

NOVA SCOTIA COURT OF APPEAL

Citation: *Five Star Roofing and Masonry v. Nova Scotia (Workers' Compensation Board)*, 2017 NSCA 59

Date: 20170622

Docket: CA 447078

Registry: Halifax

Between:

Five Star Roofing and Masonry

Appellant

v.

Workers' Compensation Board of Nova Scotia,
Workers' Compensation Appeals Tribunal,
The Attorney General of Nova Scotia, Curtis
Marr, and McCarthy's Roofing

Respondents

Judge: The Honourable Justice David P.S. Farrar

Appeal Heard: May 24, 2017, in Halifax, Nova Scotia

Subject: **Workers' Compensation. Interpretation of Workers' Compensation Act, S.N.S. 1994-95, c. 10. Interpretation of WCB Policy 1.3.8 (Recurrence of Compensable Injury).**

Summary: Mr. Marr was injured in a workplace accident while working for McCarthy's Roofing in October 2012. On March 14, 2014, while working for Five Star Roofing, Mr. Marr experienced low back pain. The Board determined that Mr. Marr suffered a new injury while working for Five Star in 2014. Five Star appealed the Board's decision to a Hearing Officer. That appeal was dismissed. Five Star then appealed the Hearing Officer's decision to the Workers' Compensation Board. Again, that appeal was dismissed. In dismissing the appeal, WCAT found that the return of the workers' symptoms in March of 2014 constituted

a recurrence of his compensable injury in October of 2012. It also found that the recurrence was caused by his employment with Five Star.

Five Star appealed WCAT's determination that the injury was as a result of his employment with it.

Issues: Did WCAT err in its interpretation of Board Policy 1.3.8 – Recurrence of Compensable Injury - in finding that Mr. Marr's 2014 symptoms were as a result of his employment with Five Star?

Result: Appeal allowed. WCAT's decision that the injury was a "recurrence" as that term is defined in Policy 1.3.8 and that the "recurrence" was as a result of his employment with Five Star are inconsistent. His interpretation of Policy 1.3.8 was unreasonable. The matter was remitted to WCAT for rehearing before a different Appeal Commissioner.

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.