COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *C.A.S. v. British Columbia (Workers' Compensation Appeal Tribunal),* 2024 BCCA 315

Date: 20240906
Docket: CA50000

Between:

C.A.S.

Applicant/Appellant
(Petitioner)

And

Workers' Compensation Appeal Tribunal

Respondent
(Respondent)

File Sealed in Part

Before: The Honourable Madam Justice DeWitt-Van Oosten
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated January [redacted], 2023 (*C.A.S. v. British Columbia (Workers' Compensation Appeal Tribunal*)), [redacted neutral citation], [redacted docket number]).

The Appellant, appearing in person:	C.A.S.
Counsel for the Respondent:	I.D. Morrison
Place and Date of Hearing:	Vancouver, British Columbia August 21, 2024
Place and Date of Judgment:	Vancouver, British Columbia September 6, 2024

Summary:

The appellant seeks an extension of time to file a notice of appeal. HELD: The application is dismissed. It is not in the interests of justice to grant an extension in the circumstances of this case. The proposed appeal is bound to fail.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

[1] The appellant, C.A.S., seeks to appeal an order from the British Columbia Supreme Court dismissing her petition for judicial review. The petition challenged a June 2021 decision of the Workers' Compensation Appeal Tribunal ("WCAT").

[2] For purposes of the appeal, the appellant seeks four orders: (1) an extension of time to file her notice of appeal; (2) a waiver of appeal-related filing fees; (3) a permanent sealing order covering the entirety of the appeal file; and (4) application costs against the respondent. At a previous appearance in this Court, the appellant was granted an anonymization order. As such, I will use initials in place of her full name.

Factual background

[3] In May 2019, C.A.S. was head-butted by a client at work. She made a claim to the Workers Compensation Board ("WCB"). WCB accepted her claim for a concussion. However, in October 2019, WCB decided that the appellant was not entitled to wage-loss benefits resulting from the injury.

[4] C.A.S. requested a review of WCB's decision. She was assisted in the review by someone from the Workers' Advisers Office. The appellant argued that she was entitled to wage-loss benefits. In support of her position, she provided a written statement and letters from her family physician. In her statement, she said: "As of October 31, 2019 … my symptoms have been resolved – date of recovery and full return to work as indicated in medical note". A letter from her family physician, dated November 7, 2019, confirmed that her concussive symptoms had resolved and the appellant could return to work, albeit at a different location of her employer. On

review, C.A.S. sought wage-loss benefits for the specific period of June 23, 2019 to October 15, 2019.

[5] The Review Officer disagreed with WCB's original determination. Based on the material submitted by the appellant, the Officer was satisfied that: C.A.S "… had ongoing symptoms from her compensable concussion …" after May 2019; was "temporarily disabled" by those symptoms when she went off work in June 2019 (on the advice of a physician); and "… continued to be disabled at least in part …" until October 15, 2019. In May 2020, the Review Officer varied WCB's original decision and determined that the appellant was entitled to wage-loss benefits for June 26, 2019 to October 15, 2019.

[6] Although C.A.S. had succeeded in obtaining wage-loss benefits, she appealed the Review Decision to WCAT. (She was granted an extension of time for that purpose.) In her notice of appeal she said she continued to experience symptoms arising from the workplace injury. She asked for financial compensation in the form of wage-loss and/or a long-term disability award, as well as further coverage for treatment. C.A.S. was represented in the appeal through the Workers' Advisers Office.

[7] In the material before WCAT, the appellant acknowledged having previously told her family physician that the headaches associated with the concussion had improved. She also acknowledged that she had been cleared to return to work in October 2019. However, she said she was prematurely forced back to work for financial reasons and that her symptoms had not actually resolved by then. She said she continued to suffer from "… post-concussive disorder and residual headaches" after October 2019. The WCAT package included medical records from various health care providers seen by C.A.S. between October 2019 and January 2021.

[8] WCAT denied the appeal. In doing so, it took into consideration the appellant's statement and position before the Review Division that the symptoms associated with the workplace injury had resolved by October 2019. WCAT was

troubled by the inconsistency between what had been told to the Review Division and the appellant's position in the appeal, namely, that "… she only told [her physician] that she had recovered because she felt forced to return to work for financial reasons". From WCAT's perspective, this inconsistency:

> [97] … [brought] the credibility of her evidence in relation to her symptoms and her disability into question. She [was] essentially stating on appeal that she lied to [her physician] and to the Review Division because she needed to be cleared to return to work.
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> WCAT Decision Number: [Redacted] (June [Redacted], 2021).

[9] WCAT acknowledged that when significant credibility issues or factual disputes arise in the context of an appeal, it will usually hold an oral hearing. However, the appellant did not ask for an oral hearing. When she commenced her appeal, the appellant elected on the prescribed form to have the appeal addressed in writing. In October 2020, WCAT wrote to the appellant's representative (with a copy to her), confirming that the appeal would proceed in writing. There is no indication the appellant took issue with the confirmed process, either in response to the WCAT letter or later in the appeal. In any event, WCAT was satisfied it could resolve the credibility issue on the record before it, including the appellant's written submissions: at para. 99.

[10] In reaching this latter conclusion, WCAT referred to this Court's decision in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.), wherein the Court noted that the "real test" for assessing the credibility of a narrative from someone with an interest in the outcome of a case is its "… harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": at 357. This approach to assessing credibility remains good law. See, for example, *Starrett v. Campbell*, 2016 BCCA 236 at para. 20 and *Sellathurai v. Bremjit*, 2023 BCCA 268 at para. 32.

[11] Ultimately, WCAT found that the appellant's evidence of concussion symptoms beyond October 2019 was "… not in harmony with the preponderance of

probabilities …": at para. 106. WCAT noted, for example, that the appellant said she told her physician she had recovered by October 2019 so that he would clear her to return to her employment. However, she did not, in fact, return to her employment. Instead, she resigned from her job and started new work with another organization in a different jurisdiction in November 2019: at para. 104. WCAT also noted that the appellant could have contacted her family physician post-October 2019 to tell him that she had not recovered. There was no independent confirmation in the record that she did so for the purpose of seeking an amended or clarified opinion: at paras. 104–105. Furthermore, the appellant's statement to the Review Officer that her symptoms had resolved by October 2019 was dated November 2019, and not sent to the Review Officer until February 1, 2020. She was copied on the latter submission. From WCAT's perspective, there was:

> [108] … ample opportunity for [C.A.S.] to alert her representative by then, at the latest, that she had not recovered. And, there was certainly no reason to maintain the alleged deception when she was fully employed and had been since November 18, 2019.

[12] WCAT found that the appellant's explanation for the position taken before the Review Division strained credulity: at para. 109. WCAT also concluded that to the extent the post-October 2019 medical documentation related the appellant's symptoms to the workplace incident, those records could not be given any weight. From WCAT's perspective, they were grounded in "unreliable evidence" from C.A.S. about her symptoms: at para. 111. The tribunal concluded that the appellant's statements to WCAT and medical service providers after October 2019 were "… less reliable than her more contemporaneous evidence to [her family physician] and the Review Division": at para. 112. Ultimately, WCAT found the appellant ineligible for wage-loss benefits after October 15, 2019. It also concluded she was not eligible for a referral for an assessment of permanent disability benefits.

[13] In June 2021, WCAT denied the appeal. Notwithstanding the outcome, the appellant was held entitled to be reimbursed for expenses incurred in producing medical documentation for the appeal.

[14] I understand the appellant's employer did not make substantive submissions in response to the WCB claim, the review of that claim by the Review Officer, or the appeal to WCAT.

Petition for judicial review

[15] In December 2021, C.A.S. sought judicial review of WCAT's decision.

[16] The appellant alleged in the Supreme Court that WCAT's decision was patently unreasonable, that she was not afforded procedural fairness, and that WCAT discriminated against her. She asked to have her claim remitted to WCAT for reconsideration with specific directions, including that WCAT hold an oral hearing to determine all credibility and reliability issues.

[17] The judge began his analysis of the petition by addressing the applicable standard of review.

[18] He correctly instructed himself that any finding of fact or law or exercise of discretion by WCAT in relation to a matter over which it has exclusive jurisdiction must not be interfered with unless shown to be patently unreasonable. Questions of procedural fairness are determined by asking whether WCAT "acted fairly": *Administrative Tribunals Act*, S.B.C. 2004, c. 45, ss. 58(2)(a)-(b).

[19] A WCAT decision will be patently unreasonable if it is: (a) exercised arbitrarily or in bad faith; (b) exercised for an improper purpose; (c) based entirely or predominantly on irrelevant factors; or (d) fails to account for statutory requirements: *Administrative Tribunals Act*, s. 58(3). WCAT decisions are subject to a highly deferential standard of review: *Baun v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2024 BCCA 195 at para. 56.

[20] Specific to the latter point, the judge instructed himself with reference to *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, in which the Supreme Court of Canada clearly stated that in British

Columbia, judges are to "accord the utmost deference" to workers' compensation decisions:

> [28] … In the workers' compensation context in British Columbia, a patently unreasonable decision is one that is "openly, clearly, evidently unreasonable": *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80, 46 B.C.L.R. (4th) 77, at para. 33; *Vandale v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2013 BCCA 391, 342 B.C.A.C. 112, at para. 42 (emphasis deleted).
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> [29] By stipulating the standard of patent unreasonableness, the Legislature has indicated that courts should accord the utmost deference to the Tribunal's interpretation of the legislation and its decision.
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> [Emphasis added.]

[21] Applying this framework, the judge determined that the appellant did not meet the test for judicial intervention.

[22] He found that her claim of discriminatory treatment was vague and advanced without supporting material. There was no established basis for her suggestion that in dismissing the appeal, WCAT acted in its own self-interest for cost-cutting purposes or otherwise.

[23] The judge also rejected the appellant's assertion of procedural unfairness. First, as the appellant acknowledged in the petition proceeding, she elected to have the WCAT appeal proceed in writing. The judge found no merit to her submission that she did not know an oral hearing was available. The form she completed to commence the appeal clearly indicated the option of an oral hearing. Second, the material she submitted to WCAT and the position she took about her ongoing symptoms was plainly inconsistent with her position before the Review Officer. In this context, the judge found the appellant's suggestion that she had no way of knowing her credibility would be at issue to be untenable.

[24] Finally, the appellant was unable to persuade the judge that WCAT's decision was patently unreasonable. To the contrary, he concluded that the tribunal's reasoning was "… well within the boundaries of a reasonable credibility finding based on the materials before it and the submissions made, especially having regard to WCAT's expertise with respect to work-related injuries".

[25] The petition was dismissed on January 3, 2023.

Appeal to this Court

[26] On July 10, 2024, C.A.S. filed a notice of appeal from the dismissal. This was approximately 17 months past the prescribed deadline for filing: R. 6(2)(a) of the *Court of Appeal Rules*, B.C. Reg. 120/2022 [*Rules*]. To advance her appeal, the appellant requires an extension of time.

[27] As noted, she also applies for: (1) a waiver of appeal-related filing fees; (2) a permanent sealing order (she has been granted a temporary sealing order pending a final determination); and (3) application costs against the respondent.

[28] I understand that a sealing order has been granted in the Supreme Court proceeding. However, it is limited in scope. I have reviewed a copy of that order (dated February 1, 2022), and it appears to apply only to records that refer to intimate partner violence, including any protection orders that may have been issued in the Provincial Court.

[29] WCAT (the only respondent to the appeal) has filed a response to the appellant's applications. It takes no issue with a waiver of fees and sealing order. However, WCAT says C.A.S. does not meet the criteria for an extension of time to appeal. It also says the parties should bear their own application costs.

Analysis

[30] The appellant filed numerous documents in support of her applications. I have reviewed those documents, including: (1) an "Anonymization/Sealing Order Argument" filed on July 11, 2024; (2) a written argument entitled "Leave for Late Appeal and Related Orders" filed on August 9, 2024; and (3) affidavits from the appellant filed on July 11, August 9, and August 16, 2024, respectively.

[31] After the application hearing, the appellant provided a three-page letter to the Court's Registry. The letter sought to repeat or add to many of the submissions already made about the appellant's personal circumstances and the reasons for

delay in filing her appeal, and reiterates concerns expressed before me about legal counsel for the respondent, WCAT's handling of her claim, and the system generally. The letter is not properly before the Court, and accordingly, I have not taken it into account.

[32] In my view, the appellant has received a fair opportunity to advance her applications. She first appeared on these applications on July 29, 2024. That Chambers hearing was adjourned to allow the appellant additional time to put the material she considered necessary for her applications in proper form. She did so and the matter then proceeded before me on August 21, 2024. For the purpose of the latter hearing, I had the benefit of two written arguments prepared by the appellant and a comprehensive affidavit with multiple exhibits, including written submissions that she filed in the Court below and various medical records. The appellant also made oral submissions and was given opportunity to reply to submissions made on behalf of WCAT.

Extension of time to appeal

[33] The questions to ask on an application for an extension of time are well-established and set out in *Davies v. C.I.B.C.*,15 B.C.L.R. (2d) 256 at 259–260, 1987 CanLII 2608 (B.C.C.A.):

1) Was there a *bona fide* intention to appeal?
2) When was the respondent informed of the intention?
3) Would the respondent be unduly prejudiced by an extension of time?
4) Is there merit in the appeal?
5) Is it in the interests of justice that an extension be granted?

The burden is on the applicant to show that they meet these criteria: *Rapton v. British Columbia (Motor Vehicles)*, 2011 BCCA 71 at para. 19.

[34] The "interests of justice" enquiry, the last of the five questions, is overriding and can encompass a myriad of factors, including the interests of the parties and the circumstances and length of the delay: *Sielsky v. Monaghan*, 2020 BCCA 346

at para. 30 (Chambers), citing *Clock Holdings Ltd. v. Braich*, 2009 BCCA 437 at para. 24. Whether an extension is shown to be warranted in a particular case involves an individualized assessment and is informed by the whole of the circumstances. This includes the fact that a party is self-represented, which has been recognized to weigh in favour of an extension of time: *Emond v. British Columbia (Attorney General)*, 2023 BCCA 143 (Chambers) at para. 39. The appellant relies upon this factor in her case.

Was there a bona fide intention to appeal?

[35] C.A.S. has provided a number of explanations for the delay in filing her notice of appeal. Out of respect for her privacy, I consider it neither necessary nor appropriate to specify each of them. Suffice it to say that in her affidavits and when before me, the appellant described very challenging personal circumstances leading up to and since the end of 2022. These challenges are said to include (but are not limited to): multiple trips to hospital; residential treatment; the loss of family members; continued debilitating symptoms associated with untreated injuries; homelessness; sexual and physical violence; and other forms of abuse. The appellant says her personal circumstances rendered her unable, and in fact, incapable of understanding or diligently attending to the appeal process in this Court.

[36] The respondent does not take issue with the explanations offered by the appellant in her affidavits, *per se.* Rather, it raises two main concerns about the weight, if any, those explanations properly attract at this stage of the appeal process. First, the respondent suggests that the asserted connection between the appellant's personal circumstances and a resulting incapacity to file a notice of appeal until July 2024 finds little support in the documentation appended to her affidavit (i.e., there is no letter from a physician or someone else independently affirming any such connection). Second, and perhaps more importantly, during the period in question, the appellant was able to file multiple process-related materials, including court actions. The respondent says she filed: (1) an appeal to WCAT in March 2023 in relation to another WCB decision; (2) a petition for judicial review in October 2023 in

relation to another WCAT decision; and (3) two petitions for judicial review in May 2024 arising out of WCAT decisions.

[37] The appellant does not deny these filings, but says the fact that they exist cannot be determinative of a *bona fide* intention to appeal because they each have their own explanatory context, including having been long completed before the filing date and/or having been completed and filed with the assistance of one or more others.

[38] I do not consider it necessary to resolve this first issue, or indeed, to weigh each of the explanations provided for the delay in filing an appeal and make findings about them. On the whole of the material before me, including the medical documentation that forms part of the record in the Supreme Court and this Court, I am prepared to give the appellant the benefit of the doubt on the first of the *Davies* questions. I accept that she has never been content with WCAT's determination, has been voicing concern about the correctness of that decision since it was made, and that she has faced a number of personal challenges in her life since then, all of which could reasonably affect a self-represented litigant's ability to take the steps necessary to bring and advance an appeal in a timely way, and to prepare the materials necessary for doing so.

Was the respondent informed of the appeal and is there prejudice?

[39] Prior to filing the notice of appeal in July 2024, the appellant did not notify the respondent of an intention to do so. However, the respondent does not allege prejudice from the late filing. As such, the second and third of the *Davies* factors are neutral.

Is there merit to the appeal?

[40] In my view, this is the most contentious of the issues raised by the appellant's application for an extension, and ultimately, determinative of her request. It is well-established that an extension of time to file will generally not be granted if an appeal is without merit or bound to fail, even where the appellant may satisfy other

of the *Davies* factors: *Wu v. Murray*, 2023 BCCA 270 (Chambers) at para. 19. In other words, the existence of a *bona fide* intention to appeal and the absence of prejudice arising from a late filing will not automatically lead to an extension.

[41] C.A.S. has many things to say about WCAT's decision, its approach to her statements, its review of the documentation submitted by her, and the fact that the appeal was determined in writing. In addition to asserting patent unreasonableness and procedural unfairness, she also alleges ongoing negligence on the part of WCB, and as I understand it, attributes many of her struggles since May 2019—psychological, physical, financial, and employment-related—to WCB, the Review Division, WCAT, and the courts.

[42] It is readily apparent that C.A.S. is frustrated with the resolution of her workplace claim and feels she has not been treated fairly. Among other things, her August 9, 2024 affidavit states this:

> The respondents … have continually and negligently opposed any and all of my injuries and denied any and all supports. They would not be prejudiced by this appeal although they continually and pathetically claim ignorance and zero culpability for my injuries and the ongoing harms I have suffered as a result. They will not continue to get away with these outright negligences and abuses that have led to continual threats to my security of person and safety and survival.
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> …
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> It is most certainly in the interest of justice to grant this extension as there are critical security issues for especially vulnerable and injured workers at stake at the outright negligence and subtle but real hostilities and insurance abuses committed by the WCB and WCAT and the Courts, disproportionately resulting in harms to vulnerable and otherwise innocent citizens …

[43] I appreciate C.A.S. believes that WCB, related decision-makers, and the courts, have failed her. However, her proposed appeal and the request for an extension of time do not account for the legal standard of review that applies to an appeal such as this one, and in particular, the narrow scope for appellate intervention because of WCAT's role as a specialized tribunal. Claims that proceed before WCAT are not re-litigated at the appellate stage. In advancing her appeal, C.A.S. cannot ask that a division of this Court review the whole of the medical and/or

other documentation that has been produced since the workplace incident in May 2019 and reach its own conclusions as to whether symptoms arising from that injury detrimentally affected the appellant's well-being beyond October 2019, and continue to do so. That is, essentially, what C.A.S. wants to have done. She indicated at the hearing that she has further evidence to adduce in support of ongoing symptoms. A broad-scoped, fact-finding review of the nature contemplated by C.A.S. would constitute jurisdictional error by this Court.

[44] Instead, if this appeal were allowed to proceed, it would focus on two issues: (1) whether the Supreme Court judge identified the proper standard of review; and (2) whether he correctly applied that standard of review. In answering the second of these questions, the Court would step into the shoes of the judge and review WCAT's decision, but only for the purpose of assessing whether that decision was patently unreasonable or procedurally unfair: *Dhillon v. Workers' Compensation Appeal Tribunal*, 2022 BCCA 251 at paras. 53–56. In conducting this review, the Court would not owe deference to the judge; however, his reasons may be instructive and worthy of respect: *Vandale v. Workers' Compensation Appeal Tribunal*, 2013 BCCA 391 at para. 43; *R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, 2021 BCCA 67 at para. 56.

[45] Importantly, the Court's review of WCAT's decision would be conducted with reference to the record before WCAT at the material time and any procedural fairness materials that may have been filed before the Supreme Court, not medical records or other documentation that was not produced to WCAT, or has been obtained since then and potentially sheds further light on the appellant's symptoms: *English v. Richmond (City)*, 2021 BCCA 442 at para. 86, citing *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387. See also, *Goulding v. Workers' Compensation Appeal Tribunal*, 2015 BCCA 223 at paras. 6–7.

[46] It is within the context of this framework that I have concluded there is no realistic prospect a division of this Court would interfere with the order made by

the Supreme Court judge and remit the appellant's May 2019 workplace claim to WCAT for reconsideration.

[47] The appellant's primary substantive contention in the petition was that it was patently unreasonable for WCAT to not assign the post-October 2019 medical records and reports any weight because the observations and/or the opinions stated therein were based on purportedly unreliable information from the appellant.

[48] First, the appellant says that when considering inconsistencies between the information before the Review Officer and WCAT, the tribunal failed to appreciate the fact that when she said the things she did, she was on medication and in desperate personal circumstances. In other words, there was an understandable explanatory context for the apparent inconsistencies that was relevant to WCAT's assessment, but ignored.

[49] Second, the appellant says that even if her statements suffered from credibility or reliability issues (which she denies), WCAT ignored all of the other information submitted on appeal, including independent information provided by more than eight medical practitioners specific to the appellant's condition after October 2019. How can it be that something said or claimed to her regular physician in the fall of 2019 has been found to undermine everything that came thereafter, including any and all objective observations made by physicians who have no interest in the outcome of the case? The appellant submits that in allowing her statement and position before the Review Division to have the effect that it did, WCAT's decision is "openly, clearly, [and] evidently unreasonable": *West Fraser Mills* at para. 28. Moreover, she says it was fundamentally incorrect for the Supreme Court judge to affirm that decision. The fatal flaws with WCAT's determination were plain to see.

[50] On the issue of procedural unfairness, the appellant argued in the petition that the absence of an oral hearing deprived her of the ability to respond to WCAT's concerns about her credibility and reliability, explain the context in which her past

statements had been made, or correct the many inaccuracies that she said revealed themselves in the post-October 2019 medical documentation placed before WCAT.

[51] I have gone through the Review decision, WCAT's decision, the judge's reasons, and the material filed in this Court. Given the highly deferential standard of review applied on appeal, I consider the appellant's appeal bound to fail.

[52] WCAT's decision reveals a detailed consideration of the procedural history of the matter involving C.A.S. (including the previous WCB-related determinations), the circumstances surrounding her workplace injury, and the medical documentation that was before it, including records that were not considered by the Review Officer and extended well beyond October 2019. In assessing that evidence, WCAT explicitly instructed itself that if evidence supporting a finding different from the Review Division was "evenly weighted", WCAT must resolve that issue in favour of the worker: at para. 11. In other words, WCAT understood that the new material could make a substantive difference, and importantly, that it was obliged to give effect to any such difference where warranted.

[53] The appellant does not contend that in assessing WCAT's decision, the judge identified an incorrect standard of review. She says he applied the standard incorrectly and should have found the decision patently unreasonable. However, she does not identify a specific error in principle that tainted WCAT's reasoning process or otherwise rendered its assessment of the medical documentation clearly unreasonable. She does not contend that WCAT incorrectly instructed itself on the legal principles or analytical framework it was obliged to apply, exceeded its jurisdiction, or materially misapprehended the record—in whole or in part.

[54] Instead, as I see it, the appellant's substantive challenge to WCAT's decision, and consequently, to the judge's dismissal of her petition, was and remains grounded in her disagreement with how the factual record was interpreted by WCAT and her personal belief that she continues to suffer symptoms connected to the May 2019 workplace incident, as opposed to other accidents, physical injuries, or ailments that she experienced before and after that incident. A disagreement with a

tribunal's interpretation of evidence does not render its decision patently unreasonable. As recently affirmed in *Maung v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 371, it is "… not for the court on review or appeal to reweigh evidence or second guess conclusions drawn from the evidence and substitute different findings": at para. 42, emphasis added.

[55] In this case, it cannot be said there was no evidence to support WCAT's findings and the inferences it drew. In deciding that the appellant's explanations for her previous statements about recoverability strained credulity, WCAT considered a number of different factors and explained the reasons for its conclusions. From the face of its reasons, all indications are that the record was considered as a whole. Significantly, this included documentation from the appellant's family physician that independently confirmed recovery in October 2019.

[56] Specific to procedural fairness, I appreciate that in light of WCAT's findings, the appellant considers an oral hearing to have been necessary. However, she did not request one, which was a choice for her to make. Moreover, as aptly noted by the judge below, she elected a written process in the context of an appeal in which the material she was advancing (as opposed to another party), and the position she was taking, were plainly inconsistent with the position advanced before the Review Officer. I agree with the judge's conclusion that in those circumstances, there is no merit to the suggestion that the appellant and/or her representative would not have anticipated the possibility of a credibility issue.

[57] WCAT does not have a statutory obligation to provide an oral hearing in every case. Section 297(1) of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, stipulates that subject to any rules, practices, or procedures established by the chair of the tribunal, WCAT "may conduct an appeal in the manner it considers necessary, including conducting hearings in writing or orally with the parties present in person, by teleconference or videoconference facilities or by other electronic means". As explained in *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc.*, 2013 BCCA 55:

> [52] … A tribunal is entitled to choose its own procedures, as long as those procedures are consistent with statutory requirements. On review, the courts will determine whether the procedures that the tribunal adopted conformed with the requirements of procedural fairness. In making that assessment, the courts do not owe deference to the tribunal's own assessment that its procedures were fair. On the other hand, where a court concludes that the procedures met the requirements of procedural fairness, it will not interfere with the tribunal's choice of procedures.
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> [Emphasis added.]

[58] When it became apparent that the material filed in support of the WCAT appeal raised credibility and reliability issues, WCAT turned its attention to the fact that the appeal was in writing only and asked whether those issues could reasonably be determined on the basis of the record. It recognized that fairness principles were engaged, considered those principles, and looked to the case law for guidance: at paras. 97–102. Ultimately, it exercised its discretion to proceed by way of written submissions, as allowed for by the statutory scheme and consistent with the appellant's stated choice.

[59] I see no prospect of a division finding that this exercise of discretion was unprincipled, unreasonable, or unwarranted in the circumstances. Although the appeal was in writing, the appellant was given the opportunity to be heard on the basis of the record she advanced, including new material. The right to be heard is a key right protected by the rules of natural justice: *Maung* at para. 43. The letter sent to WCAT in January 2021 with the appellant's attachments provided a detailed break down of her material and made submissions about its implications, namely, that "she continued to suffer from headaches, poor concentration, and brain fog since her concussion, although it was reported to have improved". This submission acknowledged and accounted for the prior evidence about recovery in October 2019. There is no indication that after submitting the new material to WCAT, the appellant changed her view on the appropriateness of a written process and requested an oral hearing.

[60] In light of the highly deferential standard of review that would apply to the substantive issues on appeal and the principles that govern procedural unfairness, the appellant has not persuaded me there is any merit to her appeal.

Is it in the interests of justice to grant an extension?

[61] Contrary to the appellant's suggestion, this case does not have far-reaching implications for other WCB claims. Instead, WCAT's decision reflects a fact-specific, individualized determination that was grounded in statements and medical documentation specific to the appellant, coupled with a credibility and reliability assessment that the tribunal was entitled to make in exercise of its jurisdiction. In my view, it is not precedent-setting.

[62] In any event, I have concluded there is no merit to the appeal and it is bound to fail. In light of that finding, I do not consider the interests of justice to weigh in favour of a 17-month extension of time to file the notice of appeal. Accordingly, I dismiss the application for an extension.

Sealing order

[63] A sealing order prohibits access to all or part of a court record and thereby limits the open court principle: S*herman Estate v. Donovan*, 2021 SCC 25. To obtain this order, an applicant must show: (1) that court openness poses a serious risk to an important public interest; (2) a sealing order is necessary to prevent that risk because reasonably alternative measures will not prevent it; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects: *Sherman Estate* at para. 38.

[64] The appellant says there are many reasons why a sealing order is necessary in her case. The material before WCAT (which presumably formed part of the petition record) includes multiple private, sensitive, and potentially protected records, including: medical records, psychological information, information specific to adult and child sexual violence, and information detailing intimate partner violence. The appellant says that if this information is publicly available, it is likely to affect her

already-impacted psychological well-being and/or expose her to violence and other life-threatening circumstances. This includes the potential for harm perpetrated by a former partner who has been violent against her in the past, and according to the appellant, continues to seek out information about her for nefarious reasons. The appellant has filed two letters from physicians in support of a sealing order. One of the letters asks that the appellant's "involvement in [the] matter be kept private" to limit her distress. The other states it would be in the appellant's best interests if "references to her could be anonymized in the public file with regards to the [S]upreme [C]ourt and matters related to her work place injury".

[65] As noted, the appellant has already been granted an anonymization order in the appeal, which restricts access to her identity. She also has a limited sealing order in the Supreme Court and the opportunity, if she chooses, to seek an expanded order in that Court specific to the petition record. Any order I make here would apply only to the appeal file. I understand there may already be an outstanding application for a comprehensive sealing order in the Supreme Court, which was filed at the appellant's initiative.

[66] In its current state, the appeal file consists of forms completed by the appellant as prescribed by the *Rules*, written submissions prepared by her (in this Court and below), one or more of the decisions at issue, the respondent's material, and some of the medical records that I understand were before WCAT and/or the Supreme Court. Some of this information has already been disclosed or published through WCAT's decision and the judgment in the petition proceeding.

[67] To obtain an order of the nature sought by the appellant, she must establish that the risks asserted by her "… cannot be adequately addressed without an order": *Mother 1 v. Solus Trust Company Limited*, 2021 BCCA 461 at para. 70, emphasis added. On the whole of the material before me, I do not consider a sealing order that covers the entire appeal file warranted. The anonymization order already ameliorates much of the prejudice claimed by the appellant. However, I accept that public access to her medical records and/or any information already sealed in the

Court below is legitimately of concern. On balance, in light of the material before me, and given the respondent's position, I am prepared to grant the application for a sealing order to the extent that it protects the appellant's medical records from review. Doing so is consistent with the approach taken in *C.S. v. British Columbia Workers' Compensation Appeal Tribunal)*, 2019 BCCA 406 at para. 38. I am also prepared to grant a sealing in respect of any records that have been or will be sealed in the Supreme Court that also form part of this Court's file.

No fees order

[68] Given my conclusion on the extension application, I see no purpose in making a prospective no-fees order. The need for that type of an order has been rendered moot.

[69] I note that when previously before this Court, the appellant was granted a temporary waiver of fees for the purpose of filing affidavit material in support of her applications. I will leave that waiver intact and make it permanent. Consistent with the spirit and intent of that order and given the appellant's financial circumstances, I am also prepared to declare that the appellant is not required to pay other filing fees she has incurred thus far in the appeal proceeding (before there was a determination that the appeal is without merit—R. 85(4)). My dismissal of her request for a fees waiver is therefore prospective only.

Costs of the applications

[70] Given my conclusion on the extension application, I see no basis for awarding costs against the respondent. The request for an extension was the only part of the appellants' applications that the respondent opposed and the appellant did not succeed. The appellant alleges unprincipled and distressing conduct by the respondent in the litigation, but respectfully, that allegation is unfounded on the material before me.

Disposition

[71] For the reasons provided, I dismiss the application for an extension of time to file the notice of appeal.

[72] I allow the application for a sealing order to this extent: the order applies to any medical records filed by the appellant in the appeal. Any records that presently are (or will be) subject to a sealing order in the Supreme Court's petition file must also be treated as sealed. The anonymization order continues in effect.

[73] I dismiss the application for a prospective no fees order and I decline to award application costs against the respondent. For greater clarity, the appellant does not have to pay any appeal-related filing fees that she has incurred thus far in the appeal process.

"The Honourable Madam Justice DeWitt-Van Oosten"