

NOVA SCOTIA COURT OF APPEAL

Citation: *Martell v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2007 NSCA 107

Date: 20071108

Docket: CA 270707

Registry: Halifax

Between:

John Martell

Appellant

v.

The Nova Scotia Workers' Compensation Appeals
Tribunal and Workers' Compensation Board of Nova
Scotia

Respondents

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: September 17, 2007

Subject: *Workers' compensation; s-s. 10(7), ss. 184, 184A, 226 and 227 of the Workers' Compensation Act; s. 8 of its Chronic Pain Regulations; Effective date of award*

Summary: Worker appeal of Workers' Compensation Appeals Tribunal (WCAT) decision that he was not entitled to extended earnings-replacement benefits (ERBs) and that February 29, 1996 was the proper effective date of his pain-related impairment (PRI) award.

Issues: Whether WCAT erred in law or jurisdiction (a) in finding that s. 8 of the *Chronic Pain Regulations* prevented him from receiving extended ERBs, and (b) in determining the effective date of this PRI award.

Result: Appeal allowed in part. The first issue requires a determination of whether s. 8 is *ultra vires* because it is inconsistent with the *Workers' Compensation Act* and, in particular its ss. 226 and 227.

There is no inconsistency or conflict between those provisions of the *Act* and s. 8 of the *Chronic Pain Regulations*. Those *Regulations*, which set out a separate scheme for chronic pain, were made pursuant to s-s. 10(7) and ss. 184 and 184A of the *Act*. Subsection 10(7) authorizes the Worker's Compensation Board to differentiate between different types of occupational disease and gives it the power to prescribe the rates and types of compensation. WCAT's decision met the standard of review of correctness, and the appeal on this ground dismissed.

There was no evidence supporting WCAT's selection of February 29, 1996 for the onset of the worker's chronic pain and the effective date of his PRI award. Its conclusion of fact was patently unreasonable and constitutes an error of law. The appeal on this ground was allowed and the determination of the effective date was remitted to the Board.

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 10 pages.