

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Edwards v. British Columbia (Workers' Compensation Appeal Tribunal)*,
2023 BCSC 1277

Date: 20230725
Docket: 191623
Registry: Victoria

IN THE MATTER OF the *Judicial Review Procedure Act*, S.B.C. 1996, C. 241, and the *Workers Compensation Act*, R.S.B.C. 2020, C. 492; AND IN THE MATTER OF a final decision of the Workers' Compensation Appeal Tribunal rendered on February 25, 2019, under No. A1801060.

Between:

Jim Edwards

Petitioner

And

Workers' Compensation Appeal Tribunal

Respondent

Before: The Honourable Mr. Justice A. Saunders

On judicial review from: An order of the Workers' Compensation Appeal Tribunal, dated February 25, 2019 (*Re: Jim Edwards*, WCAT Decision No. A1801060).

Reasons for Judgment

Counsel for the Petitioner: V. Ishkanian

Counsel for the Respondent: K. Koles

Place and Date of Hearing: Victoria, B.C.
May 30-31, June 1, 2022

Further Written Submissions Received: July 8 and 14, 2022; February 22,
March 9 and 13, 2023

Place and Date of Judgment: Victoria, B.C.
July 25, 2023

[1] The petitioner applies to this Court by way of judicial review to quash a February 25, 2019 decision of a Panel of the Workers' Compensation Appeal Tribunal ("WCAT"), and to have the appeal of his claim for compensation benefits re-heard. The claim arose out of a low back injury he sustained on February 8, 2017 (the "Claim Date"), in the course of his employment as a technical field representative with Shaw Communications Inc. The employer did not participate in the WCAT appeal, nor in this judicial review.

Background

[2] As of the Claim Date, Mr. Edwards had had a lengthy history of back pain and related disability. He had initially injured his back in 1989, and was off work for four years. He sustained a work-related injury in 2004 when he bent over to retrieve a toolbox, and was off work for seven months. Imaging studies of his spine taken at that time showed some developmental spondylolisthesis and degenerative changes at the lumbar and lumbosacral levels. His employer accommodated his return to work in 2004, limiting his hours of work and his use of ladders. Mr. Edwards experienced continuing back pain, but managed his symptoms by continuing to perform core-strengthening and stretching exercises, walking as much as possible, and limiting recreational activities.

[3] The subject injury was sustained when Mr. Edwards slipped on ice. He fell backwards against a house, hitting his hand and shoulder, and then fell to the ground, onto his toolbox. He immediately felt back pain, which increased over time to the point that he has chronic severe pain and restrictions in his activities of daily living. He has not worked since the Claim Date, and he appears, on all the evidence, to be markedly more impacted by his back pain than had previously been the case.

Claim History

[4] Mr. Edwards applied to the Workers' Compensation Board (the "Board") for benefits. The Board accepted a claim for back strain injury resulting from the February 8, 2017 workplace accident.

[5] In a decision of a Case Manager dated June 30, 2017, the Board terminated Mr. Edwards' benefits as of June 19, 2017, and concluded that the February 2017 accident had not caused an aggravation of his pre-existing spondylolisthesis and degenerative disc changes. The Case Manager wrote:

After a thorough review of your file I have concluded that while there is evidence of a chronic and pre-existing condition, there is no evidence that this condition was aggravated, accelerated or otherwise changed by the February 8, 2017 workplace incident.

Consistent with all evaluations and reviews of the medical documentation, your claim remains accepted for a back strain injury only. A condition which is expected to resolve in a matter of a few weeks.

Any further symptoms now presenting can only be attributed to your chronic and pre-existing spondylolisthesis and degenerative disc changes, conditions that have not been accepted as part of this claim.

The medical evidence that led to that decision, including the opinions of the Board medical advisor Dr. Robinson, is reviewed below.

[6] Mr. Edwards appealed to the Review Division, which confirmed that ruling in a decision dated March 16, 2018.

[7] Prior to giving that decision, the Review Division had sought an opinion from a Review Division medical advisor, Dr. Bulger, as to whether the compensable back pain had resolved. Dr. Bulger reviewed the Board's medical documents, including notes of physical findings during assessments of Mr. Edwards conducted in May and June 2017. In a medical opinion dated February 14, 2018, Dr. Bulger concluded,

Although the worker's objective findings continued to include diminished range of motion and paraspinal muscle tenderness, the area of tenderness and pain had significantly expanded from the initial assessment. Findings of increased muscle tone in the thoracic T9 area at the PMMP [Pain and Medication Management Program] assessment were not present initially following the injury. This spreading of symptoms and findings is not consistent with the normal healing of an acute lumbar strain injury. Most lumbar spine strain/sprain injuries will recover to the extent that individuals return to normal activity within 2-6 weeks.

It is my opinion that by the time the worker was assessed for the PMMP [i.e. by June 6-7, 2017] that the initially accepted lumbar strain injury had resolved and that at that time the diagnosis was acute on chronic back pain.

[8] In giving its decision, the Review Division explicitly referenced Policy Item C3-16.00 from the Board's Rehabilitation Services & Claims Manual ("RSCM"), "Pre-existing Conditions or Diseases". The Review Officer said,

Policy item C3-16.00, *Pre-Existing Conditions or Diseases*, is of assistance when determining whether a described work activity was more than a trivial cause in aggravating a pre-existing condition. It provides that a pre-existing condition may be aggravated by an employment-related incident or trauma, or series of incidents or traumas. Evidence that the pre-existing condition has been accelerated, activated, or advanced more quickly than would have occurred in the absence of the employment activity may be confirmation that the aggravation resulted from the employment activity.

[9] As did the Case Manager, with respect to determining the role, if any, played by the February 2017 workplace injury in aggravating the petitioner's pre-existing condition, the Review Officer focused on Mr. Edwards' degenerative spinal conditions. The Review Officer accepted the opinion of the Board medical advisor Dr. Robinson as to the absence of evidence of radiological changes in the pre-existing degenerative changes in the spine, and concluded that the workplace injury had not aggravated the petitioner's pre-existing degenerative changes:

The BMA advised that there was no evidence that the February 8, 2017 incident had aggravated the worker's pre-existing back conditions. The BMA explained that her review of the workers medical imaging showed that imaging findings were almost exactly the same following the February 8, 2017, incident as they were 13 years ago. Specifically, the spondylolisthesis was reported as being one centimetre (10 millimetres) in 2004, compared to eight or nine millimetres reported in x-ray and MRI imaging following the workplace incident.

With respect to the worker' [sic] degenerative disc changes, the BMA found that the changes had progressed to becoming mild at discs L3-4, and progressed from mild to moderate at L4-5 and L5-S1. The BMA advised that this was an expected progression, and did not reflect an aggravation of the degenerative disc changes.

[10] The Review Officer further found that the disability associated with the compensable back strain injury had resolved by June 19, 2017; that as the back strain injury had resolved without any residual permanent disability, Mr. Edwards was not eligible for referral to be assessed for a permanent disability award; and that for the same reason, he was not entitled to a vocational rehabilitation referral.

[11] On the latter two points, the Review Officer explicitly walled off his conclusions from any findings as to whether Mr. Edwards was suffering chronic pain, potentially compensable, under RSCM Policy Item C3-22.20, through partial disability benefits under s. 23 of the *Workers Compensation Act*. The Review Officer wrote:

I acknowledge that the worker continues to present with ongoing back pain symptoms, including what would now appear to be chronic pain complaints. The decision before me does not include any decisions regarding whether a chronic pain condition may be acceptable under the claim. The decision by the Board not to accept any medical conditions as permanent is not a decision to specifically deny chronic pain, but is only in relation to the accepted back strain injury, which was considered resolved and not meriting a referral to Disability Awards. From my review of the claim, I do not see that the Board has adjudicated whether a chronic pain condition may be a compensable consequence of the back strain accepted under the claim. As such, it is open to the worker to discuss this with the Board and seek such a decision if he wishes.

[12] As to the former issue, the status of the initially accepted back strain claim, the Review Officer cited Dr. Bulger's opinion that the back strain had resolved. However, the Review Officer omitted any reference to Dr. Bulger having diagnosed "acute on chronic back pain". He did not consider either whether the "acute" component of the acute-on-chronic condition was causally related to Mr. Edwards' workplace injury, nor whether it constituted a compensable aggravation of his pre-existing chronic back pain condition.

[13] The petitioner appealed that decision to WCAT. An oral hearing before a Panel took place on September 12, 2018.

Evidence Before the WCAT

[14] WCAT had before it extensive documentation of the relevant medical history. To summarize, Mr. Edwards had been treated for his February 2017 work injury by his family physician Dr. Barron, who had treated Mr. Edwards' chronic back pain since 2000. In a report dated February 16, 2017, Dr. Barron documented the post-accident worsening of Mr. Edwards' condition. Dr. Barron recommended an expedited MRI.

[15] Dr. Barron's request was reviewed and approved by a Board medical advisor, Dr. Jiwa. In a clinical opinion dated February 20, 2017, Dr. Jiwa made a working diagnosis of acute lumbosacral sprain/strain. He stated,

There is a pre existing condition of spondylosis bilaterally at L5 with anterolisthesis of L5 on S1—the natural history of which is to progress into discogenic symptoms/signs. This pre existing condition predisposes this worker to further injury.

Dr. Jiwa requisitioned an MRI investigation to rule out central disc herniation.

[16] Dr. Barron provided a progress report dated February 27, 2017. At that time, Mr. Edwards was continuing to have moderate pain and limited function, with radicular pain around the abdomen. On examination, the para-lumbar muscles were still tender; for the first time, Dr. Barron noted that the tenderness extended into the para-thoracic muscles.

[17] The MRI results, and Dr. Barron's opinion, were reviewed by the aforementioned Dr. Robinson, a Board medical advisor, in a clinical opinion dated April 21, 2017. Dr. Robinson noted Dr. Jiwa's previous working diagnosis, including Mr. Edwards' predisposition to further injury. Dr. Robinson opined that there was "no new diagnosis nor aggravation". Dr. Robinson referred Mr. Edwards to Dr. O'Driscoll, a medical and return-to-work specialist.

[18] Dr. O'Driscoll examined Mr. Edwards on May 3, 2017. She diagnosed him as having apparently "sustained a low back strain in the presence of chronic spondylitic changes of his spine and anterolisthesis", and appearing to have "significant kinesophobia and an element of catastrophization". She recommended that he participate in a pain management program.

[19] Mr. Edwards underwent a multi-disciplinary PMMP assessment on June 6–7, 2017. The assessment report's summary of his current condition included the following:

The patient reports that the primary area of pain that affects his function is in the lower lumbar region. He does again describe the pain radiating anteriorly into the lower-to-mid abdomen. He also describes intermittent spasms

occurring in his lower and mid back, which results in twisting and contraction where he is laterally flexed and rotated to one side...

...

He reports his secondary area pain is mid-thoracic pain, which he has had for approximately 14 years. He describes this as a pressure and burning pain. Again, he described this at 8/10 and it has radiating components to his mid-chest...

[Emphasis added.]

The assessment team set out their diagnostic impression:

Mr. Edwards is a 54-year-old male who presents with acute on chronic lumbosacral pain without radicular symptoms or radiculopathy. Negatively impacting on his pain symptoms are features of significant catastrophizing and insomnia. ... The L5-S1 disc protrusion and anteriolesthesis may be adding to local low back pain and spasm but does not appear to be producing radicular changes.

[Emphasis added]

[20] Dr. Robinson prepared a clinical opinion dated June 21, 2017. After summarizing the findings from the imaging studies, Dr. Robinson wrote:

There is certainly no objective evidence of aggravation, or acceleration of the pre-existing conditions.

There is no evidence that the actual physical findings of spondylolisthesis and mild to moderate degenerative changes ought to have affected the extent of this injury nor the recovery.

Rather it seems to be the worker's reaction to injury then and now that have played the major role in the extent of the presentation and the duration of recovery, rather than the physical changes pre-dating this claim.

[21] This was medical evidence that had been available to the Board at the time of the June 30, 2017 decision. As noted above, the subsequent Review Division decision was also based in part on the clinical opinion of Dr. Bulger.

[22] In advance of the WCAT oral hearing, Mr. Edwards submitted to WCAT an August 14, 2018 medical report of Dr. Barron. Dr. Barron expressed the following opinions:

a) That Mr. Edwards' pre-existing condition was chronic back pain;

- b) That he significantly aggravated his pre-existing chronic back pain and related chronic pain syndrome;
- c) That the February 2017 injury had caused significant deterioration in his level of function and significant increase in his level of chronic pain;
- d) That his condition [which WCAT inferred to mean his aggravated chronic pain] had not stabilized or reached the point of maximal medical recovery by June 19, 2017; and,
- e) that as of June 19, 2017, the petitioner continued to be functionally disabled by chronic back pain, and medically unfit to return to his pre-injury employment.

[23] The Panel also heard oral testimony from the petitioner and his wife. The petitioner gave evidence that Dr. Barron had referred him to a neurosurgeon, Dr. Janicki, whom he saw in February 2018, and that the neurosurgeon had recommended fusion surgery. Subsequent to the hearing, WCAT obtained further medical records, including a February 23, 2018 consultation report from Dr. Janicki to Dr. Barron. Dr. Janicki's impression was that the petitioner was suffering "chronic disabling back pain related to degenerative spondylolisthesis at L5-S1 with mild degeneration at the L4-L5 segment".

The WCAT Decision

[24] As a threshold issue, the Panel considered a submission made by Mr. Edwards' representative during the hearing, that as an alternative remedy there be a referral to Dr. Janicki or to an independent medical provider as to whether he had sustained an aggravation of his pre-existing spondylolisthesis and degenerative disc changes as a result of the February 2017 workplace injury. The Panel declined this request.

[25] On the substantive issue of Mr. Edwards' entitlement to claim benefits, the Panel characterized the issue in the same terms as the Review Officer, focusing on

the physiology of the degenerative changes, as opposed to the pain Mr. Edwards had suffered prior to the workplace injury, which he claimed to have been aggravated relative to his pre-accident condition. The Panel framed the questions as being,

Did the worker aggravate his pre-existing spondylolisthesis and degenerative disc changes as a result of his February 8, 2017 work injury?

[26] The Panel reviewed the applicable Board policies, including C3-16.00, and the medical evidence. The Panel found that Dr. Barron's August 2018 medical report had not sufficiently addressed Dr. Robinson's opinion regarding the nature of the pre-existing degenerative changes or the results of the imaging studies, and gave Dr. Barron's opinion no weight:

[92] ... Dr. Barron has not contradicted Dr. Robinson regarding the nature of spondylolysis, spondylolisthesis and degenerative disc disease or the results of the worker's imaging studies. He merely has stated that just because there is no change in the pre-existing structural abnormalities does not mean that the injury did not aggravate pre-existing chronic pain. Therefore, Dr. Barron has only indirectly addressed Dr. Robinson's conclusion. Dr. Barron's opinion is not of probative value in addressing the issue of whether the work incident was of causative significance to an aggravation of the pre-existing spondylolisthesis and degenerative disc changes.

[27] Relying on the opinion of Dr. Robinson, the Panel concluded that Mr. Edwards:

[93] ... did not sustain an aggravation of his pre-existing spondylolisthesis and degenerative disc changes arising out of and in the course of the February 8, 2017 work incident.

[28] However, the Panel at the same time overturned the Review Division's decision regarding the status of the strain injury. The Panel found that the low back strain injury had neither resolved nor stabilized as of June 19, 2017, but continued to cause temporary disability, entitling Mr. Edwards to continuing wage loss benefits beyond that date. In reaching this conclusion, the Panel commented on Dr. Bulger's clinical opinion:

[119] The worker had a number of symptoms which Dr. Bulger found inconsistent with a strain injury. I do not find this surprising in light of the fact that the worker had an acknowledged pre-existing condition. The whole of the

worker's circumstances indicate he was a vulnerable person likely to have a lengthier recovery than was the norm. One must take the worker as one finds him. His underlying pre-existing conditions, his prior injuries and his fearfulness regarding medical treatment are all factors which may have been less than ideal for promoting rapid recovery.

Given that the back strain had not then resolved or stabilized, the Panel held that it was premature to determine whether he had an actual or potential permanent partial disability as of that date, and it was therefore premature to consider referral to the Board's disability awards department. The Panel also left open the question of whether Mr. Edwards would be entitled to claim chronic pain benefits once his strain injury stabilized as a permanent condition.

Issues

[29] Compendiously, the petitioner says that the Panel's decision was patently unreasonable in its failure to consider whether the subject accident aggravated his pre-accident back condition, within the meaning of Policy Item C3-16.00. While acknowledging that the Panel allowed the payment of continuing wage loss benefits beyond June 19, 2017, the petitioner says that the Panel erred through implicitly limiting his entitlement to benefits to the continuation of a discrete injury. The petitioner submits:

If this court or WCAT on a re-hearing of this matter decides that the [petitioner] *did* suffer an aggravation, then perforce the plateau date and his entitlements to wage loss, vocational, and pension benefits will be decided anew by WCB.

...

...if Edwards' pre-existing condition *was* aggravated, then Edwards would be entitled to new WCB decisions covering his wage loss, vocational, and pension benefits, in which event the pain he suffers could result in a finding that he is entitled to a higher pension award even if the underlying degenerative condition remained the same.

[Emphasis in original.]

[30] The petitioner further says that the Panel erred in the exercise of its discretion, in deciding not to obtain a further medical opinion.

Standard of Review

[31] There is no dispute as to the applicable standards of review.

[32] For matters of fact and law, the applicable standard of review is patent unreasonableness: *Administrative Tribunals Act*, SBC 2004, c.45, s. 58(2)(a) [ATA]. It is this standard that governs review of the Panel's decision on aggravation of the petitioner's pre-existing condition.

[33] In *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10, leave to appeal to SCC ref'd, 40106 (24 November 2022), Mr. Justice Groberman, writing for a five-member division, restated the conventional interpretation of that standard, declining to reformulate it in light of the new approach to reasonableness *simpliciter* following the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Mr. Justice Groberman stated,

[129] While there have occasionally been calls for judicial reinterpretation of the patent unreasonable standard [cit. omit.] this Court has not reinterpreted the standard. In *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211, Saunders J.A., speaking for the Court said:

[27] ... [A] court may only interfere with a decision of the Board when the court is satisfied that the Board's decision is patently unreasonable. That standard continues to apply notwithstanding developments of the common law standards of review, and it continues to mean what it meant when the *Administrative Tribunals Act* came into force: *Red Chris [Red Chris Development Company Ltd. v. United Steelworkers, Local 1-1937]*, 2021 BCCA 152] at para. 29.

[28] Patent unreasonableness is the standard that is most highly deferential to the decision maker. There are many descriptions of the standard. The explanation found in *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 (aff'd *Victoria Times Colonist, a Division of Canwest Mediaworks Publications Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 25-G*, 2009 BCCA 229) is useful:

[65] When reviewing for patent unreasonableness, the court is not to ask itself whether it is persuaded by the tribunal's rationale for its decision; it is to merely ask whether, assessing the decision as a whole, there is any rational or tenable line of analysis supporting the decision such that the decision is not clearly irrational or, expressed in the *Ryan [Law Society of New Brunswick v. Ryan]*, 2003 SCC 20] formulation, whether

the decision is so flawed that no amount of curial deference can justify letting it stand. If the decision is not clearly irrational or otherwise flawed to the extreme degree described in Ryan, it cannot be said to be patently unreasonable. This is so regardless of whether the court agrees with the tribunal's conclusion or finds the analysis persuasive. Even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long as they do not affect the reasonableness of the decision taken as a whole, the decision is not patently unreasonable.

[29] In other words, the standard is at the most deferential end of the reasonableness standard

[130] The patently unreasonable standard remains the most deferential standard of review known to Canadian law. Because it lies at the constitutional limit of deference to a tribunal, its definition has remained stable. This is in contrast to the definition of the "reasonableness" standard, which has gradually been refined.

[131] In *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, the Supreme Court of Canada described the standard as follows:

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

[34] The discretionary decision of the Panel on the obtaining of a further medical opinion, is also subject to review under a standard of patent unreasonableness, but as modified by s. 58(3) of the *ATA*, which provides:

- (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.

Discussion

[35] As I have noted, both the Panel and the Review Division reached their decisions in reliance on Dr. Robinson's opinion that there was no objective evidence of aggravation or acceleration of Mr. Edwards' pre-existing condition, and no evidence that the actual physical findings of spondylolisthesis and degenerative changes ought to have affected the extent of his strain injury or his recovery from it. The Panel rejected the opinion of Dr. Barron—that the workplace injury had caused significant aggravation of a pre-existing condition—as having no probative value, and considered the opinion of Dr. Bulger only in respect of the issue of whether the strain injury had resolved. The Panel gave no weight to—and in fact, did not even acknowledge—the diagnosis of “acute on chronic back pain” that had been given by Dr. Bulger and by the PMMP team. The Panel did not consider whether Mr. Edwards' ongoing signs and symptoms may have been manifestations of the types of injury to which, in the opinion of Dr. Jiwa, his pre-existing condition had predisposed him.

[36] These failures to address and weigh competing evidence stem from the more fundamental error of the Panel, and the Review Division before it, having defined Mr. Edwards' pre-existing condition as the pre-existing spondylolisthesis and degenerative disc changes. Having confined its inquiry to the narrow issue of whether those physical conditions had been aggravated, it was only natural for the Panel to regard Dr. Robinson's opinion as conclusory in respect of applying Policy Item C3-16.00. The Panel provided no explanation for having interpreted the policy so narrowly, nor for having failed to consider whether there were alternative characterizations of Mr. Edwards' pre-existing condition supported by the medical evidence: e.g. that the pre-existing condition could have possibly been considered to have been “a level of functionally significant, but not disabling, discogenic back pain”; or, alternatively, “chronic back pain”, regardless of its precise cause.

[37] The Panel's overly restrictive understanding of what constituted a pre-existing condition, for the purposes of Policy Item C3-16.00, was patently unreasonable. It is a notorious feature of back pain that symptoms can appear, and that symptoms and

functionality can worsen, without corresponding changes in objective radiological findings. The Board's responsibility in such cases is to determine whether increased signs and symptoms, and changes in function, are causally related to the trauma of a workplace injury, or whether they are mere manifestations of the natural history of the underlying disease: see *Kostiuk v. Workers' Compensation Appeal Tribunal*, 2019 BCSC 363 at paras. 133–136. To describe the Board's responsibility in this fashion does not intrude on the Board's exclusive jurisdiction over the interpretation and application of Board policy; it is simply a description of how but-for causation analysis must be applied, as a matter of logic. How the Board does so in any particular case will vary with the circumstances of the worker and the nature and quality of the evidence. But to require objective evidence of accelerated physical degeneration as a precondition to compensation for aggravation of a pre-existing condition, which in effect is what the Panel did in the present case, is to subject a worker to an impossibly high standard.

[38] As noted by Madam Justice MacNaughton in *Kostiuk* at para. 154, medical opinions about the source of back pain are not determinative of whether a workplace accident aggravated or accelerated the course of a worker's condition. A rational engagement with the medical evidence and Policy Item C3-16.00 would have led the Panel to treat the lack of objective findings of physical changes to Mr. Edwards' degenerative conditions not as conclusory, but at best as only as one piece of the puzzle. It ought to have led the Panel to consider holistically Mr. Edwards' pre-accident condition (just as, at para. 119 of the decision, quoted above, it viewed Mr. Edwards' condition holistically in respect of the resolution of the sprain injury), and to weigh all the medical evidence relevant to the aggravation issue. And it ought to have led the Panel to consider whether the diagnosis of "acute on chronic back pain" made by both Dr. Bulger and the PMMP team was sufficient to support a finding of aggravation within the meaning of Policy Item C3-16.00.

[39] WCAT submits that the Panel's decision was not patently unreasonable, as it sets out a rational, tenable interpretation of Dr. Robinson's clinical opinion and application of that opinion to Board policy, which are matters falling within its

exclusive jurisdiction. WCAT's jurisdictional competence however is only a rationale for courts treating its decisions with the highest level of deference. It cannot cure decisions that are, to quote from *Speckling*, "openly, clearly, evidently unreasonable". The Panel's decision on aggravation falls into that category.

[40] Accordingly, the matter is remitted to WCAT for reconsideration in accordance with these Reasons.

[41] I do not find that the Panel's decision not to seek a further opinion from Dr. Janicki was patently unreasonable within the meaning of s.58(3) of the *ATA*. Whether WCAT finds it necessary or desirable to seek further medical opinion in reconsidering its decision in accordance with these Reasons is a matter for its discretion.

"A. Saunders, J."