeal Tribunal*, 2016 BCSC 1352 at para. 27, aff'd 2018 BCCA 73.

[11] Policy #C3-24.00, entitled "Section 135 – Mental Disorders", applies to mental disorder claims.

[12] The Board also issues practice directives. Unlike policies, practice directives are not binding on WCAT. Rather, they provide guidance in interpreting Board policy. "Practice Directive #C3-3 (Interim) Mental Disorder Claims" was the applicable practice directive at the time of the Decision.

[13] On appeal, WCAT may confirm, vary or cancel a Board decision: s. 306(1). It can reweigh evidence, and parties can submit new evidence. WCAT can substitute its own decision for that of the Board.

Standard of Review

[14] Recently, in *Lawrence v. Workers' Compensation Appeal Tribunal*, 2023 BCSC 1695, I summarized the law applicable to the standard of review of WCAT decisions made under the *Act* as follows:

> [72] It is helpful in attempting to frame Mr. Lawrence's grounds for judicial review to consider the statutory framework that establishes the standard of review of WCAT decisions. Section 308 of the *Act* provides:
>
> > **Exclusive jurisdiction of appeal tribunal**
> >
> > **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, including the following:
> >
> > > (a) all appeals from review decisions as permitted under section 288 *[review decisions that may be appealed]*;
> > >
> > > (b) all appeals from Board decisions or orders as permitted under section 289 *[other Board decisions that may be appealed]*;
> > >
> > > (c) all matters that the appeal tribunal is requested to determine under section 311 *[request for certification to court]*;

> > > (d) all other matters for which a regulation under section 315 *[regulations respecting this Part]* permits an appeal to the appeal tribunal under this Part.
>
> [73] Section 309 of the *Act* provides that WCAT decisions are final and conclusive.
>
> [74] Section 58(2)(a) of the *ATA* defines the standard of review applicable to the substance of WCAT decisions as follows:
>
> > (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
>
> [75] In essence, this means that insofar as Mr. Lawrence is challenging the substance of the Reconsideration Decision, the standard of review is whether the decision was patently unreasonable. This is a highly deferential standard of review, which has been defined by the Court of Appeal in *Shamji v. Workers' Compensation Appeal Tribunal*, 2018 BCCA 73, at para. 37 as "'clearly irrational' or 'evidently not in accordance with reason.'" To the extent Mr. Lawrence challenges WCAT's findings of fact, they will be found to be patently unreasonable only if "the evidence, viewed reasonably, is incapable of supporting" the findings: *British Columbia (Workers' Compensation Appeal Tribunal v. Fraser Health Authority*, 2016 SCC 25 at para. 30.
>
> [76] Where procedural fairness is in issue, s. 58(2)(b) of the *ATA* states that the standard is whether WCAT acted fairly, having regard to all of the circumstances.
>
> [77] This is the standard of review that applies to Mr. Lawrence's challenges to the fairness of the procedures followed by WCAT in this case, in particular his allegations of bias.

[15] I adopt that summary of the law with respect to the standard of review applicable to the Decision under review in the case at bar.

Factual Background

[16] I provide the following brief factual background to provide the necessary context for the legal issues raised on this judicial review.

[17] At the time of the events that gave rise to J.T.'s claim he was employed by Scarlet West Coast Security Ltd. as a security guard at a remote northern mining camp. He had been employed in that position since November 27, 2018.

[18] On March 13, 2019, the employer terminated J.T.'s employment without cause.

[19] J.T. says that throughout the course of his employment he was subjected to treatment and conditions that had a damaging impact on his mental health, including numerous instances of bullying and harassment, including sexual harassment. J.T. says that his employer failed to take any steps in response to his complaints about such behaviour.

[20] J.T. places particular emphasis on an incident he says occurred in March 2019 when he detected gun ammunition, which he reported to his supervisor. His supervisor made arrangements for the owner of the ammunition to bring the ammunition in that night. J.T. did not feel that this arrangement was safe, and expressed concerns to his supervisor about it. According to J.T., he was required to confiscate the ammunition alone at night. While doing so, the owner of the ammunition slammed the door of the security office open in a threatening and shocking manner while carrying a long black object, and shouted whether he wanted to "see [his] gun or what". There was no gun in the case when the owner opened it. J.T. confiscated the ammunition.

[21] J.T. says that he was fired and banned from the work site the following week, on March 13, 2019. He says that the cumulative effect of the treatment he received was traumatic, and he experienced anxiety, insomnia and an adjustment disorder as a result.

Procedural History

[22] J.T. made a claim to the WCB on September 23, 2019. He claimed that workplace incidents of bullying and harassment had caused him to develop a mental disorder, compensable under s. 135 of the *Act*.

[23] On October 4, 2019, J.T. was interviewed by a Board entitlement officer. On November 6, 2019, a Board officer requested a psychological assessment of J.T. In

the referral letter, the officer summarized 11 incidents of bullying and harassment reported by J.T.

[24] Dr. Pappas conducted the requested psychological assessment on November 24, 2019. She provided her assessment report on January 3, 2020.

[25] In a January 9, 2020 decision letter, the WCB determined that J.T. did not meet all of the mandatory elements for a compensable mental disorder under the *Act*. The WCB found that J.T. had been exposed to workplace incidents of bullying and harassment that were significant work-related stressors between December 2018 and March 2019, and that he had been diagnosed with an unspecified adjustment disorder. The WCB found, however, that the expert opinion evidence indicated that the significant work-related stressors were not the predominant cause of the adjustment disorder.

[26] On January 10, 2020, J.T. wrote a letter to the Board officer who had denied his claim. In it, he provided a list of 89 occurrences and provided corrections to the summary of the 11 events that had been provided to Dr. Pappas. That same date he wrote to Dr. Pappas, providing the list of 89 occurrences, and raising some concerns about inaccuracies he perceived in her assessment.

[27] J.T. sought a review by the Review Division of the WCB's initial decision denying his claim. In *Review Reference #R0262365*, dated June 20, 2020, the Board review officer confirmed the WCB's initial decision. The review officer agreed with the initial WCB decision that the significant work-related stressors were not the predominant cause of J.T.'s adjustment disorder. The review officer noted that the expert opinion evidence was that the predominant cause of the adjustment disorder was the employer's failure to pay "back pay" and an associated claim with the Employment Standards Tribunal, which fell under the labour relations exclusion in s. 135(1)(c) of the *Act*.

[28] J.T. appealed the review officer's decision to WCAT. A WCAT Vice Chair conducted a pre-hearing conference on December 1, 2021. In a letter dated

December 13, 2021, a WCAT appeal coordinator provided responses, at the Vice Chair's request, to a number of requests J.T. had made in the pre-hearing conference. Unfortunately, J.T. did not receive the December 13, 2021 letter prior to the appeal being heard on January 12, 2022.

[29] WCAT issued the Vice Chair's Decision denying J.T.'s appeal on April 13, 2022: *WCAT Decision Number A221878*. It is that Decision which is before this court for judicial review in the case at bar.

[30] J.T. applied for reconsideration of the Decision in June 2022. On July 4, 2022, WCAT denied his reconsideration application: *WCAT Decision Number A2201455*. The reconsideration decision is not under judicial review, but it is common ground that if this court sets the Decision aside, then the reconsideration decision should also be set aside.

The Decision under Review

[31] After summarizing the procedural history of the case, the presiding WCAT Vice Chair identified the issue for decision at para. 6 as "Did the worker develop a mental disorder arising out of his employment as a security guard at a remote mining camp over the November 2018 to March 2019 time period?".

[32] The Vice Chair then set out WCAT's appellate jurisdiction, including stating at para. 12 that the standard of proof is the balance of probabilities, and referring to the s. 303(5) "tie-breaker" provision "that if the evidence supporting different findings on an issue is evenly weighted in that case, the appeal tribunal must resolve that issue in a manner that favours the worker".

[33] Starting at para. 13, the Vice Chair summarized the background and evidence. At para. 13 the Vice Chair noted that J.T. had a conversation with a Board entitlement officer on October 4, 2019, in which J.T. advised that he had kept a log book of bullying and harassment, and that he had submitted 32 occurrence reports to his employer. The Vice Chair stated that J.T. had told the officer that he had been

consistently intimidated and sexually harassed at work. The Vice Chair referred to nine specific incidents at para. 13:

> - On December 19, 2018, a supervisor mocked the worker in front of a client. The supervisor indicated that the worker had to do "the rubber glove treatment". She also asked the worker to keep her posted because she did not want him to be "sold into sexual slavery".
> - On January 11, 2019, the gate arm for the security check-point malfunctioned while he was conducting a vehicle check. An outbound vehicle bypassed the malfunctioning gate by crossing into the inbound traffic lane and almost hit the worker.
> - On January 24, 2019, an off-duty co-worker visited the office and acted in a very aggressive manner. This co-worker paced back and forth behind the counter and then stood between the worker and the exit door. This made the worker feel very uncertain and fearful for his personal safety.
> - On February 13, 2019, the worker stopped an inbound truck as it was overweight. The truck driver became aggressive and yelled at him. The truck driver stated that the other security guards would have let him pass. One of the other security guards subsequently confronted the worker about that workplace incident and suggested that the worker had thrown him "under the bus" by stopping the inbound truck for being overweight.
> - On February 21, 2019, a co-worker mocked the worker in front of other co-workers. The co-worker asked if the worker was "out fighting crime".
> - On February 23, 2019, a co-worker mocked the worker about his history of alcohol abuse and rehabilitation.
> - On March 8, 2019, an outbound driver wagged his finger at the worker and told him to "stay sober".
> - On March 9, 2019, the worker, while working alone on the nightshift, had to conduct a vehicle check. The driver of the vehicle entered the office with a black gun case, slammed the gun case down on the table and asked the worker if he wanted to see the gun. The driver then opened the case and there was no gun.
> - On March 12, 2019, the employer terminated the worker's employment without cause or notice.

[34] The Vice Chair noted that the Board officer requested a psychological assessment of J.T. on November 6, 2019. As stated at para. 14:

> [14] On November 6, 2019, a Board entitlement officer requested a psychology assessment of the worker. He documented that the worker had reported numerous workplace incidents of bullying and

> harassment during his 3 ½ months of work with the employer. The worker had kept a log book of those workplace incidents and had submitted 32 security occurrence reports to his supervisors. He provided a brief summary of 11 of the worker's reported workplace incidents. He requested that the psychology assessment provide a DSM-5 diagnosis, consider the impact of any pre-existing/co-existing factors and also consider the likely cause of any DSM-5 diagnosis.

[35] At para. 15, the Vice Chair referred to Dr. Pappas' November 24, 2019 assessment of J.T. He summarized her comments and conclusions as follows:

- The worker has struggled with alcohol abuse since approximately 2003. He began with binge drinking and that subsequently developed into daily drinking. However, he had been clean and sober from 2014 to 2018. He then suffered a relapse from April 2018 to September 2018 but had been clean and sober since that time.
- In 2018, the worker became depressed and anxious. He sought medical treatment and was placed on anti-depressant prescription medication for a number of months.
- The worker worked as a security guard at a mine site from November 2018 to March 2019. He made identification badges, created a record of individuals entering and leaving the mine site and searched individuals who came onto the mine site for alcohol, drugs and weapons.
- The worker reported being intimidated, bullied and sexually harassed at work over the December 19, 2018 to March 9, 2019 time period. He had been mocked by his supervisor in front of a client on December 19, 2018. He had been almost hit by an outbound vehicle driven by a co-worker while performing a vehicle check on January 3, 2019. He had been asked by a bus driver, during a vehicle safety and contraband search, whether he would be performing a "full body cavity search". He had been threatened by a co-worker on January 24, 2019. He had been mocked by co-workers about his history of alcohol abuse and alcohol rehabilitation on February 23, 2019 and again on March 8, 2019. The worker also reported experiencing sleep disruptions and anxiety since those workplace incidents.
- The worker advised that his supervisor had not sent all of his security occurrence reports and security daily reports to the employer.
- The employer terminated his employment without notice of cause on March 12, 2019.
- The worker advised that he had not been issued "back pay" after the termination of his employment. As a result, he had to file a claim for unpaid wages against the employer with the British Columbia Employment Standards Branch. This wage loss claim was still ongoing.

- The worker suggested that his claim with the Employment Standards Branch had been significantly delayed by bureaucracy and staffing issues. As a result, he felt demoralized and overwhelmed because he had not been able to obtain closure with the employer. He believed that the unpaid-wages issue with the employer needed to be resolved before he would be able to return to alternate employment.
- The worker was well groomed, alert and oriented. He had appropriate tone of speech but his speech was pressured and rambling.
- The worker's clinical picture was primarily characterized by heightened-energy and-activity levels.
- Based on the clinical presentation, interview and objective psychological test results, the worker met the diagnostic criteria for an unspecified adjustment disorder that was mild in severity. He had clinically significant behavioral symptoms in response to an identifiable stressor that had impacted his occupational and social functioning.
- The worker has developed a maladaptive reaction due to the employer's termination of his employment and failure to provide his "back pay". The worker has perseverating and rumination that are non-productive and interfere with his ability to seek alternative employment and comfortably engage with other individuals. For example, the worker felt that, if the "back pay" issue had been resolved in the spring of 2019, he would have been able to secure alternate employment.
- The workplace incidents of bullying and harassment over the December 2018 to March 2019 time period were, from an etiological perspective, unpleasant for the worker. However, those workplace incidents of bullying and harassment were only a minor factor in the worker's development of his unspecified adjustment disorder. The employer's lengthy delay in providing the worker's "back pay" and the associated claim with the Employment Standards Branch were the major factors in the worker's development of the unspecified adjustment disorder.

[36] At para. 16, the Vice Chair noted that J.T. spoke with a Board officer in early January 2020, at which time he questioned whether the Board had obtained sufficient evidence before issuing its January 9, 2020 decision letter dismissing his claim. In particular, J.T. felt that the Board had failed to provide Dr. Pappas with sufficient information about all of the workplace incidents of bullying and harassment. At para. 17, the Vice Chair referred to J.T.'s January 10, 2020 letter to the Board, in which he provided descriptions of 89 occurrences which he believed constituted workplace bullying and harassment. J.T. told the Board that many of the 89 occurrences had been recorded in security occurrence reports and daily security

reports he had submitted to his supervisor, but which had not been forwarded to the employer.

[37] In a January 17, 2020 conversation with a Board officer, J.T. requested that the Board reconsider the January 9, 2020 letter decision. He wanted the Board to consider the new evidence outlined in his January 10, 2020 letter, that is the 89 occurrences. The Board officer told J.T. that the letter decision would not be reconsidered and recommended that he request a review by the Review Division.

[38] As noted at para. 19 of the Decision, J.T. provided additional information about the 89 occurrences in a February 19, 2020 letter. J.T. noted that the original Board officer had only recorded 11 of the 89 occurrences that he had reported during his initial Board interview and as such had not obtained all relevant information. Further, J.T. suggested that Dr. Pappas did not have an accurate understanding of the extent of the workplace bullying and harassment, bringing the validity of her opinion evidence into question.

[39] On March 9, 2020, J.T. requested a review of the January 9, 2020 letter decision. On April 25, 2020, J.T. wrote to the Review Division, advising that he also had an active prohibited action complaint and suggesting that the Prevention Department had investigated that complaint and had relevant information. On April 29, 2020, J.T. wrote to the Review Division, providing his contemporaneous handwritten notes about workplace incidents.

[40] At para. 24, the Vice Chair summarized J.T.'s then legal counsel's submissions to the Review Division as follows:

> - The worker was exposed to numerous and frequent workplace incidents of bullying and harassment during his 3 ½ months of work as a security guard. Those workplace incidents included exclusionary behaviour, mocking, taunting, ridicule, sexual harassment and dangerous circumstances. The worker received no support from the employer.
> - The cumulative effect of the workplace incidents were particularly damaging and eventually caused the diagnosed unspecified adjustment disorder.

- The Board failed to consider all 89 workplace incidents in its adjudication of the worker's mental disorder claim. The Board's conclusion that only 11 of the workplace incidents were significant work-related stressors was unreasonable and unfair.
- Dr. Pappas only considered the 11 workplace incidents documented by the Board in the psychology assessment. Dr. Pappas did not have access to the worker's contemporaneous notes about all 89 workplace incidents. As a result, the psychology assessment report of Dr. Pappas was flawed and should only be given limited weight. For example, Dr. Pappas did not consider whether the 89 workplace incidents as a whole were a predominant cause of his diagnosed unspecified adjustment disorder. Dr. Pappas also did not obtain an accurate history as demonstrated by the factual inaccuracies in her assessment report.

[41] At para. 25, the Vice Chair summarized J.T.'s written submissions in support of his appeal. One submission noted was that J.T. questioned whether the labour relations exclusion clause applied to his claim.

[42] After summarizing various other submissions from J.T., the Vice Chair referred at para. 30 to WCAT's December 13, 2021 letter to J.T. The Vice Chair summarized the contents of that letter as follows:

> [30] In a December 13, 2021 letter to the worker, the WCAT panel agreed to the worker's request to change the appeal path from written submission to an oral hearing. I acknowledged that there were documents on the worker's prohibited action complaint file that were relevant to the mental disorder appeal, including a number of the security occurrence reports that he had submitted to his supervisors. I declined to [obtain] additional records from the worker's employer, specifically the daily security reports and security occurrence reports the worker had submitted to his supervisors over the November 2018 to March 2019 time period as there is sufficient evidence about the workplace incidents on the Board claim file. I have accepted that the worker's January 10, 2020 letter to the Board provided accurate information about 89 workplace events. I recommended that the worker provide additional information at the upcoming WCAT oral hearing to support his belief that the Board's mental disorder presumption applies to his mental disability claim. I also recommended that the worker provide any clinical records that comment on the cause of his diagnosed mental disorder.

[43] At para. 31, the Vice Chair summarized J.T.'s oral appeal submissions. One submission noted was that emergency dispatchers were included under the mental disorder presumption outlined in s. 135(2) of the *Act*. J.T. submitted that his security

guard work included emergency dispatcher work activities, and that he therefore should have the benefit of the presumption.

[44] The Vice Chair started his analysis at para. 33 of the Decision. At para. 35, he referred to J.T.'s concern that the Board had failed to sufficiently investigate his claim, and his request that WCAT conduct such an investigation or direct the Board to do so. The Vice Chair rejected that request, as follows:

> [35] As a further preliminary matter, the worker questioned whether the Board undertook a sufficient investigation of his mental disorder claim. As a result, he requests that the WCAT conduct such an investigation or direct the Board to contact such an investigation before completing this appeal. I acknowledge that the Board initially only documented 11 of the most serious workplace incidents described by the worker during the initial interview. However, the worker subsequently provided a detailed written description of the 89 workplace events he believed were relevant to his mental disorder claim in a January 10, 2020 letter. For these reasons, I am satisfied that there is sufficient evidence on the Board claim file and in the worker's significant written and oral submissions to the WCAT to allow me to proceed with this appeal with confidence. As a result, I will not undertake a further investigation of the worker's mental disorder claim before completing this appeal. I will also not direct the Board to undertake a further investigation of the worker's mental disorder claim before completing this appeal.

[45] At para. 36, the Vice Chair dealt with J.T.'s request that WCAT attempt to obtain the security occurrence reports and daily shift reports that he submitted to his supervisors. The Vice Chair refused to do so, for the following reasons:

> [36] As a further preliminary matter, I acknowledge that the worker requested that the WCAT attempt to obtain the security occurrence reports and daily shift reports that he submitted to his supervisors. However, there is a real question with respect to whether the employer has those security occurrence reports and daily shift reports as the supervisors did not forward all of those documents to the employer. Further, the worker, in a January 10, 2020 letter to the Board, provided descriptions of 89 workplace incidents that he believed were the cause of his unspecified adjustment disorder. The employer also has not questioned the accuracy of the worker's description of those 89 workplace events. For these reasons, I am satisfied that there is sufficient evidence on the worker's Board claim file concerning the workplace incidents in question to allow me to proceed with the WCAT appeal with confidence. Therefore, I did not attempt to obtain copies of the security occurrence reports and daily shift reports from the employer and/or the mining company.

[46] At para. 37, the Vice Chair addressed J.T.'s request that WCAT refer him to another psychological assessment and request that that assessment take into account all 89 occurrences, or that it request Dr. Pappas to update her assessment. The Vice Chair declined to do so, finding that he had sufficient psychological evidence to proceed with the appeal with confidence. He stated that Dr. Pappas had conducted a detailed psychological assessment and that the Board had provided her with a summary of 11 of the most severe incidents.

[47] At para. 38, the Vice Chair addressed J.T.'s submission that the s. 135(2) presumption applied to his claim. He rejected that submission, as follows:

> [38] As a final preliminary matter, I acknowledge that the worker has suggested that the presumption in subsection 135(2) of the Act applies to his mental disorder claim. Subsection 135(2) of the Act states that, if a worker who is or has been employed in an eligible occupation is exposed to one or more traumatic events arising out of and in the course of employment in an eligible occupation and has diagnosed mental disorder, the mental disorder may be presumed to be a reaction to the one or more traumatic events arising out of and in the course of the worker's employment in that eligible occupation unless the contrary is proved. However, the worker was employed as a security guard and the security guard occupation is not listed as an eligible occupation. Further, I am not satisfied that the worker's limited dispatching work activities for first aid and fire suppression as part of his security guard work activities would allow me to consider him under the dispatcher occupation. I also note that the presumption only applies to situations where there was a traumatic workplace event or events and that workplace bullying and harassment is generally not considered to be a traumatic workplace event.

[48] At para. 39, the Vice Chair referred to and reproduced s. 135(1) of the *Act*. At para. 40, he referred to Board policy #C3-24.00 for the factors that must be present for a mental disorder claim to be accepted, as follows:

> A. Does the worker have a DSM-mental disorder diagnosed by a psychologist or a psychiatrist?
>
> B. Was there one or more identifiable events, or an identifiable stressor or a cumulative series of stressors?
>
> C. Was the identifiable event or events "traumatic" or was the identifiable work-related stressor or stressors "significant"?

> D. Causation (was the mental disorder a reaction to one or more traumatic events arising out of and in the course of the employment, and/or; was the mental disorder predominantly caused by a significant work-related stressor or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment)?
>
> E. Was the mental disorder caused by a decision of the employer relating to the worker's employment? If so, compensation for the mental disorder is excluded.

[49] At paras. 41–43, the Vice Chair accepted Dr. Pappas' evidence that J.T. met the diagnostic criteria for a mild unspecified adjustment disorder. J.T. had "clinically significant behavioural symptoms in response to an identifiable stressor that had impacted his occupational and social functioning." As a result, the Vice Chair held that J.T. had met the requirement that he be diagnosed with a mental condition described in the most recent DSM.

[50] At paras. 44–46, the Vice Chair found that there were one or more identifiable events or stressors. Specifically, at para. 454, he referred to J.T.'s written description of 89 occurrences, 11 of which had been documented by the Board officer at the initial interview. The Vice Chair stated at para. 46 that "based on this uncontradicted evidence, I am satisfied that the worker has met this second requirement for a compensable Board mental disorder claim".

[51] At paras. 47–50, the Vice Chair considered whether the identifiable events were "traumatic" or the identifiable work-related stressors were "significant". At para. 47, he referred to policy #C3-24.00 for the following propositions:

> [47] Policy C3-24.00 of the RSCM 11 states that a work-related stressor is considered significant when it is excessive in intensity and/or duration from what is experienced in the normal pressures or tensions of a worker's employment. Policy item C3-24.00 also states that interpersonal conflict between a worker and the worker's supervisors is not generally considered a significant work-related stressor unless the conflict results in behaviour that is considered threatening or abusive. The policy also notes that exposure to bullying or harassment is an example of a significant work-related stressor not a traumatic workplace event.

[52] At para. 48, the Vice Chair referred to the Board's Interim Practice Directive #C3-3 for the proposition that bullying and harassment includes conduct that is intended to or should reasonably be known to intimidate, humiliate or degrade a person. At para. 49, the Vice Chair held that a number of the workplace incidents met the standard of bullying or harassment:

> [49] I have reviewed the 89 workplace incidents described by the worker and I accept that a number of those workplace incidents can be characterized as bullying and harassment that rises to significant work-related stressors as they were excessive in intensity and/or duration from what is experienced in the normal pressures of a worker's employment. For example, the workplace incidents where the worker was mocked and teased about his prior history of alcohol abuse and rehabilitation are clearly significant work-related stressors. Those workplace incidents of bullying and harassment were definitely intended to humiliate or degrade the worker. I do not consider any of the described workplace incidents to have been "traumatic" in nature.

[53] At paras. 51–55, the Vice Chair considered whether the labour relations exclusion in s. 135(1)(c) applied. He concluded at para. 55 that the employer's failure to pay back pay and the subsequent ESB proceedings were covered by s. 135(1)(c). As a result, those employer decisions would not be considered as traumatic workplace events or significant work-related stressors.

[54] At paras. 56–60, the Vice Chair considered causation, specifically, whether J.T.'s mental disorder was predominantly caused by the significant work-related stressors that had been identified.

[55] At para. 57, the Vice Chair held that despite the fact Dr. Pappas did not have access to information about all 89 occurrences, he was satisfied she obtained sufficient evidence from J.T. to be able to provide valid expert opinion evidence on causation.

[56] At para. 58, the Vice Chair summarized Dr. Pappas' opinion that:

> …the workplace incidents of bullying and harassment were unpleasant for the worker but concluded that they were only minor factors in the development of his unspecified adjustment disorder. Dr. Pappas stated that the worker's lengthy delay in obtaining "back pay" from the employer along with the associated interactions with the Employment Standards

> Branch were the major factors in the worker's development of his unspecified adjustment disorder. …

[57] At para. 59, the Vice Chair found, based on Dr. Pappas' evidence, that J.T.'s adjustment disorder was not predominantly caused by the significant work-related bullying and harassment stressors. In the result, the Vice Chair agreed with the Board's review officer, and denied J.T.'s appeal.

Summary of Grounds of Review

[58] As set out in his amended petition, and elaborated upon in submissions before me, J.T. seeks review of the Decision on the following nine grounds:

a) the Decision is patently unreasonable because WCAT relied on Dr. Pappas' assessment when it knew that she did not have the relevant and correct information regarding the 89 incidents and 32 occurrence reports;

b) the Decision is patently unreasonable because WCAT did not ensure that Dr. Pappas had the same information it was considering in terms of the causative significance of work-related stressors;

c) it was procedurally unfair for WCAT not to obtain a further report from Dr. Pappas that would take into account all of the relevant information, namely J.T.'s written description of the 89 incidents and the 32 security occurrence reports, or in the alternative for it not to obtain an assessment from a different psychologist that would consider all of the relevant information;

d) it was patently unreasonable or procedurally unfair for WCAT to find that all of the 89 occurrences did not constitute a "traumatic event" without providing any explanation or reasons for that conclusion;

e) it was patently unreasonable for WCAT to find that the events surrounding the termination of J.T.'s employment and his employer's failure to provide him with back pay fall under the s. 135(1)(c) labour relations exclusion;

f) it is procedurally unfair and patently unreasonable that the errors J.T. has identified in the findings of fact have not been corrected on appeal;

g) it was procedurally unfair not to solicit J.T.'s employment records from his employer;

h) it was patently unreasonable for WCAT to not consider J.T.'s emergency response duties as falling under the presumption of cause policy; and

i) it was procedurally unfair for WCAT to decide what evidence would be considered before the January 12, 2022 oral hearing. The December 13, 2021 decision letter was not communicated to J.T. until the oral hearing.

[59] WCAT denies that the Decision was patently unreasonable in any respect, and that WCAT breached the duty of procedural fairness.

Analysis

[60] As frequently occurs, there is substantial overlap between J.T.'s stated grounds of review. The core of J.T.'s complaint is that Dr. Pappas was unable to consider all of the 89 occurrences he says were significant workplace stressors in providing her opinion about the causative significance of those stressors to his mental disorder; that WCAT failed to ensure that Dr. Pappas or another psychologist was provided with complete information about the 89 occurrences; and that these failures led WCAT to wrongly conclude that the significant work-related stressors were not the predominant cause of his adjustment disorder.

[61] In considering whether WCAT was patently unreasonable in relying on Dr. Pappas' opinion in these circumstances, I am mindful that it is not for this court to reweigh the evidence that was before WCAT: *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25 [*Fraser Health*] at para. 30. Findings on causation are findings of fact: *Fraser Health* at para. 30. Findings of fact are reviewable on the patent unreasonableness standard of review. The question is not whether I agree with WCAT's findings on causation.

The question is whether there is a rational basis for WCAT's findings about causation: *Bellia v. Workers' Compensation Appeal Tribunal*, 2018 BCSC 1974 at para. 39.

[62] I have concluded that it was patently unreasonable for WCAT to fail to ensure that Dr. Pappas or another psychologist was provided with complete and accurate information about the 89 occurrences. Further, it was patently unreasonable for WCAT to rely on Dr. Pappas' opinion on causation given that she was provided with only incomplete information.

[63] The core of WCAT's reasoning on this central issue is found at para. 57 of the Decision, where the Vice Chair wrote:

> [57] As already outlined as a preliminary matter, I am satisfied that Dr. Pappas had access to sufficient evidence concerning the worker's significant work-related stressors at the time of the November 24, 2019 psychology assessment in order to provide a valid opinion on the likely cause of the worker's unspecified adjustment disorder. I acknowledge that Dr. Pappas did not have access to information on all of the 89 workplace incidents outlined in the worker's January 10, 2020 letter to the Board. However, I am satisfied that Dr. Pappas obtained sufficient evidence from the worker about the critical workplace incidents of bullying and harassment during the course of the detailed psychology assessment, including during the in-depth interview and psychological testing, to provide valid expert opinion evidence on the worker's mental disorder diagnosis and the cause of that diagnosis. The Board also had provided Dr. Pappas with a summary of the 11 most significant workplace reported by the worker during the initial October 2019 claim application interview.

[64] It is "'clearly irrational' or 'evidently not in accordance with reason'" to accept a psychologist's opinion on causation of a mental disorder when that psychologist has not been provided with complete information about all of the significant work-related stressors which might have causative significance. It is clearly irrational to think that a sound opinion on whether a number of significant work-related stressors were the predominant cause of a person's mental disorder, when the psychologist providing the opinion was not informed of all of the significant work-related stressors in issue.

[65] Since January 2020, J.T. had been trying to ensure that Dr. Pappas had complete information about the 89 occurrences. He tried to provide further information directly to Dr. Pappas, but Dr. Pappas declined to review or comment on any issues unless she was requested to do so by the WCAT. J.T. requested both the Board and WCAT to ensure that Dr. Pappas was provided with complete information, but decision-makers at every level, including in the WCAT Decision now under review, have refused to do so.

[66] Section 135(1)(ii) of the *Act* requires that to be compensable, a mental disorder must be "predominantly caused by a significant work-related stressor, including bullying or harassment, or a cumulative series of significant work-related stressors, arising out of and in the course of the worker's employment". This requires the decision-maker to assess the causative significance of the significant work-related stressors that have been found to exist.

[67] In the Decision, WCAT accepted at para. 45 that a number of the 89 occurrences were significant work-related stressors. Dr. Pappas was only advised about 11 of those occurrences by the Board. The account she was given of one of the most serious of the 11, the ammunition incident, was not complete. Her conclusion that J.T.'s adjustment disorder was not predominantly caused by work-related stressors is fatally undercut by the Board's failure to ensure that she was informed about all of the significant work-related stressors which may have caused J.T.'s adjustment disorder. It was patently unreasonable for WCAT to accept and rely on Dr. Pappas' opinion on causation in these circumstances.

[68] This is not a question of second-guessing WCAT's findings of fact or of reweighing the evidence that was before WCAT. Rather, I have concluded that WCAT's reliance on the Pappas opinion, when Dr. Pappas was not provided with complete information about all of the significant work-related stressors, was patently unreasonable.

[69] It was open to WCAT to cure this problem by taking up J.T.'s request that it refer him to another psychologist or ask Dr. Pappas to update her assessment with

consideration of all 89 occurrences. Section 297(2)(b) of the *Act* gives WCAT the power to request the Board to investigate a matter further, and s. 302(1) provides that if WCAT determines independent advice from a health professional would assist in reaching a decision, it may retain a health professional to give such advice. As stated by Willcock J.A. in *Erskine v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2014 BCCA 96 at para. 35:

> The obligation of the Board to seek out further evidence arises where it is of the view that the evidence is not sufficiently complete and reliable to arrive at a sound conclusion with confidence.

[70] Whether to require a further investigation or to retain a health professional to provide independent advice are discretionary decisions, subject to review on the patently unreasonable standard.

[71] Section 58(3) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*] provides that a discretionary decision is patently unreasonable in the following four circumstances:

> (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.

[72] WCAT submits that the court should not even consider this ground of review, because J.T. failed to address s. 58(3) in his petition. WCAT submits that the burden is on J.T. as the petitioner to establish that this discretionary decision violated the criteria set out in s. 58(3), and having failed to do so, it is not for the court to construct a possible legal path to relief, even for a self-represented litigant: *Rodrigues v. Tribe*, 2016 BCSC 1233 at paras. 36-37.

[73] I do not find this submission persuasive. The substance of J.T.'s complaints about WCAT's failure to require a further investigation or to retain a health professional to provide independent advice is clear on the face of the amended

petition. This is not a situation, as in *Rodrigues*, where the plaintiff had failed to file intelligible pleadings. WCAT was not prejudiced in any way, and was fully able to address this issue in its written and oral submissions. While WCAT properly appeared at this hearing to defend the merits of the Decision, it is important that a statutory tribunal do so in a manner that recognizes the difficulties self-represented litigants may experience in navigating the legal and procedural intricacies of a petition for judicial review, and the significant advantages an institutional litigant such as WCAT has in this process.

[74] Given the critical importance of Dr. Pappas' opinion on causation to J.T.'s claim, I find that it was a patently unreasonable exercise of WCAT's discretion not to either request the Board to investigate further or to retain a health professional to conduct a further assessment of J.T. with access to the full facts regarding the significant work-related stressors. It is a statutory requirement for a mental disorder claim that the disorder be predominantly caused by significant work-related stressors. Dr. Pappas did not have the information before her necessary to arrive at an informed expert opinion on that issue. WCAT failed to take this statutory requirement into account in refusing to obtain a second or updated psychological assessment.

[75] In the alternative, WCAT's failure to obtain a further or updated psychological assessment may also be framed as a breach of procedural fairness. The causation of J.T.'s adjustment disorder was of fundamental importance to his claim; it is the only essential element WCAT found he had failed to establish. The acceptance, or otherwise, of his mental disorder claim was of obvious importance to J.T. J.T. was entirely dependent on WCAT in seeking to have Dr. Pappas review all 89 occurrences, as she declined to consider the matter further without a formal request from WCAT. In these circumstances, I find that WCAT owed J.T. a high level of procedural fairness, and it was a breach of that duty for WCAT to fail to ensure that it had the benefit of a psychological assessment of causation based on a complete and accurate record.

[76] This analysis addresses the first three of J.T.'s grounds of review, and will result in the Decision being set aside and the matter remitted to WCAT for a new hearing. In the circumstances, I will deal relatively briefly with J.T.'s other grounds of review.

[77] J.T.'s fourth ground of review was that it was patently unreasonable or unfair for WCAT to find that all of the 89 events did not constitute a "traumatic event" without providing any explanation or reasons for this.

[78] I do not agree with this submission. At paras. 47–50 of the Decision, the Vice Chair considered this issue. At para. 50, the Vice Chair wrote that he had reviewed all 89 incidents and accepted there were a number of incidents of bullying and harassment, including J.T. being mocked for his prior history of alcohol abuse and rehabilitation. By contrast, the Vice Chair did not find the workplace incidents to be traumatic. At para. 47, the Vice Chair referred to Policy #C3-24.00, which "notes that exposure to bullying or harassment is an example of a significant work-related stressor not a traumatic workplace event".

[79] Viewed in context, WCAT's Decision provides an adequate explanation for why the Vice Chair held the events complained about by J.T. were not traumatic events. He found they were bullying and harassment, which binding Board policy states are examples of significant work-related stressors, not traumatic events. WCAT's reasoning and conclusion on this issue are not patently unreasonable.

[80] J.T.'s fifth ground of review was that it was patently unreasonable for WCAT to conclude that the events concerning the termination of his employment and the employer's failure to pay him back pay falls under the s. 135(1)(c) labour relations exclusion. J.T. submits in connection with this ground that he submitted evidence that the employer laughed at him when he was terminated and that the employer failed to comply with the *Employment Standards Act*.

[81] WCAT dealt with this issue at paras. 51–55 of the Decision. The Vice Chair referred to s. 135(1)(c), which requires that "the mental disorder is not caused by a

decision of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the worker's employment". The Vice Chair referred to Interim Practice Directive #C3-3, which provided that there may be situations that fall outside of "routine" employment issues and may therefore give rise to compensable mental disorders.

[82] At para. 54, the Vice Chair held that this was a situation where there was a routine dispute about back pay, and that the employer's failure to pay back pay when J.T. was terminated and the ensuing ESB processes fell under the s. 135(1)(c) exclusion.

[83] I find that reasoning and conclusion were not patently unreasonable. It is not clearly irrational or evidently not in accordance with reason. The termination of a worker's employment is explicitly listed in s. 135(1)(c) as an example of an excluded employer decision relating to a worker's employment. It was open to WCAT on the record before it to conclude that the labour relations exclusion applied to the back pay dispute.

[84] J.T.'s sixth ground of review was that it is procedurally unfair and patently unreasonable that the identified errors in the findings of fact have not been corrected at any level. This is essentially a restatement of J.T.'s first three grounds, which I have already dealt with. I need not consider it further.

[85] J.T.'s seventh ground of review was that it was procedurally unfair not to solicit his employment records. This issue was dealt with at para. 36 of the Decision where the Vice Chair stated there was a real question whether the employer in fact had the security occurrence reports and daily shift reports. He further stated that the employer had not questioned the accuracy of J.T.'s descriptions of the 89 occurrences. The Vice Chair concluded on this issue that he was satisfied that there was sufficient evidence in the Board file to allow him to proceed with the appeal in confidence.

[86] Viewed contextually, I find no breach of procedural fairness arising out of WCAT's decision not to solicit J.T.'s employment records from his employer. J.T.'s own evidence was that his supervisor had not passed on all of his security occurrence reports to the employer. WCAT accepted that the 89 events occurred, and that they included a number of significant work-related stressors. In the circumstances, it was not necessary to solicit the records to provide J.T. with a fair appeal hearing.

[87] I note that WCAT submits that the question of whether to attempt to obtain J.T.'s employment records was a discretionary decision, reviewable on the patently unreasonable standard. If this ground of review is assessed under that rubric, the result is the same – the decision not to obtain the employment records was not patently unreasonable.

[88] J.T.'s eighth ground of review was that WCAT's decision that his emergency response duties did not fall under the presumption of cause policy was patently unreasonable.

[89] This issue is addressed at para. 38 of the Decision. The Vice Chair noted that security guard is not listed as an eligible occupation. He further held that he was not satisfied that J.T.'s limited dispatching duties would allow him to be considered under the dispatcher occupation.

[90] In my view, the Vice Chair's reasoning and decision on this issue are not patently unreasonable. "Eligible occupation" is defined in s. 135(5) as meaning "correctional officer, emergency medical assistant, firefighter, police officer, sheriff or, without limitation, any other occupation prescribed by regulation". The *Mental Disorder Presumption Regulation*, B.C. Reg. 136/2018 provides that "emergency response dispatcher" is an "eligible occupation". Security guard is not prescribed as an eligible occupation. It was not clearly illogical for the Vice Chair to conclude that J.T.'s limited dispatching duties did not bring him within the definition of an emergency response dispatcher, and thus within the presumption. Further, and as noted by the Vice Chair, the presumption only applies to situations where a worker is

exposed to a traumatic event. The Vice Chair held that J.T. was not subjected to a traumatic event, and I have held that that finding was not patently unreasonable. If J.T. was not subjected to a traumatic event, then the presumption has no role to play in any event.

[91] J.T.'s ninth ground of review was that it was procedurally unfair to decide what evidence would be considered before the January 12, 2022 oral hearing. J.T. submits that the December 13, 2021 letter was not communicated to him until the day of the oral hearing, when it was read aloud by the Vice Chair. He submits that it was procedurally unfair for WCAT not to ensure that he was told about what evidence WCAT would be considering prior to the oral hearing. He also submits that WCAT failed to accommodate his disabilities in the manner in which the letter was communicated to him.

[92] A transcript of portions of the January 12, 2022 oral appeal hearing was provided by WCAT for the purposes of this judicial review, in accordance with an order I made on July 18, 2023. At the outset of the appeal hearing, the December 13, 2021 letter was referred to. J.T. said that he had not received it. J.T. asked the Vice Chair if he could screen share the letter, but the Vice Chair said that he was not allowed to do that at a hearing, and offered to read it to him, which he proceeded to do. Among the issues addressed in the December 13, 2021 letter was the Vice Chair's decision not to attempt to obtain the security occurrence reports and daily shift reports from the employer. The letter also advised J.T. that he could provide evidence and information in support of his position that the mental disorder presumption applies to his claim, as well as any medical or psychological clinical records relevant to his diagnosis and the cause of that disorder, at the oral hearing.

[93] I have significant concerns about the fairness of the process employed by the Vice Chair to communicate the contents of the letter to J.T. J.T. said then and continues to say now that he had not received the December 13, 2021 letter in advance of the appeal hearing. The letter provided J.T. with important information about what evidence WCAT was prepared to receive from him, and what evidence it

would not be soliciting from the employer. Clearly WCAT intended J.T. to receive that information in advance of the oral hearing, and he should have been provided with that information in advance of the hearing so that he could marshal whatever additional evidence and information might have been available to him, and do so in the knowledge that WCAT would not be soliciting any additional information from the employer.

[94] In my view, it was procedurally unfair for the Vice Chair to continue with the appeal hearing once he learned that J.T. had not received the December 13, 2021 letter in advance of the appeal hearing. It is no answer to say, as WCAT does before me, that J.T. chose to continue the appeal hearing. J.T. was self-represented at the appeal hearing, and the Vice Chair should, in the circumstances, have offered to adjourn the hearing to allow J.T. to receive the letter, digest its contents, and prepare for the appeal hearing in accordance with WCAT's directions.

Remedy

[95] In his amended petition, J.T. sought an order setting aside the Decision, and remitting the matter to WCAT for a full rehearing on the merits. He also sought an order for costs. In oral submissions, he also sought an order requiring WCAT to ensure that Dr. Pappas or another doctor was shown all the evidence.

[96] WCAT opposed any remedy being ordered, but submitted that if I concluded the Decision was patently unreasonable, the proper order would be to set the Decision aside and remit the matter to WCAT. It further submitted that in that event I should also set aside the reconsideration decision. WCAT submitted that the usual rule that no costs should be awarded against it as an administrative tribunal should apply. WCAT requested that if I was considering making a costs order against it that it be given the opportunity to make submissions on costs after judgment, as the basis for potentially doing so might vary depending on the grounds upon which the Decision is set aside: *18320 Holdings Inc. v Thibeau*, 2014 BCCA 494.

[97] I have found the Decision to be patently unreasonable. I have also found that WCAT breached procedural fairness in two respects.

[98] In my view, the proper order is to order that the Decision is set aside, and to also set aside the subsequent reconsideration decision. The matter is remitted to WCAT for a new oral hearing. I found the Decision to be patently unreasonable insofar as WCAT failed to ensure that either Dr. Pappas or another psychologist performed an assessment of J.T. that included information about all 89 occurrences being provided to them. I do not think any further order is necessary from this court. It will be up to WCAT in holding to the new oral hearing to take the steps necessary to ensure that the patently unreasonable error I have identified does not occur again.

[99] J.T. has been successful in this judicial review. I am considering ordering costs against WCAT. I will provide both parties with an opportunity to make submissions on costs. They are to contact Supreme Court Scheduling to schedule a 45-minute hearing at which I will hear the parties' submissions on costs.

"L.M. Lyster J."

LYSTER J.