Pinder v. WCB, 2001NWTSC 39

Date: 2001 05 24
Docket: S-0001-CV2000000121

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Workers' Compensation Act*,
R.S.N.W.T. 1988, c. W-6, as amended (the "Act");

AND IN THE MATTER OF a decision of the Appeals Tribunal
made on July 30, 1998, pursuant to Section 7.7 of the *Act.*

BETWEEN:

KARIN PINDER

Applicant

-and-

THE WORKERS' COMPENSATION BOARD OF
THE NORTHWEST TERRITORIES AND NUNAVUT

Respondent

Application for judicial review of a W.C.B. adjudicator's decision regarding denial of benefits and reimbursement of relocation expenses. Allowed in part.

Heard at Yellowknife, NT on April 17, 2001
Reasons filed: May 24, 2001

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE V.A. SCHULER

Counsel for the Applicant: James Posynick
Counsel for the Respondent: Adrian Wright

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REASONS FOR JUDGMENT

[1] This is an application for judicial review of a decision made by an adjudicator for the Workers' Compensation Board ("WCB"). The Applicant seeks orders in the nature of *certiorari* quashing the adjudicator's decision and *mandamus* directing the WCB to follow the directions given in an earlier decision rendered by the Appeals Tribunal.

[2] The Applicant submits that the WCB adjudicator acted contrary to the Appeals Tribunal's decision based on her own view of the medical evidence that was before the Appeals Tribunal and a medical opinion she obtained after the Appeals Tribunal had rendered its decision.

[3] The Respondent submits that the adjudicator did what the Appeals Tribunal had left for her to do and that the Applicant should, if she wishes to appeal the adjudicator's decision, continue with the statutory appeal process under the *Workers' Compensation Act*, R.S.N.W.T. 1988, c. W-6, as amended, a process which she had already commenced by obtaining, albeit unsuccessfully, a review of the adjudicator's decision by a Review Committee.

[4] The Applicant asks for judicial review, not of the Review Committee's decision, but of the adjudicator's decision, on the issue of her entitlement to temporary total disability benefits and reimbursement of her expenses to relocate to another province.

Factual background

[5] In September of 1992 the Applicant sustained a strain in the neck and shoulder area after lifting a heavy box at work. Although she was paid temporary total disability ("TTD") benefits for some time, those benefits were terminated in June 1993 when a WCB adjudicator determined that she had been adequately compensated for the injury and that her continuing symptoms related to a suspected non-compensable ailment which predated the accident.

[6] At the Applicant's request, a review of the adjudicator's decision was held. In its decision of May 8, 1995 the Review Committee said two things that are important for purposes of this application. First, it said that it could find no medical information on file that would confirm that she was totally disabled from work during the period of time under consideration, that is, from the time benefits were denied until May 1995. Secondly, it said there was no causal connection between the accident and her continuing symptoms. The Review Committee therefore upheld the adjudicator's decision to deny further benefits and certain medical expenses which the Applicant had claimed.

[7] The Applicant then appealed to the Appeals Tribunal in March 1997. In her notice of appeal, she alleged that the Review Committee's decision was wrong in part because the work-related injury was severe enough to disable her from returning to work. She asked for benefits retroactive to the date they were terminated.

[8] In response, the WCB wrote to the Applicant's counsel, saying that, "The issue being appealed has been identified as denial of continuing temporary total disability benefits".

[9] After a hearing, the Appeals Tribunal released its decision on July 30, 1998. In that decision, it stated that the Applicant had appealed on four issues, two of which are relevant for purposes of this application. They are: (i) denial of continuing TTD benefits and (ii) denial of reimbursement of costs for medical travel.

[10] The Appeals Tribunal found that the Applicant's "present condition is caused by Thoracic Outlet Syndrome brought on by her work place accident of September 14,

1992". It found that her "condition should be treated as a work-related accident and benefits be awarded accordingly". It varied the Review Committee's decision as follows:

> Issue #1 The Appeals Tribunal overturns the Review Committee's decision and directs client services to accept the [Applicant's] Thoracic Outlet Syndrome as a result of her work place accident.
>
> Issue #2 Upon receiving receipts, the Appeals Tribunal directs client services to reimburse the appellant of all medical costs and medical travel specific to the diagnosis and treatment of the Thoracic Outlet Syndrome.

[11] In August 1998 the Applicant submitted a list of her medical expenses to the WCB. These included expenses arising from her relocation to another province from the Northwest Territories.

[12] The Board's adjudicator responded in April 1999 to the Applicant's request for her benefits and medical expenses that benefits "will be issued accordingly".

[13] In June 1999, however, the adjudicator asked the WCB Medical Advisor to advise her on two points: first, whether the medical information in the Applicant's file supported total disablement for the period March 26, 1993 to December 1995; secondly, whether the Applicant should have a medical examination to determine the extent of permanent medical impairment, if any, resulting from the compensable injury, that is, the Thoracic Outlet Syndrome.

[14] The Medical Advisor responded that there was a lack of sufficient medical evidence for the period June 1994 to January 1995 upon which to base an opinion that she was disabled from work and said that in his opinion the Applicant had developed a chronic pain syndrome from a minor soft tissue injury and that the work accident would not result in an injury with sequelae of permanent impairment. He suggested she should be offered a chronic pain management program.

[15] On June 28, 1999 the adjudicator denied the relocation expense claim and benefits from July 1, 1994 to October 11, 1995 and stated that no benefits would be paid for the period after December 2, 1995. The reason given for denying benefits from July 1, 1994 to October 11, 1995 was a lack of sufficient medical evidence supporting her time off work. The adjudicator also referred to surgery which the Applicant underwent in October 1995 for her condition and stated that the eight weeks of benefits which were payable for the period after the surgery represented a normal recovery period for that

type of injury. She stated further that the Applicant was suffering from chronic pain syndrome and that, following completion of a chronic pain management program, which was the only benefit the Applicant was now entitled to, a medical examination would be arranged to determine the current status of the Applicant's condition.

[16] The adjudicator's decision of June 28, 1999 is the decision for which the Applicant seeks judicial review by this Court. However, after that decision she took other steps which are relevant.

[17] After a review of the adjudicator's decision at the Applicant's request, in January 2000 the Review Committee varied the adjudicator's decision so as to deny benefits for the period July 1,1994 to January 1995 only and extend the termination date for benefits to July 3, 1996. It upheld the denial of reimbursement for the relocation expenses.

[18] The Applicant undertook the above review without legal representation. She subsequently obtained counsel and in December 2000 filed this application for judicial review of the adjudicator's decisions as to the denial of benefits and refusal to reimburse the relocation expenses. No objection was taken to the timing of this application nor was any issue raised in that regard.

[19] The Applicant also sought clarification from the Appeals Tribunal about its decision but was told that no clarification would be forthcoming because the matter was before the Court.

The issues

[20] The following issues arise from the circumstances and the arguments made:

1. whether judicial review is available to the Applicant or whether she should be required to continue with the statutory appeal process;

2. the meaning of the Appeals Tribunal's decision and whether it should be read as dealing only with the issue of causation of the Applicant's condition or also with the issue of payment of benefits to her;

3. whether the adjudicator followed the Appeals Tribunal's decision or acted contrary to it;

4. whether the Applicant should have asked for judicial review of the Review Committee's decision rather than, or in addition to, the adjudicator's decision;

5. if judicial review is available and the adjudicator acted contrary to the Appeals Tribunal's decision, what relief should be granted?

[21] Some of these issues are related. For example, in order to decide whether judicial review is available, the nature of the error alleged to have been made by the adjudicator will have to be considered and that necessitates a review of the decision made by the Appeals Tribunal pursuant to which the adjudicator purportedly acted in rendering her own decision of June 28, 1999. For that reason, there will be some overlap in my consideration of these issues.

Should judicial review be available to the Applicant?

[22] The Applicant submits that the adjudicator revisited the same ground covered by the Appeals Tribunal when it rendered its decision of July 30, 1998. She submits that the adjudicator had no jurisdiction to do that or to make a decision contrary to what the Appeals Tribunal had already decided. Considering the length of time it has taken for her claim to make its way through the system, and that this is a jurisdictional issue, she submits that she ought not be required to follow the statutory appeal process but should instead be allowed to seek judicial review.

[23] The Respondent submits that the adjudicator acted properly, as directed by the decision of the Appeals Tribunal, which effectively left certain further decisions in the hands of the adjudicator. The Respondent argues, therefore, that this application for judicial review is premature and that the Applicant should instead be required to follow the normal appeal process set out in the *Workers' Compensation Act*. This would mean, since the Applicant has already obtained a review of the adjudicator's decision by the Review Committee, she has a further right of appeal to the Appeals Tribunal under s. 25 of the *Act*.

[24] The principles to be applied in determining whether judicial review is available when there is also a statutory right of appeal were set out by the Supreme Court of Canada in *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3. In *Matsqui*, the Court pointed out that the Federal Court Rules, which applied in that case, preserve the traditionally discretionary nature of judicial review. Rule 592(2) of the Rules

of Court of the Northwest Territories similarly reserves for the Judge hearing an application the discretion in determining whether judicial review should be undertaken:

> 592(2) On an application for judicial review, the Court may grant any relief that the applicant would be entitled to in a proceeding for any one or more of the following remedies:
>
> (a) an order in the nature of mandamus, prohibition, *certiorari, quo warranto* or *habeas corpus*;
>
> (b) a declaration or injunction.

[25] The main reason for declining to undertake judicial review is the "adequate alternative remedy" principle. The factors to be taken into account in deciding whether the statutory right of appeal is an adequate alternative remedy were summarized by Lamer C.J.C. in *Matsqui*. They are: the convenience of the alternative remedy, the nature of the error alleged, the nature of the appellate body and any other factors the Court hearing the application deems relevant.

[26] As to the convenience of the alternative remedy, the Applicant points out that she has already been through the appeal process once and that it took some three years (from May 1995, when she applied to the Review Committee to June 1998, when the Appeals Tribunal rendered its decision) for that process to conclude. After the Appeals Tribunal's decision of June 30, 1998, it was a year before the adjudicator notified her of her decision regarding the benefits and the relocation expense. All this time, the Applicants says, she has been without continuing benefits and in poor financial circumstances.

[27] Counsel for the Respondent advised at the hearing of this application that an appeal could possibly be heard by the Appeals Tribunal in six months. He argued that her appeal should go to the Tribunal, which can then make any necessary clarification of its decision. This, however, gives rise to the possibility that the Appeals Tribunal may simply be revisiting a decision it already made on June 30, 1998.

[28] Bearing in mind that the Applicant's claim is for <u>temporary</u> total disability benefits, it does seem that an inordinate amount of time has elapsed while her claim has been dealt with under the statutory processes. Her benefits were initially terminated in 1993. While she has to bear some responsibility for the delay, in that she did not pursue a review of that decision until May 1995, apart from that two year period this still leaves five years over which she has been trying to obtain those benefits.

[29] In these circumstances, I am not persuaded that it can be said that the appeal process under the *Act* is a convenient alternative.

[30] Counsel for the Applicant also pointed out that at the time the Applicant requested an appeal from the adjudicator's decision to the Review Committee, she was not represented by counsel. Therefore, a lack of legal advice may have compelled her to take an inappropriate route in the circumstances. However, I do not consider that she is in any way estopped from applying for judicial review by reason of having already commenced the statutory appeal process. In the circumstances, I do not feel that the fact that she has pursued the statutory route is of much significance.

[31] The nature of the appellate body, in this case the Appeals Tribunal, also seems to me not to be a significant factor. The issue in this case is not whether the Appeals Tribunal or the Court is better able to deal with the subject matter or whether there is some bias on the part of the statutory appellate body. The issue is simply whether the adjudicator acted within her jurisdiction.

[32] The most important factor in this case appears to me to be the nature of the error alleged. The Applicant's position is that the adjudicator simply did not have the jurisdiction to deny the benefits claimed in light of the fact that the Appeals Tribunal had already determined that issue.

[33] In assessing that position, I start with the proceedings before the Appeals Tribunal, which resulted in its decision of July 30, 1998, as it is essential to understand what the Tribunal was asked to decide in order to understand what it did decide and what it left to be acted on by the adjudicator. As I think the issue of the relocation expenses involves different considerations, the following remarks pertain only to the claim for TTD benefits.

[34] The Appeals Tribunal had before it on appeal the Review Committee's decision of May 8, 1995. The Review Committee decided that (i) there was no medical information on file that would confirm that the Applicant was totally disabled from work during the period of time from June 1993 to May 1995 and (ii) there was no causal connection between the accident and the Applicant's continuing symptoms.

[35] The Applicant's notice of appeal from the Review Committee's decision stated that one of the reasons the decision was wrong was that her work-related injury was severe enough to disable her from returning to work. In its correspondence of March 16,

1997 to the Applicant's counsel, the WCB stated that the issue being appealed was the denial of continuing temporary total disability benefits. This is also how the Appeals Tribunal described the first issue at the beginning of its decision.

[36] Clearly, therefore, the Appeals Tribunal had before it the allegation that the Review Committee's decision to deny continuing temporary benefits was wrong on two grounds: first, because there was a causal connection between the accident and the Applicant's continuing symptoms and second, because she was totally disabled from working as a result of the injury.

[37] The Appeals Tribunal's decision includes a recitation of the submissions made to it and in that recitation there are references to the Applicant's submission that although she had always been employed before the accident, she had been unable to work since the accident.

[38] The Appeals Tribunal also had before it a number of medical reports dated from just after the accident in 1992 up to 1995. (Although there was one report dated November 21, 1997, it makes no reference to the Applicant's ability to work.) Included in these was a report from the WCB Medical Advisor dated November 8, 1993, in which he stated that there was no objective evidence indicating any condition that would prevent the Applicant from working. Obviously this was a live issue before the Appeals Tribunal.

[39] Having reviewed all of this, the Appeals Tribunal's decision on the first issue, the denial of continuing TTD benefits, was to overturn the Review Committee's decision and direct "client services to accept the Appellant's Thoracic Outlet Syndrome as a result of her workplace accident... the appellant's condition should be treated as a work-related accident and benefits be awarded accordingly".

[40] The Respondent submitted that the decision of the Appeals Tribunal should be read only as an acceptance of the causal connection between the Applicant's condition and the accident and a direction that client services should review and assess the medical information and determine the appropriate benefits. In other words, client services (that is, an adjudicator) was to give effect to the Tribunal's decision, not simply by paying the benefits claimed, but by determining whether the benefits were payable.

[41] In my view that is not a reasonable way of reading the decision. The Appeals Tribunal overturned the Review Committee's decision and although it did not, in its own decision, go into detail on the issue of disablement as it did on the issue of the causal connection, its decision necessarily means that it did not accept what the Review

Committee held on either point. Since it overturned the Review Committee's decision on benefits, it must have found that decision wrong on both points. There would have been no need to overturn the decision if it was wrong on the causal connection but correct about the lack of evidence of inability to work.

[42] If the Respondent's interpretation of the Appeals Tribunal's decision is correct, it would mean that the Appeals Tribunal simply refused or failed to deal with the Applicant's allegation that the Review Committee was wrong on the issue of her ability to work, and left it to her to start again on that issue with client services, presumably on the basis of the same medical information that was before the Tribunal or by submitting further medical information. I do not see how that can be. It is noteworthy that the Appeals Tribunal did not say that the medical information before it was inadequate or direct the Applicant to obtain more medical information. The Appeals Tribunal was in as good a position as the Review Committee had been to assess the question of the Applicant's ability to work. In my view, the decision can only mean that it rejected the Review Committee's finding that she was not totally disabled as a result of her condition and found that she was in fact totally disabled and therefore entitled to the continuing benefits claimed.

[43] Counsel for the Applicant also relied on s. 7.3 of the *Workers' Compensation Act*, dealing with the jurisdiction of the Appeals Tribunal:

> 7.3 Subject to section 7.7, the appeals tribunal has exclusive jurisdiction to examine, inquire into, hear and determine all matters arising in respect of an appeal from a decision of a review committee under section 24 or 64, and it may confirm, reverse or vary a decision of the review committee.

[44] One of the matters which arose in respect of the Applicant's appeal from the Review Committee's decision was whether the Applicant was totally disabled from working. Pursuant to s. 7.3, the Appeals Tribunal had exclusive jurisdiction to determine that matter. In my view it must be taken to have made that determination, that being its duty and the logical inference from its decision and the Tribunal having made no statement that it was declining to make that determination.

[45] That being the case, it follows that when, in June of 1999, the adjudicator set upon an inquiry as to whether the file information supported total disablement for the period March 26, 1993 to December 1995 and later, she was inquiring into a matter that the Appeals Tribunal had already decided and which was within its exclusive jurisdiction to decide.

[46] The nature of the error alleged, that the adjudicator acted without jurisdiction and contrary to the decision of the Appeals Tribunal weighs in favour, in my view, of making judicial review available to the Applicant on the issue of the denial of benefits.

[47] I conclude that in the somewhat unusual circumstances of this case, and considering that the error alleged is one of jurisdiction, requiring the Applicant to pursue the statutory appeal procedure again when she has already done so and received a decision is not appropriate and does not, especially considering the time that would take, provide an adequate alternative remedy. I would therefore make judicial review available to her on the issue of the TTD benefits.

[48] As to the adjudicator's decision to refuse reimbursement of the relocation expenses, the situation is quite different. I note that the appeal taken to the Appeals Tribunal was based on the Review Committee's denial of reimbursement of costs for medical travel (thus was the issue stated in the Appeals Tribunal's decision). Although the cost of various trips for medical treatment and advice was addressed before the Review Committee, I can find no evidence that the Applicant ever included the expense of relocation to another province in what she was asking for from the Committee. Nor was the relocation expense addressed before the Appeals Tribunal, either orally or in the Applicant's written submissions. While the record does indicate that the Applicant or her counsel told the Appeals Tribunal that she had relocated as a result of her condition and the difficulty of obtaining adequate treatment, nowhere does there appear any statement that she was including the expenses of that relocation in her claim for the cost of medical travel.

[49] The decision of the Appeals Tribunal on the issue of medical travel was that, "Upon receiving receipts, the Appeals Tribunal directs client services to reimburse the applicant of all medical travel costs and medical travel specific to the diagnosis and treatment of the Thoracic Outlet Syndrome". This left it for the adjudicator to decide precisely which costs and travel were specific to the diagnosis and treatment of her condition. Although it may have been preferable for the Appeals Tribunal to have directed that receipts come to it for a decision to avoid any further delay, since it was not alerted to the fact that the relocation expenses would be an issue, and since the other expenses claimed were for various return trips taken for medical consultations, I cannot say that it was unreasonable for the Tribunal to leave the review of receipts to an adjudicator.

[50] From the record, it appears that the first time the Applicant made a claim for the relocation expenses was in 1998, when she submitted receipts for same to the adjudicator after the Appeals Tribunal handed down its decision.

[51] The Applicant also submitted that either the Board should have acted under s. 7.7(2) of the *Act* or the Appeals Tribunal should have acted under s. 7.8, which read as follows:

> 7.7(2) Where the Board considers that the appeals tribunal has failed to properly apply the policy established by the Board, or has failed to comply with the provisions of this Act or the regulations, the Board may, in writing, direct the appeals tribunal to rehear the appeal and give fair and reasonable consideration to that policy and those provisions.
>
> 7.8 The appeals tribunal may vary a decision made by it and may, on its own motion, rehear an appeal.

[52] As to s. 7.7(2), its invocation is clearly a matter within the discretion of the Board and requires that the Board consider that the Tribunal has failed to act in a certain manner. There is no evidence before me which suggests either that the Board has improperly failed to exercise its discretion or that the Tribunal has failed to act in a manner contemplated by the section. The issue whether the travel to relocate was a reimbursable expense was simply never raised before the Tribunal. The only expenses which had been refused by the Review Committee and which were therefore before the Appeals Tribunal on appeal were expenses for travel unrelated to the relocation.

[53] In relation to s. 7.8, again that is a matter for the Tribunal's discretion. As the inclusion of the relocation expense in the medical travel claim was not placed squarely before the Tribunal, there is no basis upon which to find that judicial review should be available to the Applicant on this point.

[54] In light of the fact that the decision of the Appeals Tribunal specifically left it to client services to review the actual receipts and therefore the claims made for medical travel expenses, this aspect of the Applicant's claim should not be subject to judicial review. It was raised for the first time after the Appeals Tribunal made its decision. There is no basis upon which this Court should review the adjudicator's decision to deny the claim; it should continue to proceed through the statutory appeal process.

<u>The meaning of the Appeals Tribunal's decision</u>

[55] I have already reviewed the Appeals Tribunal's decision above. In my opinion, the decision can only mean that the Tribunal accepted the Applicant's claim that she was suffering from Thoracic Outlet Syndrome as a result of the work place accident, causing her to be in sufficient pain that she was unable to work. The Tribunal directed that she be awarded benefits "accordingly". That can only mean that she be awarded benefits according to her claim, which was for continuing benefits. A reasonable inference is that the Tribunal expected she would be paid benefits until her claim for permanent benefits was dealt with. In my view the Appeals Tribunal cannot have intended, because it would be unreasonable to do so, that the claims division would go over the same material which was before the Tribunal and make another decision about whether or not to deny benefits, when that was the very decision under appeal to the Tribunal. If the Tribunal had felt that more medical information was needed, surely it would have stated as much.

Did the adjudicator follow the Appeals Tribunal's decision or act contrary to it?

[56] In my view, the adjudicator did not act in accordance with the Appeals Tribunal's decision; rather, she purported to inquire into and decide on the very matters which had been before the Tribunal.

[57] Clearly when the adjudicator denied benefits for the time period from July 1, 1994 to May 1995, she was denying benefits for the time period dealt with by the Review Committee in its decision appealed to the Appeals Tribunal and overturned by the Tribunal's decision of June 30, 1998. But she also denied benefits for the time period after that, to October 11, 1995 and then after December 2, 1995. This part of her decision was subsequently varied by the Review Committee in January 2000, with the result that benefits were denied for the period after July 3, 1996.

[58] If the Appeals Tribunal's decision is read as directing that continuing TTD benefits be paid, then the adjudicator had no jurisdiction to order that those payments cease without a determination being made as to whether the Applicant suffered from a permanent disability.

[59] Again, I think it is important to go back to exactly what was decided by the Appeals Tribunal. It decided that the Applicant's Thoracic Outlet Syndrome was to be accepted as resulting from her workplace accident and that her condition should be treated as a work-related injury and benefits be paid accordingly. One of the arguments

made by the Applicant before the Appeals Tribunal was that, contrary to what some of the medical advice stated, the Applicant was suffering not from chronic pain syndrome but a physical pain resulting from her injury. The decision of the Appeals Tribunal can only mean that the Tribunal accepted this argument.

[60] Yet, after the Appeals Tribunal's decision, the adjudicator obtained an opinion from the WCB Medical Advisor that (as set out in his letter of June 14, 1999):

> From my review of the mechanism of injury, I would be surprised if this client sustained any medical impairment. The mechanism of injury as reported on the report of accident form most likely resulted in a soft tissue muscular strain/sprain type which would invariably go on to complete resolution. I am of the opinion that the client has developed a chronic pain syndrome in relation to a minor soft tissue injury.
>
> ... I am of the opinion that the September 14, 1992 work incident would not result in an injury with sequelae of permanent impairment.

[61] The opinion of the Medical Advisor appears to form the basis for the adjudicator's decision that no benefits were payable after December 2, 1995.

[62] In revisiting the issue of the Applicant's condition and what exactly it was, the adjudicator fell into error in purporting to decide something the Appeals Tribunal had already decided. She had no jurisdiction to make that decision. Had she restricted her decision to whether the Applicant was permanently disabled and obtained a medical opinion or assessment about that which did not revisit the decision the Appeals Tribunal had made about the Applicant's condition, there would not have been a problem. But she did not do that. She did set out on the right track by asking the Medical Advisor about a further assessment on the issue of permanent diability. On receipt of that assessment, and upon allowing the applicant to respond to it, the adjudicator would have been in a position to make a decision on permanent diability. Instead she went back and questioned the nature of the Applicant's injury and its consequences, matters which the Appeals tribunal had already decided.

[63] The Respondent argued that because the Appeals Tribunal had before it medical reports only up to 1995, the adjudicator was at liberty and indeed was obliged to assess the Applicant's condition for the period of time after the date of those reports and determine whether there was evidence of disability. I am not persuaded by that argument for two reasons. In my view, the Appeals Tribunal's decision was that the Applicant should receive continuing benefits. Also, the adjudicator based her conclusions on a

reassessment of the injury and its consequences, matters which the Appeals Tribunal had already assessed. Insofar as the adjudicator's decision can be viewed as a decision on the Applicant's entitlement to permanent benefits (which is doubtful in light of her assertion that the Applicant's condition would be assessed after a medical examination and the pain management program), it cannot withstand scrutiny because it is contrary to what the Appeals Tribunal decided.

Should the Applicant have applied for judicial review of the Review Committee's decision of January 2000?

[64] If the adjudicator had no jurisdiction to make the decision she made on the issue of payment of benefits, then the Review Committee also had no jurisdiction to review that decision or to decide matters already decided by the Appeals Tribunal. Although it would have been preferable for the Applicant to apply to quash the Review Committee's decision, it is the action taken by the adjudicator that created the jurisdictional problem. If the adjudicator's decision is to be quashed the Review Committee's decision of January 2000 must fall along with it. In any event, I do not consider the failure to apply for judicial review of the Review Committee's decision to be fatal in these circumstances.

What relief should be granted?

[65] There is no question that *certiorari* lies to quash a decision for lack of jurisdiction.

[66] The application for judicial review is granted in part. Both the adjudicator and the Review Committee lacked jurisdiction to do what they did and their decisions on the issue of payment of benefits will be quashed. An order in the nature of *mandamus* will issue directing that the WCB pay TTD benefits to the Applicant from July 1, 1994 until such time hereafter as a decision is properly made on the issue of permanent disability. Any payments already made for any part of that time period are to be credited.

[67] For the reasons already referred to above, on the issue of reimbursement of the relocation expenses, judicial review is declined and the Applicant will have to have recourse to the statutory appeal process for purposes of that aspect of her claim.

[68] Costs normally follow the event but if counsel wish to make submissions they may do so by arranging a date to appear before me by contacting the Courtroom Services

Supervisor for that purpose within thirty days of the date these Reasons for Judgment are filed.

V. A. Schuler
J.S.C.

Dated at Yellowknife, Northwest Territories
this 24th day of May, 2001.

Counsel for the Applicant: James Posynick
Counsel for the Respondent: Adrian Wright