

CASE NO.**VOL. NO.****PAGE**

CHRISTINA JULIEN

- and -

WORKERS' COMPENSATION
APPEAL TRIBUNAL OF NOVA
SCOTIA (WCAT), WORKERS'
COMPENSATION BOARD OF
NOVA SCOTIA, (WCB), DARMOS
ENTERPRISES INTERNATIONAL

(Appellant)

(Respondents)

CA 171783

Halifax, N.S.

Oland, J.A.(orally)

Cite as: Julien v. Nova Scotia (Workers' Compensation Appeals Tribunal), 2001
NSCA 176

APPEAL HEARD:

November 29, 2001

JUDGMENT DELIVERED:

November 29, 2001

SUBJECT: **Workers' Compensation Act, S.N.S. 1994-1995, c. 10;
Reconsideration, Policy 8.1.7R1**

SUMMARY: In allowing the employer's appeal of an award to the appellant, a Board Review Officer found that there had not been a workplace accident which caused her injury as the appellant claimed. This decision was not appealed. A few years later, the appellant unsuccessfully sought reconsideration of that 1997 final decision on the basis that certain medical reports constituted "new evidence." At the hearing of her appeal before the Workers' Compensation Appeals Tribunal (WCAT), she filed additional material. WCAT decided that the medical reports were not "new evidence" and denied her appeal in that regard. It referred the additional material back to the Hearing Officer, stated that the transcript was not a full representation of the oral evidence it had heard, and suggested that the officer consider its summaries of that evidence. Those summaries included WCAT's findings as to the credibility of the witnesses.

ISSUES:

The appellant alleged that WCAT erred in law in finding that (1) there was no "new evidence" warranting a reconsideration of the 1997 final decision; and (2) the only redress was referral to a Hearing Officer; and (3) in failing to provide a full transcript of the evidence.

RESULT:

Appeal dismissed. Compensation is not payable unless there was an injury from an accident that arose out of and in the course of employment (s. 10(1) of the **Workers' Compensation Act**, S.N.S. 1994-1995, c. 10). The 1997 final decision held that there had been no accident and the appellant had never appealed that finding. The medical reports, even if accepted, do not establish that an accident took place and could not impact on that final decision. Assuming without deciding that WCAT had been able to refer any matter or material back to the Hearing Officer who had decided the matter on appeal before it, that officer should receive a transcript of the evidence and not WCAT's summaries and findings of credibility.

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 4 pages.