

NOVA SCOTIA COURT OF APPEAL

Citation: *Surette v. Nova Scotia (Workers' Compensation Board)*, 2017 NSCA 81

Date: 20171103

Docket: CA 460849

Registry: Halifax

In the matter of:

A stated case pursuant to s. 206 of the *Workers' Compensation Act* by the Workers' Compensation Appeals Tribunal to the Nova Scotia Court of Appeal in relation to WCAT Appeal 2016-299;

And, in the matter of:

WCAT Appeal #2016-299 Between:

Lloyd Surette

Appellant

v.

Workers' Compensation Board of Nova Scotia and
Attorney General of Nova Scotia

Respondents
Respondent

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: October 4, 2017, in Halifax, Nova Scotia

Subject: **Workers' Compensation Law. Interpretation of Workers' Compensation Act, S.N.S. 1994-95, c. 10; whether Board Policy is inconsistent with the Act. Compensation for noise-induced hearing loss.**

Summary: This came to the court by way of Stated Case. Mr. Surette was employed as a shipwright for 50-55 years. He retired in December of 2007. In 2015, Mr. Surette had an audiogram which suggested he had occupational noise-induced hearing loss. He applied for workers' compensation benefits. His

claim was denied by a hearing loss adjudicator. He appealed to a hearing officer. That appeal was also denied. He then appealed to WCAT. WCAT found that Mr. Surette was, in all other respects, entitled to be adjudicated for noise-induced hearing loss. However, a Board Policy required him to have an audiogram within five years of having left his employment. He had not done so. Therefore, on the plain wording of the policy he was not entitled to be adjudicated for noise-induced hearing loss.

WCAT stated a case to the Court of Appeal asking it to determine whether the Board Policy was inconsistent with the *Act*.

Issues: Was the Board Policy which required Mr. Surette to have an audiogram within five years of leaving his employment inconsistent with the *Act*?

Result: The Board Policy was inconsistent with the *Act*. The *Act* sets out a statutory scheme for payment of compensation for occupational diseases such as noise-induced hearing loss. The imposition of the five-year audiogram rule was contrary to the express provisions of the *Act*.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 9 pages.