

ENDORSEMENT SHEET

Short Style of Cause Taylor vs The Workplacesafety Board-WSIB, et al

File No. 81/18

Date	Counsel	Event
Mar 20/18		INTRODUCTION
		<p>The Applicant, Paul Taylor, was injured in a workplace accident in February 1997. He has been in receipt of workplace safety and insurance benefits for many years. He has been involved in disputes with the Workplace Safety Insurance Board (WSIB) and Workplace Safety Insurance Appeals Tribunal (WSIAT) for some time, including appeals of a number of WSIB decisions regarding his entitlement to benefits, as well as court litigation.</p>
		<p>The current Application relates to three outstanding issues that are before the WSIB: (1) a denial of reimbursement for non-prescription pain medication (2) cessation of coverage for reimbursement of prescription medications and (3) a request for <del>additional</del> benefits for certain dates in 1998.</p> <p>The Application is accompanied</p>

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		<p>by a motion to bring his Application for Judicial Review before a judge of the Superior Court of Justice rather than the Divisional Court.</p>
		<p>The Application seeks an Order of Mandamus, specifically, <sup>or orders</sup> that the WSIB hold an oral appeal hearing within 5 days to deal with his current issues, namely his request for compensation for certain over-the-counter medications, his request for <del>compensation</del> benefits for which he claims to have been entitled for August 13, 14, 17 and 18, 1998, and the termination of compensation for certain prescribed medications, which he alleges constitutes a reprisal against him. He seeks an order of mandamus, not only to force the WSIB to conduct an oral hearing within 5 days, but also to order WSIB to render a decision in writing within 5 days (or such reasonable time frame as the court directs) and, in the</p>

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		<p>locut that Mr. Taylor disagrees with the decision, a similar order for the WSIAF to conduct an oral hearing within a specified expedited time frame.</p>
		<p>Mr. Taylor sets out in his materials the delays that he has experienced regarding decisions relating to his benefits entitlements over the years. While I can appreciate his frustration with the historical delays, it is not relevant to the current issues that he brings before me.</p>
		<p>In the matter before me the <del>detour</del> time frame is as follows:</p> <p>(1) request for reimbursement of non-prescription medications was made on September 26, 2017, denied October 11, 2017, appealed internally at the Board on October 17, 2017. <del>and not yet decided.</del> This appeal readiness form was submitted on January 20, 2018. The matter has not yet been decided.</p>

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		<p>(2) His claim for benefits for dates in August 1998 was submitted on October 2, 2017.</p> <p>(3) With respect to the cessation of his prescription medication coverage, he was asked to provide updated medical information on October 4, 2017, 3 months prior to the date on which his <del>policy</del> coverage was set to expire. He has yet to provide that information to the Board, so the Board is not yet considering that issue. However, his coverage was terminated at the beginning of January 2018.</p> <p>None of the issues <del>has</del> been referred to the WSIAT.</p>
		<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>MOTION FOR LEAVE</p> </div>
		<p>Applications for judicial review must be brought before the Divisional Court per s. 6(1) of the Judicial Review Procedure Act, unless the Superior Court of Justice grants leave for such an application to be brought before a judge of the Superior Court.</p>

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Director to grant leave may only ~~also~~ be exercised when it appears to the court to be a case of urgency and the delay required for an application to the District Court is likely to involve a failure of justice.

I am of the view that this is not a case of urgency.

Mr Taylor acknowledges that his historical claim for benefits far dates in 1998 is not urgent. The request for compensation for non-prescription medication for men-purification medication ~~is~~ over-the-counter drugs that he has been using for years without reimbursement. The Board's decision to deny coverage in October 2017 did not alter the status quo. Moreover, it was an urgent issue.

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		<p>Mr. Taylor could have brought his Application at that time, as he threatened to do on several occasions prior to February 21, 2018, when this Application was commenced.</p>
		<p>The prescription drug coverage issue may be more urgent because the cessation of coverage in early January 2018 has impacted him financially, and made it more difficult to obtain medications that he requires. However, given his failure to insure that updated medical information was provided to the Board, per the Board's request on Oct. 4, 2017, I am of the view that denial of an expedited Application hearing in Superior Court would not involve a failure of justice.</p>

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		<p>I understand that Mr Taylor views the cessation of his prescription drug coverage as a reprisal against him. The Board argues that it is standard practice to review and renew drug coverage for injured workers. However, this has never been done previously for Mr. Taylor, which raises questions about whether he is being singled out. Counsel for the WSIB advised the court that Mr. Taylor's file had inadvertently been omitted from the regular reviews.</p> <p>Regardless of whether or not the WSIB's decision to request updated medical information is in fact standard practice, it is incumbent on Mr. Taylor to supply that information. He was given 13 months notice to do so, which is a reasonable period of time. He claims that he asked his physician to</p>

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		<p>forward the requisite information and she did not do so.</p> <p>He submits that the WSIB ought to have contacted him again in December 2017 to advise that the information had not been received from his doctor. It is not the responsibility of the WSIB to ensure that the requisite information is submitted.</p> <p>Mr. Taylor must supply the information so that the Board can make a decision about his ongoing entitlement to reimbursement of prescription medications.</p> <p>It is through his own failure to provide the information that he finds himself in the current situation.</p> <p>The test for leave to bring an Application before a single judge of the Superior Court of Justice has not been met and the motion for leave is therefore denied.</p>



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		<u>APPLICATION</u>
		Even if I were to grant leave for this Application to be heard by a single judge of the Superior Court of Justice, I would deny the Application on the basis that it is premature.
		As Justice Stratas stated in <u>CB Powell v Canada</u> , 2010 FCA 61 at para. 31, "absent exceptional circumstances, courts should not interfere with the ongoing administrative processes until after they are completed, or until the available remedies are exhausted."
		There are no exceptional circumstances in this case that would warrant the Court's interference in the normal processes of the WSIB and WSIA/T. Mr. Taylor has not yet exhausted the avenues available to him through the administrative processes of the WSIB and WSIA/T

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		<p>and the delay in the <u>current</u> proceedings is not so <del>exceptional</del> extraordinary as to constitute exceptional circumstances that would warrant the Court's intervention.</p>
		<p><del>##</del> In light of my finding of prematurity, I deny the Applicant's request to traverse this Application over to the Divisional Court. The Application is hereby denied.</p>
		<p style="text-align: center;"><span style="border: 1px solid black; padding: 5px;">COSTS</span></p>
		<p>The Respondents WSIB and WSIAT each seek \$2,500 in costs. A considerable amount of work was required to respond to the Application on an urgent basis. The amounts requested are reasonable and proportional. I therefore order the Applicant to pay each of the WSIB and the WSIAT \$2,500, all inclusive, for costs.</p>