CITATION: Grant v. Ontario (Workplace Safety and Insurance Appeals Tribunal), 2025 ONSC 40
DIVISIONAL COURT FILE NO.: 079/24
DATE: 20250108

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Lococo, Matheson and Sheard, JJ.

BETWEEN:	
GLEN GRANT Applicant	*Maryth Yachnin and Aleksandar Ivovic*, for the Applicant
– and –	
WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL Respondent	*Rebecca Woodrow and Kayla Seyler*, for the Respondent
THE MIGRANT FARMWORKER LEGAL CLINIC and JUSTICIA FOR MIGRANT WORKERS Intervenors	*Illija Dimeski and Taneeta Doma*, for the Intervenors
	HEARD at Toronto: September 24, 2024

REASONS FOR JUDGMENT

L. Sheard J.

Overview

[1] The applicant, Glen Grant, seeks judicial review of certain decisions regarding an injury sustained while working as a seasonal agricultural worker under the Seasonal Agricultural Worker Program. Mr. Grant, a resident of Jamaica, entered Canada for temporary periods of time to work as a farm worker. He did so from 1991 to 1997, in 2002, and lastly, in 2005. He made a claim in

2005 and the course of events required that he seek an extension of time to pursue it after a very lengthy delay.

[2] Mr. Grant was hired to work on a tobacco farm in Ontario and alleges that in the summer of 2005 he injured his knee while working on the farm. He filed a claim with the Workplace Safety and Insurance Board (the "WSIB").

[3] On August 12, 2008, Mr. Grant's claim was denied by a WSIB Claim Adjudicator (the "CA Decision").

[4] The Jamaican Liaison Service (the "JLS") requested a reconsideration of the CA Decision, which was refused on the basis that the request was made out of time.

[5] Mr. Grant's request for an extension of time to appeal the CA Decision ultimately came before the Workplace Safety and Insurance Appeals Tribunal (the "WSIAT") on December 21, 2022. His request was denied by decision dated January 10, 2023, reported at 2023 ONWSIAT 35 ("Decision No. 11/23").

[6] Mr. Grant asked for a reconsideration of Decision 11/23. This request was denied on January 4, 2024, reported at 2024 ONWSIAT 17 (the "Reconsideration Decision") (collectively with Decision No. 11/23,the "Decisions").

[7] Mr. Grant brings this application for judicial review of the Decisions. He seeks an order quashing the Decisions and granting him an extension of time to file a notice of objection to the CA Decision.

[8] In the alternative, Mr. Grant asks for an order remitting his appeal to a different WSIAT Vice-Chair or panel, for a new hearing.

[9] For the reasons that follow, I would dismiss this application.

Intervenor Application

[10] The Migrant Farmworker Legal Clinic and Justicia for Migrant Workers filed a joint motion for leave to intervene on this application, which was addressed in this Court's decision reported at 2024 ONSC 5278. The admissible submissions echoed those made by the applicant and are not specifically referred to in these reasons.

Factual Background

[11] Mr. Grant asserts that on July 15, 2005, he injured his right knee while working on a tobacco farm. He continued working and did not report his injury to his employer until August 10, 2005. On September 7, 2005, Mr. Grant was seen at a hospital. Mr. Grant returned to work two weeks later and was assigned to the processing section of the farm. He continued to work to the end of the season, when he returned home to Jamaica.

[12] On September 15, 2005, Mr. Grant's employer filed an Employer's Report of Injury/ Disease with the WSIB. On September 28, 2005, the JLS officer assigned to Mr. Grant filed a Worker's Report of Injury/Disease with the WSIB.

[13] Mr. Grant sought medical attention in Jamaica. A note dated August 18, 2006 from his doctor stated that as of July 18, 2006, Mr. Grant had "fully recovered" and was able "to resume his occupational duties".

[14] In a later note dated April 22, 2008, Mr. Grant's physician stated that as of that date, he had osteoarthritis and could not carry out his duties as an agricultural worker and recommended that he "be retired on medical grounds". On July 10, 2008, Mr. Grant sent the JLS copies of his medical records to be submitted to support his WSIB claim.

[15] On August 12, 2008, Mr. Grant's claim was denied on the basis that his injury did not appear to arise out of employment but was related to a pre-existing condition of osteoarthritis. The CA Decision also noted that Mr. Grant: 1) continued to work after the July 15, 2005 injury; 2) did not report it to his employer until August 10, 2005; 3) lost no time from work; and 4) had provided medical records indicating a pre-existing condition of osteoarthritis.

[16] The CA Decision indicated that if an appeal was being pursued, the WSIB had to be notified in writing of the appeal by February 12, 2009. The CA Decision was sent to Mr. Grant at the JLS officer's Toronto address. Mr. Grant did not receive notice of the CA Decision until October 2010, well past February 12, 2009, when the appeal period expired.

[17] Mr. Grant's evidence[1] was that after he returned to Jamaica in 2005, he regularly attended at the Jamaican Ministry of Labour to inquire about his WSIB claim and sent his JLS officer medical information about his injury. He said that he continued to follow up with the JLS officer, who failed to write to the WSIB until August 27, 2010.

[18] On August 27, 2010, the JLS officer wrote to the WSIB requesting a review of the CA Decision and enclosing the six medical reports provided by Mr. Grant. By letter dated October 19, 2010, the WSIB denied Mr. Grant's request for a review. The letter stated that the request had been brought beyond the six-month statutory appeal limit and that no further action would be taken.

[19] Mr. Grant's evidence was that he did not learn of the CA Decision until he received the October 19, 2010 letter, which did not explain that he had a right to object to the CA Decision, nor explain how to do so. Mr. Grant also asserts that he is illiterate and that, although his 11-year-old son read the letter to him, he did not understand it.

[20] Mr. Grant asserts that after receiving the October 19, 2010 letter, he continued to attend at the offices of the Jamaican Ministry of Labour and to call the JLS officer and was told that there was nothing more for them to do.

[1] Statement by Glen Grant filed December 9, 2021, in support of his appeal to the WSIB

[21] There was no activity on the WSIB claim file between October 19, 2010, and September 8, 2020, a period of approximately ten years.

[22] In September 2020, Mr. Grant contacted the Industrial Accident Victims Group of Ontario Community Legal Clinic ("IAVGO") to inquire about his Canada Pension Plan benefits. With the assistance of IAVGO, on September 8, 2020, Mr. Grant filed an Intent to Object to the WSIB decision set out in the letter of October 19, 2010.

[23] On September 16, 2020, a WSIB Eligibility Adjudicator re-issued the decision originally dated October 19, 2010. On November 4, 2021, a WSIB eligibility adjudicator advised that as the time limit for appealing had expired on February 12, 2009, the CA Decision could not be changed.

[24] Mr. Grant appealed that decision to the Appeals Registrar.

[25] By decision dated March 22, 2022, the Appeals Registrar denied Mr. Grant's request for an extension of time to object to the CA Decision. Mr. Grant then appealed to the WSIAT.

The Decision No. 11/23

[26] Mr. Grant's appeal to the WSIAT proceeded by way of written hearing. Mr. Grant's submissions were completed with the assistance of IAVGO. The Record before the WSIAT included the December 7, 2021 written statements of Mr. Grant and his son, Matthew Grant; the WSIB Case Record and Addendum; and the written submissions prepared by IAVGO, with reference to case law, filed in support of Mr. Grant's request.

[27] Mr. Grant's request for a time extension was denied. In Decision No. 11/23, the WSIAT noted that it had authority under s.120 of the *Workplace Safety and Insurance Act, 1997,* S.O. 1997, c.16, Sched. A, to permit an extension of time to file a notice of objection and that, although the WSIB did not have a policy on time extensions, the Board's Appeal Services Division had adopted a Practice Guideline, elements of which were considered by the WSIAT to be of assistance: (Decision No. 11/23, at paras. 10-12).

[28] Decision No. 11/23 considered Mr. Grant's written submissions, and specifically referenced each of the six WSIAT decisions, copies of which had been included with Mr. Grant's appeal.

[29] The WSIAT considered the Court of Appeal for Ontario decisions in *Laski v Laski*, 2016 ONCA 337 and *Cunningham v. Hutchings,* 2017 ONCA 938, which direct that a "holistic approach" be taken to time extensions, emphasizing that "decision-makers must take all relevant considerations into account": Decision No. 11/23, at para. 13.

[30] At para.14, Decision No. 11/23 identified factors considered by other tribunals stating:

> In determining time limit objection appeals for Board decisions, some Tribunal decisions have also considered the following factors (see, for example, *Decision No. 1493/98I*, 1998 CanLII 16936 (ON WSIAT)):

- The lapse of time between the expiration of the six months and the date the appeal was filed and any explanation for the delay;
- Whether there is evidence to show an intention to appeal prior to the expiry of the six months;
- Whether the applicant ought to have known of the time limit;
- Whether the applicant acted diligently;
- Whether there is prejudice to a respondent;
- Whether the case is so stale that it cannot reasonably be adjudicated;
- Whether the issue is so connected to another appeal that the Tribunal cannot reasonably adjudicate the other appeal without considering it; and
- Whether a refusal to hear the appeal could result in a substantial miscarriage of justice due to defects in prior process or clear and manifest errors.

[31] At para. 13, Decision No. 11/23 identified key facts in the chronology of the events, including that Mr. Grant did not become aware of the CA Decision until October 19, 2010, his illiteracy, and that he was "unfamiliar with worker's compensation issues and was unaware if or how he could appeal" the CA Decision until 2020.

[32] After applying the facts to the applicable factors and jurisprudence, the WSIAT dismissed Mr. Grant's appeal. At para. 16 of Decision No. 11/23, the WSIAT concluded:

> **Justice of the Case**: Taking a holistic approach to the factors discussed above, I find that the justice of the case weighs in favour of denying a time extension. I find no evidence of significance that the worker intended to appeal the adverse ARO decision until 2020 noting that the worker did not take any material steps to appeal the 2008 CA decision for a 10 year period after learning of the denial of his claim in 2010. In addition, I find that the reasons for an extensive delay in appealing the 2008 CA decision do not support allowing a time extension. Finally, I have found that the worker's appeal is stale and would be difficult to adjudicate due to the potential lack of evidence of significance. While I acknowledge that there are issues favouring the allowance of a time extension (no evidence of employer prejudice and merits of an appeal); overall, I find that the lack of an intent to appeal; a lack of reasons for waiting until 2020 to appeal and staleness of the appeal weigh against allowing a time extension. For these reasons, I find the justice of the case requires that a time extension not be granted.

Reconsideration Decision

[33] Mr. Grant's request for a reconsideration of Decision No. 11/23 was heard, in writing, on September 13, 2023. His request was dismissed on January 4, 2024.

[34] Para. 3 of the Reconsideration Decision set out the test to be met for granting a reconsideration request and read, in part:

> Because of the need for finality in the appeal process, the Tribunal has developed a high standard of review, or threshold test, which it applies when it is asked to reconsider a decision.
>
> Generally, the Tribunal must find that there is a significant defect in the administrative process or content of the decision which, if corrected, would probably change the result of the original decision. The error and its effects must be significant enough to outweigh the general importance of decisions being final and the prejudice to any party of the decision being reopened.

[35] The Reconsideration Decision contained a thorough review of the facts relied on in the Decision No. 11/23 including that Mr. Grant did not become aware of the CA Decision until he received the Board's letter of October 19, 2010, and that his illiteracy made it difficult for him to understand what it said.

[36] The Reconsideration Decision reviewed the WSIAT's reasons for denying the time extension noting that the primary reason for denying the request was the finding that Mr. Grant "did not demonstrate diligence to appeal" the CA Decision: Reconsideration Decision, at para 18.

[37] The Reconsideration Decision addressed the errors that Mr. Grant alleged were present in Decision No. 11/23, namely that the WSIAT:

(a) overlooked evidence that Mr. Grant was unable to object to the decision himself, his efforts to do so and the negligence of the JLS officer;

(b) overlooked the exceptional circumstances that impaired Mr. Grant's ability to object to the CA Decision; and

(c) made a decision based on a procedural matter that prevented Mr. Grant from arguing his appeal, despite the merits of his claim: see Reconsideration Decision, at para. 24.

[38] The Reconsideration Decision approved of the "holistic approach" taken in Decision No. 11/23, and held, at para. 29:

> The Vice-Chair recognized that there was an arguable case on the merits; in weighing all of the factors holistically, including the lack of diligence in appealing, the delay, and staleness of the appeal, the Vice-Chair reasonably determined that the factors did not weigh in favour of granting the time extension. I do not agree that *Decision No. 11/23* includes an error on this basis.

[39] The Reconsideration Decision also disagreed with Mr. Grant's submission that the WSIAT had overlooked evidence, noting the chronology found at paras. 4-8 of Decision No. 11/23 and the

finding that Mr. Grant had taken no meaningful steps to advance his claim in the ten years after he had learned of the CA Decision: Reconsideration Decision, at para 33.

[40] The Reconsideration Decision concluded that the Decision No. 11/23 considered that after learning of the CA Decision, Mr. Grant attempted to bring the matter to the attention of his JLS officer, but that the WSIAT chose to give "greater weight to other factors, such as whether the actions taken by the worker without any apparent effect, amounted to diligence by the worker, and the difficulty that would be encountered attempting to adjudicate a "stale" appeal more than 15 years after the accident": Reconsideration Decision, at para. 35.

Standard of Review

[41] The parties agree that the standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; [2019] 4 S.C.R. 653 ("*Vavilov*").

[42] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" and which "bears the hallmarks of reasonableness – justification, transparency and intelligibility": *Vavilov*, at paras. 87, 99.

[43] As a specialized and expert tribunal, decisions of the WSIAT are accorded the "highest level of deference" with which the court will interfere only "where there are no lines of reasoning that would support the decision under review": *Morningstar v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2021 ONSC 5576, 158 O.R. (3d) 739, at para. 37

[44] The role of a reviewing court is explained at para. 83 of *Vavilov*, where the Court states:

> [A] court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem… Instead, the reviewing court must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was unreasonable.

Issues on the Application:

[45] Mr. Grant raises the following issues:

(1) Was the finding the Mr. Grant did not act diligently reasonable based on the law and facts that bore upon the decision-makers?

(2) Was the finding with respect to the extent of the delay reasonable based on the law and facts that bore upon the decision-makers?

(3) Did the Tribunal fail to consider the jurisprudence it needed to follow about how to address the unique vulnerability of migrant agricultural workers?

Issue #1:

[46] Mr. Grant submits that in Decision No. 11/23, the WSIAT overlooked or misapprehended evidence about what actions Mr. Grant took to pursue his claim. He submits that the WSIAT unreasonably concluded that there was "no evidence of significance that Mr. Grant had contacted his JLS officer or the Board for 10 years after learning that his claim was denied" or that he "took no meaningful action" to advance his claim for ten years.

[47] Mr. Grant submits that Decision No. 11/23 does not account for Mr. Grant's statement that he continued to attend the Ministry of Labour and to call the JLS to follow up on his compensation claim but would receive no answer from either. He argues that the alleged error significantly affected the outcome of the Decisions, which considered a worker's diligence in pursuing a case to be a critical factor in a time-limit extension request.

[48] The Respondent disputes that Decision No. 11/23 overlooked Mr. Grant's evidence as to what he did to pursue his claim. The Respondent points to numerous references made to those efforts in the Decision such as his attempts to obtain updates from his JLS officer seen, for example, at para. 16, where the WSIAT acknowledges that Mr. Grant contacted his JLS officer "on multiple occasions".

[49] The Respondent submits that the WSIAT's findings were reasonable and entitled to deference.

[50] In my view, Mr. Grant is asking this court to re-weigh the evidence about his diligence, rather than focusing on the reasonableness of the Decisions.

[51] Decision No. 11/23 did refer to Mr. Grant's evidence regarding his attempts to obtain updates about the status of his claim. The absence of a complete recitation of all the evidence did not render the Decision unreasonable. The Vice-Chair acknowledged the submissions of Mr. Grant, weighed the evidence, and made findings that were available on the evidence. This issue was raised on the reconsideration and addressed in the Reconsideration Decision.

Issue #2:

[52] Mr. Grant submits that the WSIAT erred in finding that the notice of appeal was filed approximately 11½ years after the expiry of the six-month limitation period, noting that the notice of objection was filed on August 27, 2010, only 18 months beyond the appeal period.

[53] He submits that the ten-year delay was between October 19, 2010, when Mr. Grant learned that his extension of time to appeal was denied, and September 8, 2020, when he filed an objection to that decision. Mr. Grant argues that had the WSIAT correctly identified the length of the delay as 18 months, it would have changed its analysis and affected the outcome of the appeal.

[54] The Respondent submits that reference to the 11½-year delay in Decision No. 11/23 must be examined in context of the overall reasons for decision, which show that the correct chronology was considered. I accept those submissions.

[55] The Respondent submits that in taking into account all relevant considerations, including all time that had elapsed, the WSIAT adopted the "holistic approach", as articulated in *Laski* and *Cunningham*.

[56] Referencing *Vavilov*, at paras. 91, 100, the Respondent submits that "written reasons … must not to be assessed against a standard of perfection"; reasonableness review is not a "line-by-line treasure hunt for error."

[57] The reasons set out in Decision No. 11/23 show that the chronology was considered, including both the 18-month delay and the more than ten-year delay. The opening paragraphs of Decision No. 11/23 correctly identify that: 1) the original extension request was made 18 months after the expiration of the appeal period; and 2) the appeal of the denial of that extension request was brought approximately ten years after it came to Mr. Grant's attention, which was approximately 11½ years after the expiration of the statutory time limit for appealing. As set out in the summary regarding the justice of case, the Decision considered not only the lack of reasons for waiting until 2020 to appeal but also the staleness of the appeal among the other relevant factors.

[58] In my view, Decision No. 11/23 properly applied an "holistic approach" to the relevant chronology and considering the entire period of delay among the other relevant factors. This issue was also considered and addressed in the Reconsideration Decision.

Issue #3

[59] Mr. Grant alleges that the Decisions failed to consider his "precarity as a racialized migrant worker". Mr. Grant refers to a group of four leading cases decided on September 15, 2023 which, he submits, confirms this to be an appropriate consideration.

[60] Mr. Grant submits that his circumstances as a migrant farm worker ought to have been considered in his request for a time extension. In particular, Mr. Grant's reliance on the JLS officer, his lack of understanding of Ontario's Worker's Compensation system, and his illiteracy ought to have been considered as relevant factors.

[61] Mr. Grant submits that had these factors been considered, he would not have been faulted for failing to phone the WSIB himself, which would have led to a different outcome on his extension request.

[62] The Respondent submits that the Decisions cannot be found to be unreasonable for failing to consider later jurisprudence. In addition, the Respondent submits that the authorities referenced in the factum before this Court had not been provided to the WSIAT and that it would not be appropriate to assess the reasonableness of the Decisions in light of authorities and arguments that were not put forward.

[63] I agree that the Decisions have not been shown to be unreasonable because they failed to apply later jurisprudence and/or cases that were not put before the WSIAT. The decisions now relied upon were released eight months after Decision No. 11/23 and not put forward by Mr. Grant as grounds for his request for reconsideration.

[64] More importantly, I do not accept Mr. Grant's submissions that the Decisions failed to take his circumstances into account. As mentioned above, the Decisions did refer to and consider the challenges faced by Mr. Grant as an illiterate, foreign worker, unfamiliar with the WSIB process and who received no feedback from his JLS officer. His circumstances were taken into account.

Disposition of Application

[65] I conclude that Mr. Grant has not shown that the Decisions are unreasonable. Considering all his submissions, I find that the Decisions bear "the hallmarks of reasonableness — justification, transparency and intelligibility".

[66] I would therefore dismiss the application.

Costs

[67] As the parties agreed that no costs would be sought or paid, the application is dismissed without costs.

_____
L. Sheard J.

I agree _____
Lococo J.

I agree _____
Matheson J.

Released: January 8, 2025

CITATION: Grant v. Ontario (Workplace Safety and Insurance Appeals Tribunal), 2025 ONSC 40
DIVISIONAL COURT FILE NO.: 079/24
DATE: 20250108

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Lococo, Matheson and Sheard JJ.

BETWEEN:

GLEN GRANT

Applicant

– and –

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Respondent

MIGRANT FARMWORKER LEGAL CLINIC and JUSTICIA FOR MIGRANT WORKERS

Intervenors

REASONS FOR JUDGMENT

L. SHEARD J.

Released: January 8, 2025