

NOVA SCOTIA COURT OF APPEAL

Citation: *Boddy v. Nova Scotia (Workers' Compensation Appeals Tribunal)*,
2012 NSCA 73

Date: 20120710

Docket: CA 342364

Registry: Halifax

Between:

Nancy Boddy

Appellant

v.

Nova Scotia Workers' Compensation Appeals Tribunal,
the Workers' Compensation Board of Nova Scotia, the
Attorney General for the Province of Nova Scotia, and
Xerium Canada Incorporated

Respondents

Judge: The Honourable Justice Peter M.S. Bryson

Appeal Heard: June 14, 2012

Subject: **Workers' Compensation Law, s. 256 Workers' Compensation Act, S.N.S. 1994-95, c. 10. Authority to refer an issue back to a hearing officer. Standard of Review.**

Summary: The appellant was awarded a permanent impairment benefit and an extended earnings-replacement benefit. She appealed, claiming that the Workers' Compensation Board should have used a more generous "earnings profile" when establishing the long term rate for her earnings-replacement benefit. The Nova Scotia Workers' Compensation Appeals Tribunal (WCAT) did not decide this issue. Instead, at the urging of the appellant's employer (who had not appealed), WCAT referred the case back to a Hearing Officer to determine whether the impairment partly resulted from a non-employment cause and, therefore, should be apportioned. The

appellant argued that WCAT acted outside its jurisdiction by considering an issue not appealed and declining to decide the issue on appeal.

- Issues:**
1. Standard of Review
 2. Authority of WCAT to refer the issue of apportionment under s. 251 of the *Act*;
 3. Did WCAT err in failing to decide the worker's long term earnings rate, the issue before it on appeal?

Result: Appeal dismissed. The standard of review was reasonableness where WCAT was interpreting its own statute. WCAT's reasoning was clear and its decision occupied a reasonable range of outcomes. It was not unreasonable to refer the issue of apportionment to a hearing officer because that could affect the amount of earnings-replacement benefit to which the appellant might be entitled. Section 251(1) of the *Act* authorized a referral of "any matter connected with the appeal" to a hearing officer. "Any matter" was not restricted to the grounds of appeal. Apportionment was connected with the issue of the amount of earnings-replacement benefit to which the appellant was entitled. WCAT could require the hearing officer to consider both the apportionment issue and the long term rate issue simultaneously.

<p>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 13 pages.</p>
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