

NOVA SCOTIA COURT OF APPEAL

Citation: *Messom v. Nova Scotia (Workers' Compensation Board)*,
2017 NSCA 14

Date: 20170208
Docket: CA 443898
Registry: Halifax

Between:

Calvin Messom

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 O.H. Armstrong Limited

Respondents

- AND -

CA 443993

Between:

Workers' Compensation Board of Nova Scotia

Appellant

v.

Calvin Messom, the Workers' Compensation
Appeals Tribunal, and the Attorney General for the
Province of Nova Scotia

Respondents

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: December 5, 2016, in Halifax, Nova Scotia

Subject: **Workers' Compensation Law. Interpretation of the Workers' Compensation Act, S.N.S. 1994-95, c. 10, s. 227 – Calculation of Benefits. Entitlements to Benefits for Injuries Occurring Before March 23, 1990.**

Summary: Mr. Messom was injured in a workplace accident on April 11, 1988, for which he was awarded a 10% permanent impairment benefit which was increased to 15% on July 19, 2011.

In February, 2010, Mr. Messom had an increase in his symptoms relating to the 1988 injury and went off work. The Workers' Compensation Board awarded him temporary earnings-replacement benefits until September 13, 2011, when it was determined he was no longer entitled to that benefit.

The Board also determined that Mr. Messom was not entitled to be assessed for an extended earnings-replacement benefit as his injury occurred prior to March 23, 1990.

Mr. Messom appealed the Board's decisions to the Workers' Compensation Appeals Tribunal. WCAT found that Mr. Messom was not entitled to temporary earnings-replacement benefits beyond September 13, 2011, but found he was entitled to be assessed for an extended earnings-replacement benefit. Mr. Messom appealed the refusal of the continuation of his temporary earnings-replacement benefits.

The Board appealed WCAT's determination that Mr. Messom was entitled to be assessed for an EERB.

Issues: (1) Did WCAT err in failing to award Mr. Messom temporary earnings-replacement benefits beyond September 13, 2011?

(2) Did WCAT err in finding that Mr. Messom was entitled

to be assessed for an extended earnings-replacement benefit?

Result:

Mr. Messom's appeal was dismissed. The Board's appeal was allowed. WCAT erred in its interpretation of s. 227 in finding that Mr. Messom, who had been injured prior to March 23, 1990, was entitled to be assessed for an earnings-replacement benefit. Its decision was contrary to s. 227 of the Act and this Court's decision in *Ellsworth v. Nova Scotia (Workers' Compensation Appeals Tribunal)*, 2013 NSCA 131.

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 22 pages.