

A2601612 (Re), 2026 CanLII 101720 (BC WCAT)

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DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT Decision Number: A2601612
WCAT Decision Date: August 19, 2026
Panel: Hilary Thomson

Introduction

- [1] This decision is about whether the worker's appeal has any reasonable prospect of succeeding, or whether it should be dismissed. The worker has an accepted claim with WorkSafeBC.
- [2] In a June 25, 2026 email, the WorkSafeBC officer addressed some information on file about the worker's limitations and wrote that these limitations were findings of fact, not a decision. The worker asked for a review of the email. The Review Division advised it could not review it in *Review Reference #R0361702*. The review officer wrote that the June 25, 2026 letter did not contain a decision about entitlement to benefits and services. The review officer also wrote that the restrictions and limitations were findings of fact and could not be reviewed. As a result, the review was closed.
- [3] The worker appeals to the Workers' Compensation Appeal Tribunal (WCAT). The assessment officer at WCAT wrote to the worker to advise that she would recommend that the appeal be dismissed because it had no reasonable prospect of success, since the WorkSafeBC letter was not a decision the Review Division could review. She asked for his submissions on whether it should be dismissed. The employer was not invited because the matter is being addressed at an early stage, pursuant to the authority under section 31(1) of the *Administrative Tribunals Act*, which applies to WCAT.
- [4] The worker responded. He does not want the appeal dismissed. He maintains that the June 25, 2026 email was a decision because it was a denial of his request for formal limitations to be decided on the claim. He wrote that it limited the scope of his claim coverage.

Issue(s)

- [5] Does the appeal of the Review Division decision refusing to conduct a review have any reasonable prospect of succeeding?

Summary of Decision

- [6] I agree with the assessment officer that the appeal has no reasonable prospect of success. The email does not contain a decision about entitlement to benefits that the Review Division has the authority to review. Consequently, an appeal of a decision denying the review has no prospect of succeeding. The appeal is dismissed as authorized under section 31(1)(f) of the *Administrative Tribunals Act*.

Reasons and Decision

Background

- [7] On May 2, 2026, the worker wrote to WorkSafeBC asking for a formal adjudication of the "functional limitations" on his claim. He noted that there was a memo on file of a February 2026 meeting with the WorkSafeBC registered psychologist. The memo noted that the worker had certain limitations, including difficulty with stressful tasks or high expectations for productivity. He wanted WorkSafeBC to issue a written decision about what limitations were accepted on his claim, what conditions they related to, and the effective date of these limitations.
- [8] On June 25, 2026, the WorkSafeBC officer wrote:

Hi [worker's name],

It has been brought to my attention that you had two questions for me.

The February 18, 2026 Return to Work Planning Meeting template has a section where the psychological advisor has provided clarity on your diagnosis and accepted condition. When you review this section, if you still have questions regarding it, please email me back and I am happy to support you as best as I can.

Regarding the May 2, 2026 communication about your accepted abilities, the abilities accepted on your claim are considered findings of fact, not a decision. These findings of fact are meant to reflect your level of function.

If you have any other questions for me, please email me back. I am out of the office tomorrow but will be back next week.

Thank you.

- [9] As set out above, the worker asked for a review of this email, and the Review Division advised it was not a decision they could review.

Was the June 25, 2026 email a decision that could be reviewed?

- [10] A decision is a determination by WorkSafeBC to give, deny, reconsider or limit entitlement to benefits and services, or impose or relieve an obligation, pertaining to compensation or rehabilitation matters under the compensation provisions of the *Workers Compensation Act* (Act). That definition is set out in policy item C12-99.20 (Notification of Decisions) of the *Rehabilitation Services and Claims Manual, Volume II*.
- [11] The June 25, 2026 email made two points:
- It acknowledged the return-to-work meeting memorandum, which included information from the medical advisor.
 - It addressed the worker's May 2026 correspondence asking that restrictions and limitations be adjudicated on the claim, and explained that accepted restrictions are findings of fact, not decisions.
- [12] It is this second point that the worker says was a decision. However, the June 25, 2026 email did not contain a decision about entitlement. It did not grant, deny, reconsider, or limit entitlement to any benefit or service. Rather, it advised that the worker's restrictions and limitations were findings of fact and not decisions.
- [13] Many other WCAT decision-makers have concluded that statements about restrictions and limitations are not decisions that can be reviewed. For example, in noteworthy decision *WCAT-2007-00430*, the three-person panel pointed out that findings of fact about restrictions and limitations are not binding on future decision-makers. Consequently, they decided that statements about restrictions and limitations were not decisions about entitlement and could not be reviewed. I am not required to follow those decisions, but I agree with their reasoning and I adopt it here.
- [14] I do not agree with the worker's submission that the June 25, 2026 email contained a decision that would affect future benefits. Although restrictions and limitations may be relevant to future entitlement decisions, a WorkSafeBC officer deciding entitlement to a specific benefit is not bound by prior findings of fact or documented limitations. As outlined in policy item C12-99.20, findings of fact can change based on new information and are not subject to the limitations on reconsideration. They also cannot be reviewed in the absence of an express or implied decision.

- [15] I also note that there could be negative consequences if WorkSafeBC treated statements about restrictions and limitations as decisions rather than findings of fact. If an early statement about a worker's restrictions and limitations were treated as a binding decision, later decision-makers assessing entitlement to benefits such as loss of earnings or vocational rehabilitation could be required to follow that earlier statement, even where new or better evidence became available. For example, a worker may discover during vocational rehabilitation that they have less tolerance for a particular activity than they previously thought. If the earlier statement, perhaps made before the worker even started vocational rehabilitation, was treated as a binding decision, the worker could be prevented from arguing that the earlier assessment of their limitations was incorrect when challenging a later decision affecting their benefits.

Did WorkSafeBC refuse to make a decision, and if so, could that refusal be reviewed?

- [16] The worker also argues that the letter amounted to a refusal to make a decision about his restrictions and limitations. I do not accept that it was a refusal to make a decision, given that, as I have outlined above, statements about restrictions and limitations are not decisions.
- [17] Also, even if the June 25, 2026 email did contain a refusal to make a decision, the Review Division would not have authority to review that refusal. Through section 268(1) of the Act, the legislature gave the Review Division the authority to review situations where WorkSafeBC refused to make an occupational health and safety order. However, there is no corresponding authority granted to review decisions refusing to make a decision about compensation or rehabilitation matters. I interpret this omission, as other WCAT panels have, to mean that the legislature did not intend to give the Review Division the authority to hear a review when WorkSafeBC refuses to make a decision about a specific compensation matter.
- [18] This reasoning is consistent with *WCAT-2004-00638*, in which a three-person panel considered whether the Review Division had the authority to review a letter from WorkSafeBC, which the worker said was an implicit refusal to reconsider the decision. The three-person panel concluded that there was no new implied decision. Further and in the alternative, they concluded, after analysing the statute, that there was no right of review over the failure to make a new decision. Another three-person panel also adopted this view of the extent of the Review Division's jurisdiction in *WCAT-2005-01772*. Again, I adopt their reasoning as my own.
- [19] As further explained by the vice chair in *WCAT-2006-04203*, to the extent that WCAT has sometimes determined that the Review Division did have jurisdiction over decisions that purported to refuse to make a decision, this was only where there was actually an implied decision. That is not the case here. Since there was no refusal, and since the Review Division does not have authority to hear refusals to make decisions in any event, the review cannot proceed.

Does the MRPP support the worker's position?

- [20] The worker has made other arguments, which he says are rooted in WCAT's *Manual of Rules of Practice and Procedure* (MRPP). However, when I reviewed the MRPP, I did not find the passages that he refers to. For example, he says that item 3.1.2 of the MRPP says if WCAT decides the Review Division has jurisdiction over something, it can overturn the Review Division's refusal and refer it back to the Review Division on its merits. That principle is not necessarily wrong, but it is not contained in item 3.1.2 of the MRPP, which has to do with whether certain decisions about assessments or monetary penalties can be appealed. In any event, since I have not decided that the Review Division wrongly refused jurisdiction, this principle does not apply.
- [21] He also submits that the MRPP directs that in this case I must order WorkSafeBC to make a "section 96(1)" adjudication. Section 96(1) of the current Act has nothing to do with situations where the Review Division refuses to review a matter. It has to do with suspensions of certificates issued under occupational health and safety provisions and regulations. Under the former 1996 Act, it did set out the extent of WorkSafeBC's jurisdiction. It does not grant any authority to WCAT to order WorkSafeBC to make a decision.
- [22] He has also provided other quotes, which he says are from the MRPP, but which are not found in the original text. The most likely explanation for this is that artificial intelligence services were used to write the submissions without any independent verification. Regardless of where it came from, it is not accurate. I acknowledge that I have a duty to provide reasons, but I do not find that I need to address submissions which contain inaccurate and unverified information about the content of the MRPP. As a result, I have not addressed these arguments further. I caution the worker that providing inaccurate information about laws, policies or practices and procedures can lead to delay and could potentially lead to a costs award against him if another party incurred costs as a result.

Should I order WorkSafeBC to make a decision on restrictions and limitations?

- [23] I have also considered the worker's request that I suspend the appeal and order WorkSafeBC to make a decision. Section 297(3) gives a WCAT vice chair authority, on an appeal, to direct WorkSafeBC to determine a matter that the tribunal considers should have been determined. I question whether it would ever be appropriate to exercise that power on an appeal that, on its own, has no reasonable prospect of succeeding.
- [24] But in any event, I decline to order WorkSafeBC to make a determination about the worker's limitations and restrictions. Since statements about restrictions and limitations are findings of fact rather than decisions, I do not consider it appropriate to direct WorkSafeBC to issue a separate decision about them. It is more appropriate for WorkSafeBC to assess the evidence

regarding the worker's restrictions and limitations when determining entitlement to specific benefits.

Conclusion

- [25] The June 25, 2026 communication did not contain any decision that the Review Division had the authority to review. Therefore, there is no prospect that an appeal of the Review Division's decision declining to conduct a review will be successful. For all these reasons, I find the appeal cannot succeed.
- [26] The appeal is dismissed as authorized under section 31(1)(f) of the *Administrative Tribunals Act*.

Hilary Thomson
Vice Chair