

NOVA SCOTIA COURT OF APPEAL

Citation: *Drake v. Nova Scotia (Workers' Compensation Appeals Tribunal)*,
2012 NSCA 6

Date: 20120123

Docket: CA 341624

Registry: Halifax

Between:

Stephen John William Drake

Appellant

v.

Nova Scotia Workers' Compensation Appeals Tribunal,
Workers' Compensation Board of Nova Scotia and
Enterprise Cape Breton Corporation

Respondents

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: November 16, 2011

Subject: **Workers' Compensation Law. Board Policy 8.1.7R1.
Test for Introduction of New Evidence.**

Summary: The appellant, a former underground mine industrial electrician sustained a workplace injury on November 9th, 1987. He was granted a 5% permanent medical impairment (PMI) for the injuries sustained in that accident.

In 2009 the appellant sought to have his claim reconsidered based on additional evidence which he said established that his PMI from the original injury was greater than the 5% awarded. The Workers' Compensation Appeals Tribunal (WCAT) found that the additional evidence submitted was not "new evidence" within the definition of Policy 8.1.7R1 and, therefore, the claim

could not be reconsidered.

The appellant had his PMI increased to 20% in 2008. He argued that he was entitled to a judgment rating for the increase in his PMI and further that the effective date of the PMI, August 5, 2008, had no basis in fact and should be made retroactive to an earlier date.

Issues:

Did WCAT err in its determination that:

- (i) the additional evidence submitted was not “new evidence”;
- (ii) in determining the appellant was not entitled to a judgment rating for his increased PMI in 2010; and
- (iii) in determining the effective date of the increase in his PMI to be August 5th, 2008

Result:

Appeal allowed in part, the additional information submitted by the appellant was new evidence within the meaning of Policy 8.1.7R1. The matter was remitted to the Workers’ Compensation Board to reconsider the appellant’s original PMI having regard to the new evidence.

The appellant’s appeal from WCAT’s finding that he was not entitled to a judgment rating was dismissed and the effective date of the increase of his PMI in 2008 was held in abeyance pending the Board’s determination of the effective date of his PMI increase.

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 16 pages.