

Docket No.: CA 162580  
Date: 20000914

**NOVA SCOTIA COURT OF APPEAL**

[Cite as: **Brown v. Nova Scotia (Workers' Compensation Board), 2000NSCA101**]

**Roscoe, Hallett, Saunders, JJ.A.**

**BETWEEN:**

DONALD BROWN

Appellant

- and -

WORKERS' COMPENSATION APPEALS TRIBUNAL OF NOVA  
SCOTIA, WORKERS' COMPENSATION BOARD OF NOVA SCOTIA  
and NOVA SCOTIA POWER CORPORATION

Respondents

---

**REASONS FOR JUDGMENT**

---

Counsel: Michael K. Power, for the appellant  
Sarah Bradfield for the respondent, Workers'  
Compensation Appeal Tribunal of Nova Scotia  
Janet E. Curry and Paula Arab O'Leary for the  
respondent, Workers' Compensation Board of Nova  
Scotia

Appeal Heard: September 12, 2000

Judgment Delivered: September 15, 2000

THE COURT: Appeal dismissed as per reasons for judgment of  
Roscoe, J.A.; Hallett and Saunders, JJ.A. concurring.

**ROSCOE, J.A.:**

[1] This is an appeal from a decision of the Workers' Compensation Appeals Tribunal pursuant to s. 256 of the **Workers Compensation Act**, S.N.S. 1994-95, c.10. Leave to appeal was granted on consent of the parties by this court on June 26, 2000.

[2] On February 15, 1991, the appellant, while employed as a utility man at Nova Scotia Power, slipped on ice and fell. The accident report which he signed on the date of the accident, describes the injury as "broken eye glasses." The first medical report, from his family doctor, dated March 13, 1991, diagnosed "mechanical low back pain" and estimated that the appellant would be temporarily disabled for one week. He worked his regular hours from the date of the accident until the doctor's visit and then missed three days work. He missed four other days of work due to other illness that year. Two years later, in July 1993, the appellant's family doctor wrote to the Workers' Compensation Board to advise that the appellant had developed left leg pain and a CAT scan showed a spinal stenosis at L4-5 and a bulging disc and asking that the Board investigate the "possible connection between his present pathology and his injury of 1991."

[3] The appellant has not worked since August 29, 1993 and had back surgery on November 9, 1993. After numerous hearings, reviews and appeals, the Workers' Compensation Appeal Board in a decision dated January 23, 1996 canvassed the appellant's medical history dating back to 1987 and concluded that there was no

connection between his disc problems and the work place accident. Other than the temporary benefits for the three days in March 1991 and the payment for new glasses previously awarded, no other temporary benefits were found to be payable.

[4] The Workers' Compensation Appeals Tribunal reviewed the matter by paper review, and by decision dated November 29, 1999 confirmed the conclusion that the evidence did not support a finding that the appellant's back problems which required surgery were causally connected to the work place injury.

[5] The appeal from the Tribunal to this court is pursuant to s. 256 of the **Act**:

256 (1) Any participant in a final order, ruling or decision of the Appeals Tribunal may appeal to the Nova Scotia Court of Appeal on any question as to the jurisdiction of the Appeals Tribunal or on any question of law but on no question of fact.

[6] The appellant submits that the Tribunal erred on questions of law and jurisdiction, in failing to implement the proper level of compensation, in failing to consider, adjudicate and compensate the appellant in accordance with the law and in a timely fashion, in failing to address the jurisdictional issues raised in the leave application, in denying the appellant the benefits of sections 187 and 254, and in failing to have an oral hearing.

[7] In **Workers' Compensation Board (N.S.) v. Johnstone, et al., 1999 NSCA 164**, Justice Freeman described the standard of review that this court should employ on an appeal on a question of causation:

[37] Considering the expertise of the Workers' Compensation Appeals Tribunal, the nature of its decisions, and the legislative intent expressed in the language of the statutory scheme, I agree with counsel that the standard of review of the Tribunal's decisions on conclusions of fact by this court remains patent unreasonableness. Conclusions of fact made by the Tribunal are beyond the jurisdiction of this court on appeal unless they are transformed into errors of law or jurisdiction by reason of patent unreasonableness. In my view, no such patently unreasonable error or any error of jurisdiction or law has occurred in the decision under appeal.

[8] In this case, the questions of whether the appellant's back condition and his loss of time from work were causally related to the fall in February 1991, were questions of fact entirely within the jurisdiction and expertise of the Tribunal.

[9] The Hearing Officer, the Appeal Board and the Tribunal all dealt squarely with the questions of causation, pre-existing conditions and exacerbation of them by the work place accident. In light of the weight of the medical evidence, we are not convinced that their findings are unreasonable, let alone patently unreasonable. With respect to the discretion exercised by the Tribunal to proceed by way of paper review rather than an oral hearing, we are not satisfied that in the circumstances of this case that there is any cause for interference by this court. As well, the fact that the Tribunal chose not to exercise its discretion to order an independent medical review, in the absence of a request to do so, does not raise a question of law or jurisdiction. Although the Appeal Commissioner misstated the appellant's medical history in his review of the background of the case, there was an abundance of evidence in support of the factual conclusions and the conclusions were not patently unreasonable.

[10] After reviewing the record and considering the written and oral submissions of

counsel we are satisfied that the Tribunal made no jurisdictional or legal error in dismissing the appeal.

[11] Accordingly, the appeal is dismissed.

Roscoe, J.A.

Concurred in:

Hallett, J.A.

Saunders, J.A.