IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Macovei v. British Columbia (Workers' Compensation Appeal Tribunal),* 2025 BCSC 2365

Date: 20251202
Docket: S250238
Registry: New Westminster

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In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Penelopia Macovei

Petitioner

And

Workers' Compensation Appeal Tribunal, Attorney General of British Columbia, and Nacel Properties Ltd.

Respondents

Before: The Honourable Justice Elwood

On judicial review from: A Decision of the Workers' Compensation Appeal Tribunal, dated June 3, 2023 (WCAT Decision No. A2201603).

Reasons for Judgment

The Petitioner, appearing in person:	P. Macovei
Counsel for the Respondent Workers' Compensation Appeal Tribunal:	I. D. Morrison
No other appearances	
Place and Date of Hearing:	Port Coquitlam, B.C. July 25, 2025
Place and Date of Judgment:	New Westminster, B.C. December 2, 2025

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I. INTRODUCTION

[1] The petitioner Penelopia Macovei applies for judicial review of a decision by the Workers' Compensation Appeal Tribunal ("WCAT") dismissing her appeal from a decision by the Workers' Compensation Board (the "Board") that denied her claim for survivor's benefits under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 [*Act*].

[2] Ms. Macovei is the widow of Mircea Macovei. In 1989 and 1998, Mr. Macovei sustained two separate workplace injuries to his right knee. The Board accepted claims arising from both injuries. Over time, the Board granted additional partial disability awards and denied others. Eventually, the Board granted Mr. Macovei a permanent total disability award, effective September 2010.

[3] Mr. Macovei died on March 6, 2019. The immediate cause of his death was cardiopulmonary arrest, meaning that his heart and lungs stopped working. The underlying cause was pneumonia brought on by a respiratory syncytial virus ("RSV"). Mr. Macovei also had congestive heart failure and diabetes, amongst other chronic health conditions, when he died.

[4] Ms. Macovei applied to the Board for survivor benefits under the *Act*. She argued that Mr. Macovei's compensable injuries contributed to his death because chronic pain and depression from his injuries reduced his ability to participate in physical activity which led to weight gain which caused a premature progression of diabetes and coronary heart disease.

[5] The Board denied her application. Ms. Macovei sought a review of the decision, without success. She appealed to WCAT, which confirmed the decision. Ms. Macovei then sought judicial review. WCAT agreed with Ms. Macovei to have the original appeal decision set aside by consent and remitted for reconsideration.

[6] On June 7, 2023, a different Vice Chair of WCAT confirmed the decision of the Board to deny Ms. Macovei's application for survivor benefits, concluding that

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the compensable injuries under Mr. Macovei's 1989 and 1999 claims were not of causative significance to his death in March 2019.

[7] I have concluded that the Vice Chair's causation analysis was fundamentally flawed. First, the Vice Chair misunderstood the effect of a decision by the Board in 2010 and erroneously limited her consideration of the evidence to whether there was a significant worsening of Mr. Macovei's underlying health conditions after the date of that decision. Second, the Vice Chair relied on an opinion by a Board medical advisor that was manifestly unclear on the relevant date of injury. As a result, the decision must be set aside and remitted to WCAT for reconsideration.

II. BACKGROUND

[8] Mr. Macovei emigrated from Romania in 1984. He worked as an alarm installer, which is a physical job that includes climbing ladders and carrying equipment.

[9] In 1989, Mr. Macovei injured his right knee at work. The Board accepted his claim for a permanent knee injury. He returned to work following arthroscopic surgery and physiotherapy.

[10] In 1998, Mr. Macovei injured his right knee again while working as the manager of a rental building. The Board accepted a second claim for a permanent knee injury. The second knee injury required a further surgery. During the surgery, doctors found tears in his meniscus, which the Board subsequently accepted as a compensable consequence of the earlier injuries. He returned to work again in November 1999.

[11] Mr. Macovei struggled with chronic pain following the injuries. He stopped working in 2007, at the age of 42. The Board accepted chronic pain as a compensable consequence of his accepted injuries. The Board also accepted depression as a compensable condition. In addition, the Board accepted a claim for a left shoulder injury resulting from a fall.

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[12] In 2011, the Board granted Mr. Macovei a partial permanent functional impairment award, based on a loss of range of motion in the right knee, chronic pain and psychological conditions.

[13] Mr. Macovei was a heavy man and a smoker. He was already overweight when he first injured his knee in 1989, although his general health was good at that time. By 1998, when he injured his knee for a second time, he was morbidly obese, fairly sedentary and at risk of developing diabetes.

[14] In 2008, he was diagnosed with type II diabetes, COPD and sleep apnea. In 2009, he was diagnosed with a major depressive disorder. He subsequently told a psychologist retained by the Board that he had lost interest in daily activities, felt socially isolated and had experienced suicidal ideation. Following a heart attack in 2011, he was diagnosed with several cardiac conditions. He received a coronary artery bypass graft and a mechanical aortic valve replacement. In 2012, he was diagnosed with pulmonary disease and received treatment for that condition as well.

[15] On February 27, 2019, Mr. Macovei was admitted to hospital with pneumonia and congestive heart failure. He died in hospital on March 6, 2019. The registration of death document recorded the immediate cause of death as cardiopulmonary arrest, with pneumonia and RSV as the antecedent causes. Other noted underlying conditions included congestive heart failure, diabetes, and coronary and artery disease.

III. THE WCAT DECISION

[16] The Vice Chair began the WCAT decision by reviewing the two claim files in detail, noting that there were multiple decisions and a significant amount of medical evidence in the record.

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[17] After reviewing the files, the Vice Chair considered the medical evidence submitted by Ms. Macovei from doctors who had treated Mr. Macovei:

a) Dr. Mallavarapu, a psychiatrist, opined that chronic pain and depression reduced Mr. Macovei's ability to participate in physical activity which resulted in his gaining weight and obesity which caused a rapid progression of diabetes and coronary heart disease.

b) Dr. Bonet, a cardiologist, opined that Mr. Macovei's functional limitations as well as depression aggravated his obesity, which became a major risk factor for his coronary artery disease, hypertension and congestive heart failure.

c) Dr. Toma, a family practitioner, opined that Mr. Macovei's chronic pain and depression led to decreased mobility and subsequently to the premature onset of coronary artery disease and diabetes and difficulty controlling these conditions.

[18] The Vice Chair then considered the evidence of Dr. Kotzé, a Board Review Division medical advisor who conducted a file review. Dr. Kotzé opined that the cause of Mr. Macovei's death was mainly respiratory and related to smoking and COPD. She acknowledged that diabetes, congestive heart failure, and coronary artery disease also contributed to some extent. However, in her opinion, those conditions were already present "prior to the date of injury", and while they likely worsened as Mr. Macovei got older, the relative contributions of his compensable conditions and physical inactivity were likely trivial in her view.

[19] The Vice Chair preferred the opinion by Dr. Kotzé over the opinions of the treating physicians "who related his chronic pain and depression to his underlying health conditions but did not provide a clear opinion on the ultimate cause of his death" (para. 126). The Vice Chair explained at para. 127:

> [127] … I find that the opinion of Dr. Kotzé is more consistent with the discharge summary from Dr. Akbar-Zadeh who advised that the worker was hospitalized with pneumonia and RSV on February 27, 2019, and the registration of death document which advised that immediate cause of his death was cardiopulmonary arrest with the antecedent causes of pneumonia

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> and RSV. Also, Dr. Kotze more clearly considered other potential non-compensable aspects of the worker's death such as his COPD and congenital aspects of his heart condition.

[20] The Vice Chair concluded that Mr. Macovei's death was not a compensable consequence of his accepted injuries, summarizing her findings at para. 128:

> [128] On review of the evidence as a whole, I find that the worker's compensable injuries under his 1989 and 1999 claims were not of causative significance in his death in March 2019. I am not satisfied that the worker's death is sufficiently connected to his work injuries under the 1989 or 1999 claim such as it forms an inseparable part of his accepted work injuries and is also compensable.

[21] The Vice Chair accordingly dismissed the appeal.

IV. ANALYSIS

A. Standard of Review

[22] Section 308 of the *Act* provides that WCAT has exclusive jurisdiction to determine all questions of law, fact, and discretion on an appeal. Section 309 provides that WCAT's decisions are final and conclusive. Jointly, these provisions constitute a privative clause.

[23] In these circumstances, s. 58 of the *Administrative Tribunal Act*, S.B.C. 2004, c. 45 [*ATA* provides that on judicial review, findings of fact or law or an exercise of discretion must not be interfered with unless they are patently unreasonable.

[24] Patently unreasonable means "openly, clearly, evidently unreasonable". Findings of an expert tribunal like WCAT are entitled to deference unless the petitioner can demonstrate that the evidence, viewed reasonably, is incapable of supporting the tribunal's findings of fact: *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80 at para. 37.

[25] Decisions that are subject to the patently unreasonable standard of review must not be dissected and criticized on a line-by-line basis. Rather, reviewing judges should review the tribunal's reasons as a whole to determine whether there is a

rational or tenable line of analysis supporting the decision: *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at para. 70.

B. Was the Decision Patently Unreasonable?

1. The 2010 Decision

[26] A key element of the WCAT decision is found at paras. 111–124, where the Vice Chair held that a decision by the Board in 2010 to deny claims by Mr. Macovei for weight gain and diabetes created a fundamental problem for Ms. Macovei's application for survivor's benefits.

[27] The 2010 decision was set out in a letter from the Board dated February 11, 2010, in which a case worker addressed several issues raised by Mr. Macovei, including:

> **Issue #10 Overweight**
>
> You have provided the comment that "overweight was a direct result of the accidents and for many years has been diverted on my life." I note that on your application dated December 31, 1998, your weight was documented as 295 pounds. You weight on July 27, 1989 was documented as 240 pounds. Evidence available on your 1989 claim supports that you recovered from the arthroscopic repair of the medial meniscus and you had no difficulties after your surgery up to December 31, 1998. This evidence supports that you assumed your normal activities following your 1989 injury in your weight gain occurred during the nine year stand between injuries.
>
> I am not able to associate your current weight with [the 1989] claim or [the 1998] claim therefore your weight is a non-compensable issue.
>
> …
>
> **Issue #12 Diabetes**
>
> You have provided the information that you were diagnosed with type II Diabetes in June 2008. There is no evidence available to support this diagnosis notice nor its relationship to a right knee injury. This means that the diagnosis of type II diabetes is not accepted under this claim.

[28] The Vice Chair found that the 2010 decision was binding on her. As the Board held that Mr. Macovei's weight gain and diabetes were not compensable under the 1989 and 1998 claims, the Vice Chair reasoned, any contribution those conditions may have had to his death prior to February 11, 2010, was similarly not compensable (para. 116).

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[29] It was within this context that the Vice Chair assessed the medical evidence of the treating physicians, stating at para. 121:

> [121] I do not doubt that depression coupled with a decrease in physical activity may result in weight gain and the progression of diabetes and heart conditions as described by Dr. Mallavarapu, Dr. Toma, and Dr. Bonet. <u>Nonetheless, as set out above, the worker's weight gain and diabetes are not compensable as set out in the February 11, 2010 Board letter and it is not open to me to revisit this decision</u>. As noted by Dr. Kotze, the opinions from the worker's treating practitioners appear to have been based on the assumptions that the worker was previously well and healthy. However, the effect of the February 11, 2010 decision letter is that I am bound by the Board's determination that at that time, the worker's weight gain and diabetes were not related to his accepted injuries. <u>Therefore, any contribution by the worker's non-compensable weight gain and diabetes to his heart condition or other complications prior to February 11, 2010 are similarly not compensable</u>.
>
> [Emphasis added.]

[30] Based on this reasoning, the Vice Chair reviewed the files for evidence of a significant increase in Ms. Macovei's weight after February 11, 2010, and found that the records did not support a worsening trend (para. 122). As Mr. Macovei's compensable injuries did not cause a significant weight gain after 2010, it followed, in her view, that any causal connection between his compensable injuries and his death was no more than trivial (para. 123). In addition, the Vice Chair determined that Mr. Macovei's injuries were not of any causative significance after 2010 (para. 124).

[31] In my respectful view, the Vice Chair misunderstood the legal effect of the 2010 decision. Her reliance on that decision to limit her consideration of the medical evidence to whether there was a significant worsening trend in the health conditions that may have contributed to Mr. Macovei's death after 2010 was an open and clear error.

[32] The Board determined that Mr. Macovei's weight gain and diabetes as of February 11, 2020, were not compensable because Mr. Macovei failed to establish that they were related to his accepted injuries. As noted by the Vice Chair, Mr. Macovei did not seek a review of the 2010 decision, so it was binding on him.

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[33] However, Ms. Macovei was not seeking compensation for her husband's weight gain or his diabetes. She was seeking survivor's benefits on the basis that his accepted knee injuries, chronic pain and depression contributed to an early progression of health conditions that contributed to his death at the age of 62.

[34] Ms. Macovei relied on medical evidence that drew a potential causal connection between Mr. Macovei's accepted physical injuries and mental health issues, weight gain, health conditions, and his death. It was open to the Vice Chair to find that Mr. Macovei's accepted injuries and mental health prior to and after 2010 were contributing causes in his death. She was not bound by the 2010 decision to exclude the weight gain prior to 2010 from her analysis of the cause of his death in 2019. Nor was she bound to exclude the evidence of diabetes and coronary heart disease prior to 2010. The Vice Chair was asked to decide a different issue from the Board, based on a different evidentiary record.

[35] The Vice Chair acknowledged that depression coupled with a decrease in physical activity may result in weight gain and the progression of diabetes and heart conditions as described by the treating physicians. However, she treated the 2010 decision as if it were a break in this potential chain of causation. In my view she erred in doing so, and this error undermined a fair and meaningful assessment of the medical evidence on which Ms. Macovei relied.

[36] In my view, WCAT must reconsider the evidence free from the erroneous limitation imposed by the Vice Chair based on the 2010 decision.

2. Pre-Injury Health Conditions

[37] A second concern with the decision arises from Dr. Kotzé's opinion that Mr. Macovei had diabetes, congestive heart failure, and coronary artery disease "prior to the date of injury". The conclusion in Dr. Kotzé's report was that:

> In the final analysis, the worker's death was predominantly caused by respiratory issues related to smoking and COPD, and his diabetes, congestive heart failure, and coronary artery disease were related to some extent. <u>However, these conditions were already present prior to the date of injury.</u> While these conditions worsened as the worker grew older, the relative

> contributions of his compensable psychological conditions and physical inactivity was likely trivial.
>
> [Emphasis added; quoted at para. 82 of the WCAT decision.]

[38] It is not clear from this passage which injury Dr. Kotzé was referring to when she opined that the health conditions that contributed to some extent to Mr. Macovei's death were "already present prior to the date of injury". From the full context of the report, it would appear to be the second knee injury in 1998. The report states that the "claim injury" occurred on December 24, 1998, and makes no mention of the original accepted injury in 1989. All of the medical assessments on which Dr. Kotzé relied in the report were conducted after the original injury, and primarily in 1998.

[39] It is unclear why Dr. Kotzé thought 1998 was the only relevant date of injury.

[40] The Vice Chair relied on Dr. Kotzé's opinion for her assessment of the medical evidence from the treating practitioners. The Vice Chair agreed with Dr. Kotzé that those opinions "appear[ed] to have been based on the assumptions that the worker was previously well and healthy," whereas "pre-injury" records confirmed this was not the case.

[41] There was no evidence that Mr. Macovei had diabetes, congestive heart failure, or coronary artery disease prior to the original injury in 1989. Although he was overweight, Mr. Macovei's general health was described as good in 1989. He was not diagnosed with diabetes or coronary heart disease until 2008. Dr. Kotzé's opinion appears to be based on risk factors first identified in 1998.

[42] The Vice Chair may have overlooked the ambiguity in Dr. Kotzé's opinion because the Vice Chair was focussed on whether there was evidence of a worsening trend in Mr. Macovei's weight and diabetes after 2010. The resulting lack of clarity on the injury date that the Vice Chair considered to be relevant for the purposes of the causation analysis makes it very difficult to follow the path of her analysis to the conclusion that Mr. Macovei's death was not a compensable consequence of his accepted injuries.

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3. The Standard of Causation

[43] Ms. Macovei also argues that the Vice Chair applied the wrong standard for causation. While I agree that the decision is unclear on the standard that was applied, this issue is best left for WCAT to clarify on a reconsideration.

[44] A clear statement of the standard of proof for causation is important to properly understand any outcome in this case. Mr. Macovei had a complex medical history. His death was multi-factorial. The Vice Chair was entitled to find on the evidence that the cause of his death was mainly respiratory. The issue was whether the underlying health conditions which also contributed to his death formed a sufficient causal connection between his accepted injuries and mental health conditions and his death to make the death compensable.

[45] The Board's compensation policies are set out in two volumes in the *Rehabilitation Services and Claims Manual, Volumes I and II* ("RSCM"). Generally speaking, Volume I applies to claims originating before revisions to the *Act* that came into effect on June 30, 2002, and Volume II applies to claims originating after that date.

[46] Each volume of the RSCM has a policy item concerning compensable consequences of work injuries. Each of these policies directs the decision-maker to look at the matter "broadly and from a common-sense point of view". Volume I states that if an injury or condition "is a significant cause" of another secondary injury or condition, then the latter injury or condition is also compensable. Volume II, on the other hand, uses the phrase "is of causative significance".

[47] The Vice Chair considered which volume of the RSCM applies to a claim for survivor's benefits based on injuries in 1989 and 1998, and a death in 2019. She grappled with this issue at paras. 95–109 of the decision, without coming to any clear conclusion.

[48] In the end, the Vice Chair did not find it necessary to resolve which standard of causation applied because, on her review of the evidence, she was not satisfied

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that Mr. Macovei's death was a compensable consequence of his accepted injuries under either volume of the RSCM.

[49] The Vice Chair concluded that "the worker's compensable injuries under his 1989 and 1999 claims were not of causative significance in his death", but also that "the worker's death is [not] sufficiently connected to his work injuries under the 1989 or 1999 claim such as it forms an inseparable part of his accepted work injuries" (para. 128).

[50] In my view, the Vice Chair never clearly articulated the standard of causation she applied. Ms. Macovei is entitled to know what standard of proof governs her claim for survivor's benefits and how it applies to the evidence in this case. However, these issues should be decided by WCAT, not this Court.

V. CONCLUSION

[51] The WCAT decision is set aside and remitted to WCAT for a reconsideration in light of these reasons for judgment.

[52] In accordance with the general rule that costs are not awarded for or against an administrative tribunal on a judicial review, there will be no order of costs.

"Elwood J."