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# A2200412 (Re), 2026 CanLII 21252 (BC WCAT)

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2026 CanLII 21252 (BC WCAT)

**DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL**

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| **WCAT Decision Number**: | A2200412 |
| **WCAT Decision Date:** | February 6, 2026 |
| **Panel:** | Dawn Shaw-Biswas |

## Introduction

[1] On April 7, 2021 this right-hand dominant sawmill labourer, applied for compensation for a gradual-onset injury involving her right forearm, elbow, and shoulder (her right upper extremity). The worker attributed this injury to the repetitive, awkward and forceful nature of her work activities during the period October 1 to 19, 2019 and she explicitly indicated that this injury was not the result of a specific incident.

[2] In a decision dated June 18, 2021, the Workers' Compensation Board[1](Board) determined that the worker's April 7, 2021 application for compensation had not been filed within the one-year time limit set out in subsection 151(3) of the *Workers Compensation Act* (Act); that there were no special circumstances which had precluded her from filing this application in time; and that, as a result, the worker was not entitled to have this claim adjudicated on its merits.

[3] The worker disagreed with the June 18, 2021 Board decision and requested that it be reviewed by an officer from the Board's Review Division. In a Review Division decision dated February 10, 2022 (*Review Reference #R0282816*), a review officer confirmed the June 18, 2021 Board decision.

[4] The worker has appealed *Review Reference #R0282816* to the Workers' Compensation Appeal Tribunal (WCAT). On this appeal the worker has represented herself. On this appeal the employer has been represented; first, by an advocate from the Employers' Advisers Office (EAO), and then later by legal counsel (hereinafter referred to as the ER). Any reference to the employer in the text of this decision includes a reference to its representative unless otherwise specified.

## Issue(s)

[5] At issue on this appeal is whether the worker applied for compensation for a gradual-onset right upper extremity injury within the one-year statutory timeframe set out in subsection 151(3) of the Act; if not, whether special circumstances existed which precluded her from doing so, as contemplated in section 151(4) of the Act; and if so, whether discretion should be exercised in favour of considering her claim on its merits.

[1] The Board operates as WorkSafeBC. Colloquially the Board is also referred to as WorkSafe and WSBC. All of these names may appear in this decision.



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2026 CanLII 21252 (BC WCAT)

**Jurisdiction**

[6] This is an appeal of a Review Division decision pursuant to section 288(1) of the Act. Section 308 of the Act gives WCAT exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it.

[7] WCAT exercises an independent adjudicative function and may confirm, vary, or cancel the appealed decision or order. This appeal is a rehearing in which WCAT considers the record and new evidence that is made available. WCAT has inquiry powers, including the discretion to seek further evidence, but it is not obliged to exercise such discretion.

[8] The standard of proof in this appeal is the balance of probabilities, subject to section 303(5) of the Act which stipulates that when it comes to the compensation of a worker, if evidence supporting different findings on an issue is evenly weighted, WCAT must resolve that issue in favour of the worker.

[9] WCAT must make its decision on the merits and justice of the case, but in so doing, must apply the policy of the board of directors of the Board that is applicable in the case. All references to policy in this case, unless otherwise specified, are found in the Board's *Rehabilitation Services and Claims Manual*, *Volume II* (RSCM II).

[10] Several policies in the RSCM II were amended on February 1, 2020. These amendments apply to decisions of the Board and Review Division made on or after February 1, 2020 and to WCAT decisions where the injury or occupational disease occurred on or after February 1, 2020. When it comes to occupational diseases the date of disablement is treated as the occurrence of the injury. For reasons which I will outline later in this decision, I have determined that March 10, 2020 is the worker's date of disablement from occupational disease. This means that the amendments that were made to Board policy on February 1, 2020 apply to this WCAT decision.

[11] On April 6, 2020, the Act was revised to reorganize and renumber the sections of the Act, and in some places to modernize the language of the Act. For example, section 6 of the previous Act has been renumbered to section 136. These revisions did not change the law. These revisions apply to appeal decisions issued after April 6, 2020; therefore, all references to the Act in this appeal decision refer to the *Workers Compensation Act, RSBC 2019, c. 1*, except where otherwise noted.

[12] Board policies were amended again on April 6, 2020 as necessary to use the revised section numbers and language of the revised Act. The effect of these changes is that the version of any applicable policy as it read on or after February 1, 2020 applies to this appeal, with the changes to section numbers and language reflecting the revised Act.

[13] On December 1, 2025, as a "housekeeping" measure, certain policies in the RSCM II, were renumbered and consolidated without any change in the application of those policies. Since the underlying decisions were drafted using the prior policy references, I will do the same before providing the current policy numbers in brackets.

2026 CanLII 21252 (BC WCAT)

**Appeal Processes**

*Calls to Action*

[14] When the worker filed her notice of appeal, she self-identified as an Indigenous person. Parties to WCAT proceedings who self-identify as Indigenous on notice of appeal or notice of participation forms are offered the assistance of a WCAT Registry navigator to assist them in navigating the appeal process. This is part of WCAT's commitment to responding to the Truth and Reconciliation Commission of Canada: Calls to Action report. More information regarding WCAT's response to the Truth and Reconciliation Commission of Canada: Calls to Action report can be found on WCAT's website at www.wcat.bc.ca.

[15] The worker has received assistance from a WCAT Registry navigator at various points throughout the course of this appeal.

*Method of Appeal*

[16] Item 7.5 (Appeal Method) of the WCAT *Manual of Rules of Practice and Procedure* (MRPP) indicates that WCAT will normally grant a party's request for an oral hearing where the appeal involves a significant issue of credibility, where there are significant factual issues in dispute, and/or where there are other compelling reasons for convening an oral hearing. Item 7.5 notes that WCAT will normally conduct an appeal by written submissions where the issues are largely medical, legal, or policy based, and credibility is not at issue.

*Notice of Appeal*

[17] When the worker filed her notice of appeal, she indicated that she wished for this appeal to proceed by way of a videoconference hearing because the employer had provided false information which impugned her credibility, and she wished to have the opportunity to challenge that evidence.

*November 2022 Pre-hearing Conference*

[18] On November 1, 2022 I convened a pre-hearing videoconference during which I advised the parties that a preliminary issue that may need to be addressed on this appeal was whether the Board (which includes the Review Division) was correct in concluding that March 10, 2020 was the "date of disablement from occupational disease"[2], which applied when it came to determining whether the worker's application for compensation for a gradual-onset right upper extremity injury had been filed within the time prescribed in section 151 of the Act.

[19] During the pre-hearing conference the worker advised that she intended to argue that members of the employer's management staff had made comments to her which dissuaded her from/made her afraid to file, a compensation claim and that this constituted special circumstances which had precluded her from filing her application for compensation within the

[2] All quotations have been reproduced as originally written, unless otherwise noted.



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2026 CanLII 21252 (BC WCAT)

time prescribed in the Act. The worker indicated that it was her preference that her appeal proceed by way of a videoconference hearing as she was hoping that the members of the employer's management team who had made these comments would be called to testify at that hearing and that I would interview them regarding her allegations and hold them to account.

[20] After explaining to the worker my role as the panel assigned to hear her appeal, the limits of my jurisdiction, and what the worker would be expected to do if her appeal proceeded by way of a videoconference hearing, the worker indicated that she was not confident that she would be able to advocate for herself during an oral hearing and so she had decided that she would prefer that her appeal proceed by way of written submissions.

[21] In light of the foregoing, I canvassed with the employer whether, as part of the written submission process, it would be willing to provide WCAT with statements from the members of its management team that the worker alleged had made comments to her which had dissuaded her from/made her afraid to file a claim for her right upper extremity injury. When the employer indicated that it would be amenable to doing this, I advised the parties that in these circumstances I was prepared to grant the worker's request to change the method of her appeal from an oral hearing (held by way of videoconference) to an appeal conducted by way of written submissions.

*Section 297(2)(b) Investigation*

[22] On November 4, 2022 the WCAT Registry received a letter in which the EAO advised that instead of providing WCAT with statements from the members of its management team that the employer would prefer that I arrange for the Board's Field Services Department to conduct an investigation into the worker's allegation that the employer had engaged in claim suppression, then disclose the results of that investigation to the parties before inviting them to provide written submissions regarding the issue under appeal. The EAO advised that the employer was making this request because it anticipated that the worker would not be satisfied with written statements which it obtained from its management staff if she did not have the opportunity to question those managers about those statements, and because the employer felt that the results of a Board field investigation were likely to be more objective.

[23] On November 11, 2022 I had the WCAT Registry write to both parties to advise them that I had considered the employer's November 4, 2022 letter[3]; that I had decided not to have the employer provide written statements from the members of its management team whose comments the worker alleged had dissuaded her from/made her afraid to file a compensation claim; that instead I would be requesting that the Board have its Field Services Department investigate the worker's allegations and report back to me in writing, following which the results of that investigation would be disclosed to the parties and they would be invited to provide me with written submissions in response to same.

[24] On April 7, 2023 I exercised my discretion under 297(2)(b) of the Act and requested that the Board have its Field Services Department interview the worker and the members of the

[3] A copy of which was provided to the worker

2026 CanLII 21252 (BC WCAT)

employer's management team that the worker alleged had made comments which had dissuaded her from/made her afraid to file a compensation claim, as well as any other person identified as having information/evidence which might be relevant to the issue under investigation. I requested that the Board's field investigators record these interviews, obtain sworn statements from each person interviewed, and provide copies of same to WCAT.

[25] In my section 297(2)(b) referral for investigation memorandum I explicitly stated that I was not requesting this investigation for the purpose of determining whether the employer had violated section 73 of the Act[4] and/or section 119 of the Act; that I was requesting this investigation to assist me to determine whether special circumstances existed which had precluded the worker from filing her claim for a gradual-onset right upper extremity within one year of being disabled by same. I also explicitly requested that the Board ensure that its written response to my 297(2)(b) investigation request not include language which could be construed as the Board having made a determination pursuant to section 73 or 119 of the Act.

[26] In July 2023 the Board provided the WCAT Registry with the following: a field investigation report dated July 10, 2023 which summarized the results of the field investigation which the Board had conducted in response to my April 7, 2023 section 297(2)(b) investigation request; copies of the audio-recordings and written summaries of the sworn statements which a Board field investigator had obtained during the course of this field investigation; and copies of documents which the Board field investigator had received from the worker, the employer, and the worker's former employee and family assistance (EAP) counsellor.

[27] On October 18, 2023 the WCAT Registry arranged for the parties to be provided with updated disclosure of the worker's claim file and all of the evidence referred to in the preceding paragraph.

*Change of Appeal Path*

[28] In November 2023 the employer notified the WCAT Registry that it was no longer being represented by the EAO and had retained the ER. Sometime later the WCAT Registry received a letter from the ER in which he asserted that the worker's credibility was at issue in this appeal and that it would be a breach of natural justice to deny the employer the right to cross-examine the worker at an oral hearing which was attended by both parties, given the serious allegations that the worker had levied against Mr. A.[5]

[29] After reviewing the written record, the results of the Board's field investigation, and item 7.5 of the MRPP, I concluded that this appeal involved factual disputes and issues of credibility which were too significant to be resolved by way of written submissions and that going forward this appeal should proceed by way of an in-person oral hearing.

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[4] As referenced in the RSCM II, policy item #94.20, *Employer or Supervisor Must Not Attempt to Prevent Reporting*

[5] Mr. A is the plant manager of the mill at the employer's R location



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2026 CanLII 21252 (BC WCAT)

**Background Facts and Evidence**

[30] The employer's records indicate that the worker commenced employment on May 13, 2019.

[31] In a chart note dated October 18, 2019, the worker's primary care physician, Dr. Screen, documented that the worker complained of right elbow pain laterally and indicated that she was not sure what had happened to cause this pain. On examination Dr. Screen observed that the worker had a tender lateral epicondyle. He diagnosed the worker with right lateral epicondylitis and prescribed NSAIDs and physiotherapy.

[32] In a chart note dated March 9, 2020, Dr. Screen wrote: "[six] months of pain in the [right] lateral forearm, elbow, and then developed in the left elbow. [B]oth arms numb when lays on back. P[atient]: Refer Dr. Inkpen."

[33] On November 20, 2020, the worker filed a teleclaim application for compensation for neck symptoms which she attributed to an incident at work on February 17, 2020. A Board teleclaim operator documented that the worker said that during this work incident she had felt "a squish" in her neck and a jolt down her right arm but had not reported an injury and had continued working until March 9, 2020. The teleclaim operator documented that the worker indicated that there were reasons why she had not reported her February 2020 injury to her employer, but that she did not want to provide the operator with any details about them. The teleclaim operator noted that the worker thought that her neck issues were possibly connected to an October 2019 injury involving her (right) shoulder and arm and said that her employer was aware of these prior right arm issues. The teleclaim operator noted that the worker said that she did not want to discuss the details of her October 2019 injury "due to extreme anxiety and stress".

[34] By decision letter dated December 18, 2020, the Board denied the worker's November 2020 claim for a neck injury sustained on February 17, 2020. On February 16, 2021, the Board reconsidered and confirmed its December 18, 2020 decision that the worker had not sustained a compensable neck injury which had arisen out of and in the course of her employment on February 17, 2020.[6]

[35] On March 31, 2021 the worker was assessed by clinic physician Dr. Mori. In a Physician's First Report of the same date Dr. Mori wrote:

> Right arm issues: Shoulder and elbow issues. Clinically diagnosed with right rotator cuff and tennis elbow in 2020 by Dr. Inkpen. Problems started in 2019. Started physio October 2019 for lateral epicondylitis, then started to develop pain in the right shoulder. Claims a specific duty at work causing shoulder pain - pushing strips with a long pole. Cortisone injections by Dr. Bester into right

[6] The Board's denial of the worker's claim for a February 17, 2020 neck injury was upheld by the Review Division in a decision dated October 19, 2021 and by another WCAT panel in *WCAT decision A2102306* dated July 25, 2022. The employer referenced portions of *WCAT decision A2102306* when cross-examining the worker during the October 2024 oral hearing and I have cited portions of *WCAT decision A2102306* in my reasons.

2026 CanLII 21252 (BC WCAT)

> shoulder. Dr. Screen injected the lateral epicondylitis. Seeing Bill Nelem's pain clinic. MRI requested by Dr. Screen. Using 10 to 12 T3's per day. Requesting Ketorolac. Not worked since March 2020.

[36] Under the heading "Prior/Other problems. Affecting Injury, Recovery and Disability", Dr. Mori noted: "[r]ight arm pains since 2019." Under the heading "Return to Work Planning", Dr. Mori wrote: "[u]nable to return to work at the moment due to neck and right arm pains."

[37] On April 7, 2021, the worker filed the online application for compensation which is the subject of the current appeal. On this application the worker described the work activities which she considered to be causative of the right upper extremity complaints for which she was seeking compensation as follows:

> I have repetitive duties. There is an aluminum pole … at one of my stations working with the hoist operator, I use this long pole (maybe 10 feet long) that has a point on it, to push off any strips that are left on the boards when they come off the hoist into the mill. The pole didn't have a place it was put when done using but up into the rafters which requires you to use your shoulder to press down on the one end to get it off the rafter, then pull it back and then use it as necessary. Then again use the 'shoulder press' movement to put it back up into the rafters. That's when I first started noticing pain in my right arm. As it got worse I noticed pain when using the pike poles to unjam the strips when they got stuck in the hopper. Pretty much using my right arm became a problem as time progressed.

[38] The worker reported that she sought medical attention for this injury from physician Dr. Screen on October 18, 2019 and was given a prescription for physiotherapy, cortisone injections and a tennis elbow band. The worker indicated that the following day she reported this injury to her employer's site supervisor and attended first aid. The worker reported that she had missed time from work beyond the date of injury, indicated that the date of her last day worked was October 9, 2020, and said that she had not returned to work since that date.

[39] The worker reported that the injury for which she was seeking compensation had started as more of a "tennis elbow type pain". She said that she had a tight and sore right forearm in the ulnar nerve area, painful elbow bones, that if she touched her elbow against the railings at work it was very painful, and that there was an area on her shoulder that was also painful. The worker reported that she had started to lose her strength when using the pike poles and as a result her coworkers had to help her more often. The worker reported that she had been taken off a job stapling product in October 2019 because she could not hold the stapler and use the trigger anymore. The worker reported that both then and now if she slept on her right arm she would wake in pain. She reported that she was struggling in the mornings with her range of motion, with grasping things and with simple tasks such as doing her hair. She also reported tingling in her hands. The worker said that she had not experienced tennis elbow symptoms, pain involving her whole arm, pain up in her shoulder, or pain this severe before.



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2026 CanLII 21252 (BC WCAT)

[40] On April 12, 2021 the Board wrote to the employer and requested that it file a Form 7 Employer's Report regarding the right upper extremity injury for which the worker had filed an application for compensation on April 7, 2021.

[41] On April 22, 2021 a Board customer care agent (CCA) interviewed the worker regarding her April 7, 2021 claim for compensation and documented what the worker said in a phone memo of the same date. The worker told the CCA that she had started to experience tightness and soreness in her right forearm sometime in October 2019 which eventually became pain and weakness in her right elbow. The worker also indicated that this pain radiated up to her right shoulder. The worker said that she could not recall the date of the first shift that she had missed as a result of these right upper extremity problems, but she indicated that the first time she had received treatment for these problems was on October 18, 2019 when she saw Dr. Screen. The worker also told the CCA that she had seen Dr. Mori at a walk-in clinic on March 31, 2021. When the CCA asked the worker whether she had been offered modified work or reduced hours since sustaining her right upper extremity injury the worker advised that she had been offered shovelling and cleanup work around the mill and training as a hoist operator.

[42] In a routing memo dated April 26, 2021 the CCA documented that the worker's April 7, 2021 claim was being treated as an application for compensation for an activity related soft tissue disorder (ASTD) pursuant to section 136 of the Act, as the worker had been diagnosed with right lateral epicondylitis. This routing memo also indicates that the worker's April 7, 2021 claim was being treated as a time-loss claim, but it noted that the worker could not remember the date of her first shift missed as a result of this injury.

[43] On May 19, 2021, the employer filed an employer's report of injury or occupational disease in which it indicated that it objected to the claim which the worker had filed on April 7, 2021. The employer advised that the worker had reported a sore right forearm on October 17, 2019, for which no medical attention was required, and that the worker had returned to work that day. The employer advised that the worker did not report subsequent symptoms to the employer and that the first notification that it had received of the worker's alleged injury was the Board's request for a Form 7 report. The employer asserted that the worker had not reported a work-related injury to the Board until on or around April 12, 2021; nearly two years after the alleged injury. The employer advised that the worker had been off work and in receipt of short term disability (STD) benefits[7] since March 10, 2020 so she had not missed any pay. The employer advised that the worker had now applied for long term disability (LTD) benefits. The employer advised that it had not received any medical evidence to substantiate that the worker had sustained a work-related injury.

[44] By decision letter dated May 26, 2021 the Board advised the worker that it had determined that she had not filed her April 7, 2021 application for compensation within one year of March 10, 2020, the date that she had become disabled by the condition for which she was seeking compensation. The Board advised that it was statute barred from considering this late-filed

[7] Ms. H, the employer's HR manager for BC operations and labour relations testified during the October 2024 oral hearing that the employer uses the terms weekly indemnity and short term disability interchangeably.

2026 CanLII 21252 (BC WCAT)

claim on its merits unless the worker was able to establish that special circumstances had precluded her from filing her application within time. The letter advised the worker that if she wished to pursue a claim she should provide the Board with a detailed description of the special circumstances which she believed had prevented her from filing her application within the requisite time period.

[45] By letter dated June 8, 2021 the worker responded to the Board's invitation to provide it with evidence of special circumstances which had precluded her from filing an application for compensation for her gradual-onset right upper extremity injury within one year of being disabled by same.

[46] The worker advised that when she was hired, the plant manager, Mr. A specifically told her: "whatever you do, do not go to WorkSafe if anything happens…. If you do you will have over two hundred people pissed off at you…Don't make me regret hiring you."

[47] The worker said that she "agreed with these terms" because:

> … this was the best job I have ever had, and I was grateful to have been given the opportunity. This job would change my life as a single parent and I wouldn't do anything to jeopardize it and I didn't, until I could no longer work anymore … .
>
> I took what [Mr. A] said very seriously, although at the time I believed it only had to do with the company's insurance costs? I never wanted to deal with WSBC again anyways.

[48] The worker advised that after she told shift supervisor Mr. E[8] (in October 2019) that she could not hold a staple gun, or pull the trigger on a staple gun anymore, because she had no strength in her right arm and because her right arm was painful and numb, she was called in to speak to Mr. F[9] and Mr. K[10] about her right arm. The worker advised that during this meeting she was asked if she had seen her doctor, and she said that she had. The worker advised that Mr. F asked her what she had said to her doctor and when she said that she asked her doctor for a physiotherapy referral, Mr. F said: "why would you ask your doctor for a referral to physio when you don't need one? Anyone can just go to physio." The worker wrote:

> (This is when I started feeling uncomfortable. I remembered what [Mr. A] said about injury and WSBC and feel this was the reason I was being talked to like this. I felt that they wanted to know if I told my doctor it was something that started at work or not. I may be wrong but that is how I felt.) I answered saying, "I didn't know that I just needed some treatment and that was all".

[49] The worker also advised that during her meeting with Mr. F and Mr. K, Mr. K explained to her that the questions he was going to ask her would come from a computer app and that her

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8 Mr. E is a former shift/relief supervisor and charge/lead hand for the employer
9 Mr. F is a maintenance superintendent for the employer
10 Mr. K is a former site/finishing superintendent for the employer





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2026 CanLII 21252 (BC WCAT)

responses to those questions would be logged in this computer app. The worker indicated that later in the meeting Mr. K told her that this computer app said that her right arm injury was unlikely to be work-related and asked her if she had been doing anything else that could have caused her right arm injury since it was unlikely that it had been caused by her job. The worker wrote:

> Even though I thoroughly explained what duties were bothering my arm and making it worse, I gave in and said I was playing darts on the weekend. (I know this was more an answer they were looking for. Anything other than my work and I didn't want anyone mad at me).

[50] The worker advised that during a subsequent discussion with a coworker she learned that the employer had a safety bonus program. The worker advised that when she learned this she realized that the reason Mr. A had said that "over two hundred people would be pissed off with her" if she reported an injury to the Board, had to do with safety bonuses. The worker said that learning this reinforced the message that she had received from Mr. A about not reporting to the Board and going off on STD (instead).

[51] The worker advised that after meeting with Mr. F and Mr. K about her right arm she had continued to work with pain and limited range of motion in that arm. The worker advised that she had time off at Christmas (in 2019) which helped a bit, but eventually her right upper extremity condition started to affect not only her duties at work but her life at home as well. The worker advised that the employer was aware that she had developed an ongoing issue with her right arm for which she was receiving treatment and for which she wore a tennis elbow band/brace. The worker advised that the employer knew that she could not use her right arm to do her regular duties and that she was asked numerous times how her arm was doing.

[52] The worker advised that she had missed time from work beyond her date of injury. She said that sometimes the employer would give her different jobs to do, such as clean up, instead of her regular duties. The worker said that before she saw Dr. Screen in March 2020[11], she had communicated with a supervisor via texts and phone calls that her arm was numb and weak, and she was given the day off with pay. The worker advised that when her condition failed to improve by the following day, Mr. Q[12] told her to take the rest of the week off from work since this would be easier (for the employer) when it came to scheduling others to cover her shifts.

[53] The worker advised that prior to filing her claim for her right upper extremity injury in April 2021 she had had a phone conversation with a Board CCA about her neck injury during which she had also talked about her right arm issues. The worker advised that when she told the CCA that her right arm problem had worsened after she injured her neck, the CCA told her that she should report this to the Board. The worker advised that when she told the CCA that her employer had already said that her right arm problem was unlikely to have been caused by her work duties, the CCA told her that this was not the employer's call to make and that if her right arm condition had worsened she could be compensated.

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[11] The written record indicates that the worker saw Dr. Screen on March 9 and 15, 2020.

[12] Mr. Q is a former planer supervisor for the employer who supervised the worker.



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2026 CanLII 21252 (BC WCAT)

[54] The worker cited portions of section 73 of the Act which prohibits employers from discouraging, impeding, or dissuading a worker from reporting or filing a claim for an injury, illness, or occupational disease. The worker also wrote:

> … if there is any suspicion towards me and my claim for being dissuaded from filing a claim for compensation then I ask for a meeting with [Mr. A]. This is what I was told, and I was being loyal to that. Why he told me that only he knows. But that is what I complied with.
> …
> … I know that I have proven special circumstances for filing late. I was dissuaded from ever doing so from the very beginning, and then I feel I was discouraged when I had that meeting about my arm with [Mr. F and Mr. K] … .

[55] In a memo dated June 17, 2021 a Board adjudicator summarized the available evidence and outlined his reasons for denying the worker's April 2021 claim. The Board adjudicator found as fact that the worker had experienced a continuity of right forearm and right shoulder symptoms, dating back to 2019 for which she had continually sought medical attention; that the worker had become disabled on March 10, 2020 and had been off work ever since; and that the worker had filed her application for compensation for these right upper extremity complaints on April 7, 2021. The Board adjudicator acknowledged that it was the worker's position that the employer had dissuaded her from filing a claim and that the employer should have filed a report in order to initiate her claim. The Board adjudicator found as fact that the worker had experience with Board claims having applied for compensation benefits in the past for other injuries, including a claim which she had filed in November 2020 involving the same employer. The Board adjudicator indicated that he had adjudicated other claims involving this employer and had never observed claim suppression. The Board adjudicator also indicated that he had spoken to the employer's human resources (HR) contact who had advised him that he had spoken to Mr. A and found the worker's allegation of claim suppression to be false. The Board adjudicator concluded that there were no special circumstances which had precluded, hampered or hindered the worker from filing or pursuing a compensation claim for her right upper extremity symptoms within the time prescribed in section 151 of the Act, and that this meant that the worker was not entitled to have the claim, which she had filed on April 7, 2021, considered on its merits. The Board adjudicator's decision to deny the worker's claim and his reasons for same were communicated to both parties by way of a decision letter dated June 18, 2021.

[56] On September 14, 2021 the worker filed a request for review of the Board adjudicator's June 18, 2021 decision letter. On her request for review form the worker indicated that she was seeking a review of this decision because the Board adjudicator had incorrectly identified March 10, 2020 as her "date of injury" for the right upper extremity condition for which she was seeking compensation. The worker agreed that she was disabled from working on March 10, 2020, but she asserted that this was due to a neck injury not an arm injury. The worker advised that her neck injury had "exasperated" her right arm symptoms, but that these right arm symptoms, did not disable her from working.

[57] On February 10, 2022 a review officer issued *Review Reference #R0282816,* the Review Division decision giving rise to this appeal. In this decision the review officer held that the Board

2026 CanLII 21252 (BC WCAT)

had correctly identified both the worker's date of injury (October 2019) and her date of disablement (March 2020) for the adjudication of her April 7, 2021 claim. The review officer acknowledged that the worker had concurrent neck symptoms when she stopped working in March 2020, but he concluded, on the basis of the mechanism of injury which the worker had described on her application for compensation, and on the basis of the clinical records contained within her claim file, that the worker's persistent right upper extremity symptoms were disabling in March 2020. The review officer also indicated that he agreed with the Board adjudicator's determination that the claim for a right upper extremity injury which the worker had filed on April 7, 2021 had not been filed within the time prescribed in section 151(3) of the Act, because it had been filed more than one year after her injury became disabling in March 2020.

[58] The review officer indicated that he had considered the worker's June 8, 2021 letter wherein she had alleged that the employer had engaged in claim suppression and argued that this was the special circumstances which had precluded her from filing her claim within time. The review officer said he did not find the worker's explanation for the late filing of her claim to be persuasive in view of the fact that the worker was 42 years old with significant claims experience dating back to 2013 and was familiar with the workers' compensation system in BC and with how to file a claim. The review officer also said that he was not satisfied that claim suppression was a factor in the worker's late filing of her April 7, 2021 claim because the worker had filed her November 2020 claim for a February 2020 neck injury and her April 7, 2021 claim for a right upper extremity injury while she was still working for the employer that she alleged had actively discouraged her from filing claims. The review officer also noted that in the June 18, 2021 Board decision the Board adjudicator had written: "I have adjudicated other claims from this employer and have never observed claim suppression." On the basis of the foregoing, the review officer stated that he was unable to conclude that special circumstances had precluded the worker from filing her claim for the gradual-onset right upper-extremity injury which had disabled her as of March 10, 2020 within the statutory time frame prescribed in section 151(3) of the Act.

[59] On February 10, 2023 the following documents were submitted to the worker's claim file:

- An Incident Report dated October 17, 2019 which indicates that at 7 p.m. on that date the worker came to her supervisor to report a sore right forearm
- A Person Report dated October 17, 2019 which indicates that on that date the worker came to the foreman's office to discuss the pain she had been feeling in her right forearm.

**WCAT Proceedings**

[60] During the course of this appeal WCAT received a significant amount of new evidence including over 16 hours of audio-recorded sworn statements and oral hearing testimony, over 420 pages of documentary evidence, and over 35 pages of written submissions/argument.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[61] The remainder of my decision refers to many aspects of the evidence and arguments which have been put before me during this appeal, but it does not contain a detailed account of all of the statements provided to the Board field investigator, of all of the oral hearing testimony provided by the worker and the employer's witnesses, or of every document, submission or argument which the parties have provided in support of their respective positions. As a matter of law, I am not required to produce such a document as part of resolving the worker's appeal.

*Board Field Investigation*

[62] In June 2023 a Board field investigator obtained in-person audio-recorded, sworn statements from the worker, Mr. A, Mr. E, Mr. K, Mr. F, Mr. Q, Mr. B,[13] Mr. O,[14] Mr. C,[15] and Mr. L.[16] I have listened to the audio recordings of each of these interviews and compared them to the written summaries which the Board field investigator has provided of same. What follows is the evidence from these interviews which I consider to be relevant to the issue under appeal.

- Interview with the Worker-June 26, 2023

[63] When the Board field investigator interviewed the worker on June 26, 2023 she advised that she had sought employment at the mill at the employer's R location because she had heard from a former coworker that if she could get a job there she would be "set for life". The worker advised that she printed out resumes, attended the mill office and advised one of the office staff members [Ms. X] that she was seeking employment. The worker advised that while she was there Mr. A came out of his office and talked to her. The worker advised that Ms. X told her that it was unusual for Mr. A to do this.

[64] The worker indicated that sometime later she had received a call back from the employer, but she said that she was not sure if the call had come from Mr. A. The worker advised that at some point Mr. A had offered her a cleaning position but she said that she had told him that she was not interested in a cleaning position.

[65] The worker advised the Board field investigator that Mr. A had also "tried to push an office position" covering a staff member's maternity leave and asked her if she had "a resume for office stuff". The worker advised that when Mr. A told her that he wanted her to come in for an interview so that she could meet some of the office staff, she agreed to go in for interview for this position. The worker advised that she met with Mr. A, and two office staff members for an interview which was quite comprehensive. The worker advised that during this interview Mr. A had asked her if she was single and why she had moved there.

[66] The worker advised the Board field investigator that prior to being hired by the employer to work in the mill she had received a lot of phone calls from Mr. A. The worker said that when Mr. A called she always hoped that he was calling to say that she had gotten the job (in the mill) or

[13] Mr. B is a former director of operations in HR for the employer
[14] Mr. O is a former HR business partner of the employer
[15] Mr. C is someone the worker worked with at the mill at the employer's R location
[16] Mr. L is the worker's former EAP counsellor





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2026 CanLII 21252 (BC WCAT)

that they were moving forward with the job (in the mill), but that was not why he was calling. The worker said that there was nothing that stood out regarding what Mr. A was calling her about on these occasions, but she found his calls bothersome. The worker advised that her partner (at the time) queried whether Mr. A was going to be like a manager the worker had at a former job who used to phone her when he was drunk and said something sexually explicit to her in front of a coworker which had resulted in the worker leaving that job.

[67] The worker advised that after Mr. A offered her an office job and a cleaning job but did not offer her a job working in the mill she started to wonder whether there was even a job available for her in the mill. The worker advised that when she asked Mr. A about this he told her that there was a position in the mill and that they were just sorting things out.

[68] The worker advised that she eventually got a call (from Mr. A or HR) advising her that the employer was moving forward with the recruitment process for a mill job and that she needed to do aptitude and drug testing. The worker advised that her plan was to go to the library to do her aptitude test but Mr. A contacted her when she was on her way to the library and told her that she could just come up to the mill office and do the test there. The worker advised that she told Mr. A, that it was fine, that she would do the test at the library but Mr. A reiterated that she should just come up to the mill and that there was no one there. The worker said that she said "fine" and went up to the mill to do the test. The worker advised that this was prior to the mill office's closing time.

[69] The worker told the Board field investigator that once she got to the mill office Mr. A sat in the meeting room (where she wrote the aptitude test) with her for a little bit and then left. The worker advised that after she had completed the aptitude test she and Mr. A had talked about how the test had gone. The worker advised that Mr. A said that he would get Mr. O to fast track her aptitude test results so that she could find out right away how she had done. The worker advised that she was still at the mill office when she learned from Mr. A that she had failed her aptitude test.

[70] The worker advised that after Mr. A told her that she had failed her aptitude test they had engaged in small talk and then Mr. A said: "You know what, I'm going to get [Mr. O] to put you through". The worker said that she said: "Oh my god, really?" to which Mr. A responded: "Yeah, but don't say anything to anybody. Like, don't tell anyone that we put you through". The worker advised that Mr. A reiterated this, and while she was still in his office he also said: "Whatever you do, if anything happens, you don't go to WorkSafe, you come to me". The worker said that Mr. A indicated that if she did (go to WorkSafe) that she was "going to have over 200 people pissed off at you". The worker also said that Mr. A stated: "Don't make me regret hiring you."

[71] The worker told the Board field investigator that when she and Mr. A were getting ready to leave the mill office Mr. A put out his arms and asked her "can I have a hug?". The worker said that she did not want to give Mr. A a hug but she did give him a hug, and she said thank you because she wanted this job. The worker advised that as she and Mr. A left the mill office she had thanked him again and in response he said something to her about someone having given him a chance once. The worker said that Mr. A told her to meet him at the gas station right




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2026 CanLII 21252 (BC WCAT)

outside of the mill; that he had a company card and that he was going to fill up her gas tank. The worker said that when she asked Mr. A if he was sure about this he said: "Yeah. I am the boss; I can do whatever I want. Just don't tell anybody".

[72] When the Board field investigator asked the worker if the day that she went to the mill to write the aptitude test was the same day that Mr. A made the comment "don't go to WorkSafe, whatever you do" the worker said "yes". The worker advised the field investigator that no one else was present when Mr. A made these comments.

[73] The worker told the Board field investigator that she thought that once she started working at the mill that she would not have to deal with Mr. A anymore but that did not turn out to be the case. The worker advised that once she started working at the mill Mr. A frequently called her into his office.

[74] At this point in the interview, the worker advised the Board field investigator the office job that Mr. A had interviewed her for before she was hired to work in the mill was not a job covering for a staff member's maternity leave as she had stated earlier. The worker advised that it was after she had already started working in production at the mill that Mr. A had called her into his office and advised her that there was going to be a position coming available in the office because a staff member was going on maternity leave for twelve months. The worker advised the field investigator that Mr. A told her that if she took this maternity leave position that he would continue to pay her the same salary as she was making in her job at the mill even though the office position paid less; but that she was not to tell anyone about this. The worker said that Mr. A told her that she would be stupid not to take this temporary office position because maybe someday she could end up working at the employer's head office. The worker told the Board field investigator that she was not interested in working in an office and she was not interested in working in an office with Mr. A but she could not recall whether she had told Mr. A that she would think about this job offer or had turned the job offer down right away.

[75] The worker advised that right from the very beginning something did not feel right about the situation with Mr. A. She thought that Mr. A was calling her too much and she wondered when HR was going to take over. Mr. A had told her not to say anything to anyone about certain things, and he had told her not to report to WorkSafe. The worker said that she had a feeling that this was not a good idea; that these things did not bode well for what went on at the mill at the employer's R location.

[76] The worker told the Board field investigator that the issues with her right arm had started with a tight right forearm. She said that she mentioned this to one of her coworkers and they indicated it was probably just a tight muscle from flipping boards. The worker stated that over time the pain in her right forearm increased and began radiating to her right shoulder and she began losing strength. The worker advised that she mentioned her pain to Mr. E, but she could not recall whether she told him about her injury or whether she told a coworker about her injury and then the coworker told Mr. E.

[77] The worker told the Board field investigator that she went to see her family physician Dr. Screen regarding her right upper extremity injury and got a referral to physiotherapy prior to reporting

2026 CanLII 21252 (BC WCAT)

this injury to her supervisor. The worker said that she did not know if she had mentioned anything to Dr. Screen about the relationship between her injury and working with the pike pole at that point. The worker said that she did not think that she would have said anything to Dr. Screen at that point because she was not prepared to talk to him about anything to do with work injuries until March of 2020.

[78] The worker advised that she was told to meet with Mr. F and Mr. K about her right arm, but she could not recall who told her to meet with them. The worker stated that she did not remember a lot of details about this meeting. She recalled being asked what she thought had started or caused her pain and that she had said that it was from the pike pole. The worker recalled being asked by Mr. F if she had seen her doctor and that she had said yes. The worker recalled that Mr. F had asked her what she had seen her doctor for and that she had said that she had asked her doctor if she could get a referral for physiotherapy. The worker recalled Mr. F asking her why she would ask her doctor for a referral for physiotherapy when anyone could just go to physiotherapy and that when she responded that she had not known this that Mr. K had stated that this was why they had benefits and were encouraged to use them for maintenance.

[79] The worker stated that during her meeting with Mr. F and Mr. K: "We did this computer thing". She advised that Mr. K told her that the employer had a (computer) program that asked certain questions and could tell you whether your injury was caused from work or from something else, but the worker said that she could not recall the name of this program. The worker said that she remembered Mr. K saying to her at one point during this meeting: "This here says that your injury was unlikely caused from your duties at work" and then asking her if there was anything else that she had been doing that could have caused the problems that she was experiencing. The worker stated: "I told [Mr. K], the answer that came out of my mouth was, I was playing darts on the weekend, or the weekend before, or something like that." The worker advised the Board field investigator that she did not say this because she thought that playing darts was the reason for her symptoms; she said this because the meeting with Mr. F and Mr. K felt like an interrogation, because Mr. F was intimidating, and because what Mr. A had said to her about not reporting work injuries, and not making him regret hiring her, was in the back of her mind.

[80] When the Board field investigator asked the worker whether she told Mr. F and Mr. K when she met with them in October 2019 that her work duties were causing her pain, the worker said: "Yes, specifically because [Mr. K] specifically asked me "what do you think is causing it, or what do you think caused it"." In response to the Board field investigator asking the worker whether at any point during this October 2019 meeting Mr. F or Mr. K had suggested that she contact WorkSafe, the worker said "No".

[81] The worker advised that following her October 2019 meeting with Mr. F and Mr. K the employer had not provided her with alternate work duties; she just had to work with the pain. The worker advised that there were times when her coworkers stepped in to help her because they could see that she was struggling.

[82] The worker advised the Board field investigator that the employer had offered her time off within a month or so of her starting to work in the mill, but she advised that this was because her child had ended up in the hospital following a series of tragic events.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[83] The worker told the Board field investigator about two subsequent occasions when Mr. A had asked her prying questions about her child's situation. The worker advised that on one occasion Mr. A had called her into his office, asked her whether her child was being bullied at school, and advised her that if she told him what school her child attended that he could help her with this because he knew a lot of the teachers. The worker advised that on this occasion she responded to Mr. A's questions by telling him that she preferred to let the court deal with her child's situation.

[84] The worker advised the Board field investigator that on another occasion Mr. A had contacted her and asked her to provide him with the name of the person who had been accused of perpetrating a crime against her child. The worker advised that on this occasion she responded to Mr. A's question by advising him that she could not tell him this person's name because there was a court-ordered publication ban. The worker advised that she did not want to give Mr. A any information about this person but she ended up showing him a notice which the RCMP had issued about this person because Mr. A was persistent and had given her a job in the mill.

[85] When the Board field investigator asked the worker if she was correct in concluding that the worker felt that she owed a debt to Mr. A because he had hired her even though she had not passed the aptitude test, the worker confirmed that she did feel obligated to Mr. A because of this.

[86] When the Board field investigator asked the worker whether she was correct in concluding that Mr. A's comments and questions had made the worker feel uncomfortable the worker said:

> Yes, because I knew they were, I knew they were none of his business, and I wish I'd had the guts at the point to say that to him. And the information that I gave out, I should have kept to myself, because it is none of his business.

[87] When the Board field investigator advised the worker that it was her understanding that the worker had continued working (with her right upper extremity injury/complaints until March 9 or 10, 2020), the worker said that she was bothered by the fact that people kept referring to March 9, 2020 as when she had stopped working because she had actually gone off work the week prior to March 9, 2020. The worker stated that after Mr. Q. put her off work the week prior to March 9, 2020 the employer had continued to pay her regular wages and then at some point they had switched to paying her 60% of her wages. The worker told the field investigator: "To work's knowledge, I went off work because of my arm injury, not for my neck" but she indicated that she was actually dealing with injuries to both of these areas at that point.

- Interview with the Worker-June 28, 2023

[88] When the Board field investigator continued her interview with the worker on June 28, 2023, the worker advised that in March 2023 she was homeless and sleeping in her car, and so she had emailed Ms. Z and asked about the possibility of obtaining part-time work. The worker told the field investigator that she was upset by the response that she received from Ms. Z and she ended up sending Ms. Z an email which said that she was "sick and tired of this" and that she

2026 CanLII 21252 (BC WCAT)

was just going to email Mr. A and ask him when he was going to tell the truth about her. The worker said that shortly after she sent this email to Ms. Z she received a letter from the employer's lawyer terminating her employment.

[89] When the Board field investigator asked the worker how her leave from work had been categorized when she first went off work in March 2020, the worker stated that she had phoned her supervisor Mr. Q and that "they knew that my arm was getting worse". The worker stated that she had told Mr. Q that she could not pick up a cup of coffee and she recalled Mr. Q saying that it was getting "really hard" with the schedule and recommended that the worker take a week off from work. When the field investigator asked the worker what information or rationale she had provided for going on STD benefits, the worker indicated that she thought that she had indicated that it was for her right arm. When the field investigator asked the worker whether she had indicated that her right arm injury was related to work or not the worker indicated that she was not sure.

[90] When the Board field investigator asked the worker what had prompted her to finally initiate a Board claim for her right upper extremity injury the worker advised that she had contacted the Board's call center to talk to someone about her neck injury and during a discussion with a Board CCA she had disclosed that her problems had started with an arm injury following which she had sustained her neck injury. The worker advised that the CCA had asked her questions about her arm and whether she had reported her arm injury to the Board and when she told the CCA that she had not reported her arm injury to the Board because she had talked to her employer about it and her employer did not think it was work-related the CCA told her that her employer did not have the right to decide whether her arm injury was work-related or not. The worker said that she had placed the phone call to the Board's call centre which had resulted in her talking to this CCA about her right upper extremity injury sometime in 2021.

- Interview of Mr. A

[91] When the Board field investigator interviewed Mr. A on June 28, 2023 she asked him about the employer's procedures in the event of a worker injury. Mr. A told the field investigator that if a worker was hurt or injured, they were to report the injury to their supervisor, charge hand, or a staff member. Mr. A stated that this way the worker would get the medical aid they needed, and the employer could do an investigation in the event that there were hazards or unsafe conditions that could be corrected immediately. Mr. A also said:

> Our thing is, you come to us right away. Your first point of contact shouldn't be WorkSafeBC, and we don't know there was an incident, don't' know there was a hazard, and nobody spoke to us, nobody came to us because what happens then is we end up with a situation where WorkSafeBC will reach out looking for a Form 7, and it's rather embarrassing when they're saying, hey where's your paperwork and we don't even know there was an incident. So to me it's important that people come to us right away so that we can take immediate actions necessary to, a) look after that person b) make sure nobody else is in harm's way.



Workers' Compensation Appeal Tribunal
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2026 CanLII 21252 (BC WCAT)

[92] Mr. A stated that once the employer knew about an incident, they would start an investigation process looking for root cause.

[93] When the Board field investigator asked Mr. A to tell her about the worker, Mr. A said that when the worker first came to the employer she applied for a position in the office. Mr. A said that if he recalled correctly, the worker had been working in a financial institution of some sort. He said that the worker told the employer that they had been cutting her hours in that job and so she was not making enough money to survive and so she was looking for different work. Mr. A said that the worker said that she enjoyed the type of work that she was doing, that she enjoyed the office setting, but that she needed to find alternate work for financial reasons.

[94] Mr. A advised that at that time the employer was looking to fill a position in either accounts payable or safety administration. Mr. A advised that the person who works in safety administration typically backs up the person who works in accounts payable so when the employer hires someone to work in safety administration they cross-train them to work as back-up in accounts payable. Mr. A advised that it was determined that the worker would probably be a good fit for this job given her financial background and her experience dealing with numbers. Mr. A said that he believed that it was the accountant at that time who felt that they should offer the worker the job and so they did.

[95] Mr. A advised that when he offered the worker the job in the office the worker requested that she be allowed to work in production in the mill instead because her financial situation was very poor and working in the mill paid more than working in the office. Mr. A said that the employer granted the worker's request to work in production "given her circumstances". Mr. A told the Board field investigator that he felt that women were underrepresented in the operations side of the employer's business and that he sought to ensure that the employer's workforce was more diverse on the operations side.

[96] Mr. A told the Board field investigator that the worker had many attendance issues and personal problems while she was working for the employer. He said that the first problem he recalled was the worker being very upset because she had no food at home for her child and she had no gas to make it to work. Mr. A said that he remembered feeling sick to his stomach when he heard this and so he lent the worker $60 or $80 from his wallet to get food and gas so she could come to work.

[97] Mr. A advised that shortly after the worker began working for the employer she began to have attendance issues, and the mill supervisors/superintendents became concerned. Mr. A said that he looked into why the worker was missing time from work rather than get rid of her because she was a single mother. Mr. A said that he found out that the worker's child had been the victim of a crime and that this was causing a lot of problems. Mr. A advised that at one point the worker asked him if she could leave during her shift in order to be present when her child met with police. Mr. A said that he accommodated the worker's request and then followed up with her later to see how things were going.

[98] Mr. A advised that at some point the worker had provided him with a greater level of detail regarding her child's situation. Mr. A said that he was under a lot of pressure from his

2026 CanLII 21252 (BC WCAT)

superintendent and supervisors to terminate the worker's employment due to her ongoing attendance issues, but he did not feel, at that time, that it would be right to disclose why the worker was having attendance issues; that he felt that this was the worker's story to tell.

[99] Mr. A said that the worker eventually ended up going off on weekly indemnity. He advised that when someone goes off on weekly indemnity he was not told why. He said that he assumed that the worker was off on weekly indemnity for mental health reasons related to her child's situation.

[100] Mr. A advised that when the worker was off on weekly indemnity she struggled to get the paperwork done that she needed to do in order to claim weekly indemnity benefits. He advised that on numerous occasions Mr. O came to him about the worker's paperwork and asked him what he should do. Mr. A said that because he thought that the worker was off work due to family issues he directed Mr. O to help the worker get her paperwork done so that her benefits were not interrupted. Mr. A stated that it was not until much later that he learned that the worker had filed WorkSafe claims and that "somewhere in there was an allegation of claim suppression".

[101] Mr. A said:

> To say that I suppressed a claim two years before the claim happened how would I know to suppress a claim two years in advance?
>
> But once I heard this what I wanted to know was through our indoctrination process, which is our onboarding and everything, was all the stuff done and given to [the worker] on how to report, when to report, what to report, what to do, because that's the whole point of the indoctrination is to ensure that information is clear and concise. And everything in there showed that she had been given all the information on how to report a claim … .
>
> But since then, you know my understanding is that she is saying that I told her that you are not allowed to go to WorkSafe. I don't remember a conversation like that, that would be pretty contrary to everything I believe. I don't believe you go to WorkSafe before you come to us, but I don't believe I've ever told anybody, or recall telling people to hide an injury or hide a claim. We've had many injuries and many claims here… and the expectation is that you report and that we don't find out when people are looking for forms.

[102] When the Board field investigator told Mr. A that she understood that it was frustrating for him to be providing a statement about this situation, Mr. A said:

> You know what, I'm actually not frustrated as I am sad and disappointed. I felt that I went above and beyond in every single instance from her absenteeism to her [child's] issues, to her issues too. I don't give people money, but my soft spot is kids. And when somebody comes and says that my kid has no food, I'm embarrassed that I, now, that I went and gave my money to try and help with that.




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2026 CanLII 21252 (BC WCAT)

> I don't feel that I intentionally tried to suppress any claim. My intent is that claims should get reported and things should come to us. I don't remember this, we're talking years ago. What I remember is how sick to my stomach I felt when she told me that she had no food for her kid. And I felt I needed to do something, and she was in tears and quite honestly looking back I am embarrassed that I didn't see this as a red flag and not proceed with the employment to begin with. Especially when you find out afterwards that she has a long history of WorkSafe claims.

[103] When the Board investigator asked Mr. A about his relationship with the worker, Mr. A advised that he did not know the worker before she started working for the employer and that he had no relationship with her outside of work. When the Board investigator asked Mr. A about his communications with the worker outside of working hours, Mr. A stated that he and the worker had exchanged a few text messages about how her child was doing and that there was some communication about the constable involved in her child's case. Mr. A also said that there were text messages in which the worker offered to pay back the money that he had lent to her, and that the worker had sent him a text on New Years Eve 2020 which contained a Happy New Years' message and several emojis.

[104] When the Board field investigator advised Mr. A that the worker had also reported that he said to her: "Whatever you do, do not go to WorkSafe if anything happens… if you do you will have over 200 people pissed off at you. Don't make me regret hiring you." Mr. A responded as follows:

> I don't remember that. What I typically, [short pause] what I typically tell people is you come to us. I don't remember that quote. Is that the meeting where she brought up that she didn't have food or gas?

[105] When the Board field investigator advised Mr. A that the worker indicated that he had said this to her when she had come in to do some testing, an aptitude test, Mr. A. said:

> Yeah we were just starting down to seeing if testing was something we were going to do or make it a part of right we didn't really have anything here in stone. So I didn't know that she was, like I didn't recall that that is why she was here. But I know around that time we were trying to see, is there stuff, is there things we should do around testing. We batted this around on the hiring side. We're still batting around what is the right thing and how to go about seeing if somebody is a fit….But I don't recall telling her that "two hundred people are going to be pissed off".

[106] When the Board field investigator asked Mr. A if he recalled telling the worker "do not go to WorkSafe if anything happens", Mr. A said:

> No, I don't recall that. What would be typical with me with new hires is saying that you don't go directly to WorkSafe you come to us. I don't know how, like I don't recall having that particular conversation with [the worker]. There are so many

> new hires and so many people who come through here and this is so many years ago. You know I typically give a fairly canned speech around that kind of stuff and its typically, you come to us, and that has to do with we don't want to get blindsided when WorkSafe comes and says where is your paperwork. It's you come to us; you report it.

[107] When the Board field investigator advised Mr. A that the worker indicated that he had made frequent calls to her after hours, Mr. A stated that the only matter he called the worker about was her child, to see if things were okay. He said that he did not recall calling the worker after hours. Mr. A queried what the worker meant by after working hours. After working hours according to who? Was she on an afternoon shift, was she on a day shift? Mr. A said that he did know but he did know that he followed up with the worker a few times to find out about where she was at with the courts, the constables, the issues (involving her child). Mr. A said that the employer followed up with employees all the time who were having issues like that and having problems. Mr. A said that this was not uncommon and that he had called many, many employees at home who were having personal issues, whether it was a death in the family, injury, illness, sickness.

[108] When the Board field investigator advised Mr. A that the worker indicated that she had failed her aptitude testing and that he had given her the job anyway but had asked her not to tell anyone that she failed the test. Mr. A stated:

> I don't. She may or may not have passed that test, I don't know. But testing was something that was pretty new to us here and I don't remember whether we were even sure going to move forward with the test. When did all this…. I don't know whether I asked her to not speak about the failed aptitude test or not, but I do know at that point in time we were considering not even doing them because it was slowing down our hiring process and becoming painful. But if she hadn't passed it and she was going to work…. it probably wouldn't have been something I would have wanted people to go out there and say, I had to pass you didn't have to pass; I don't remember those exact words.

[109] When the Board field investigator asked Mr. A if the worker was discouraged from filing a Board claim, Mr. A stated: "Not as far as I know. As far as I know, she filed those claims without us knowing". Mr. A added: "I can't say that we didn't express our opinion that this is not a WorkSafe related issue that this is weekly indemnity issue and a benefits issue…." At this point, the Board field investigator and Mr. A's voices are indistinguishable as they are both speaking at the same time. Mr. A continues with, "This is years and years ago…I don't remember all the conversations … I simply don't. I don't remember the timing; I don't remember the dates…I didn't remember because I didn't know it was going to turn into this."

[110] Mr. A. stated:

> I hope I didn't give [the worker] the impression that you can never go to WorkSafe. The whole point of having an indoctrination is to ensure that these are the rules and all these things are ticked off and covered off. For me to sit here





2026 CanLII 21252 (BC WCAT)

> and say to you that I remember everything that I said to [the worker] five years ago would be a lie…. She seems to have a quote, right, and I don't remember that. I don't. I remember, I have no money, I have no food, I need a job in the mill.

- Interview of Mr. E

[111] When the Board field investigator interviewed Mr. E on June 27, 2023 and asked him about his knowledge of the worker's injuries, Mr. E stated:

> One injury that I can remember as I was doing my rounds at the start of shift, or sometime in the middle of shift, I don't remember which one it was, I spoke with her and asked her how she was going, or how the night was going, and then she said, I am pretty sure it was her wrist that had bothered her, and then I asked, that's when I started asking like if it was a work injury or if it was an outside injury and then I'm pretty sure she went on WI from that.

[112] When the Board investigator asked Mr. E what WI was, Mr. E advised that it was weekly indemnity. When the Board investigator asked Mr. E what weekly indemnity was, he said that it was when you had time off for injuries because you could not perform the work that the employer needed you to do. Mr. E said that he was not sure if weekly indemnity was for work injuries or injuries which occurred outside of work.

[113] When the Board field investigator asked Mr. E whether the worker said that she had sustained this injury at work or not, Mr. E said that the worker could not remember if her injury had happened at work, but she said that she had started feeling the pain or discomfort when she was at work. Mr. E said that he could not recall when this discussion with the worker took place and that he no longer had access to the notebooks in which he wrote everything down, but he was pretty sure that it should be on file.

[114] When the Board field investigator asked Mr. E if he had told anyone else at work about the worker's injury/wrist complaints, Mr. E said: "Yeah I'm pretty sure that an investigation was done and I do believe she either had light duty or time off."

[115] When the Board investigator asked Mr. E who he would have relayed this information to, Mr. E said that it would have been to Mr. K, his former superintendent.

- Interview of Mr. K

[116] When the Board field investigator interviewed Mr. K on June 29, 2023 and asked him about the worker, Mr. K advised that the worker had been interviewed by Mr. A for an office position and hired for a position in the mill. Mr. K. said that he did not think that there was any position open for the worker in the mill at that time but Mr. A had decided that planer was the best fit for the worker. Mr. K advised that planer was his department but that he was not involved in hiring the



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2026 CanLII 21252 (BC WCAT)

2026 CanLII 21252 (BC WCAT)

worker or getting her onboard, he was just told that the worker was part of the crew. When the Board investigator asked Mr. K why he was not involved in the worker's interview or hiring Mr. K said that he was not sure.

[117] When the Board field investigator asked Mr. K about his knowledge of the worker's injuries, Mr. K stated:

> I'm not sure exactly what occurred, it was a while ago. But I believe maybe she was using a pike pole, or she I think at the time it was her shoulder. We did the investigation and she [was not] sure if it was actually an injury at work or was potentially playing darts at home with a friend over the weekend, overusing that shoulder, so there wasn't really an incident that occurred for the injury and she just didn't know and obviously with the labour she thought maybe it was just she was not used to it and she just needs to just get better.

[118] When the Board field investigator advised Mr. K that the worker said that she had sustained her initial injury in October of 2019, and asked Mr. K at what point he had become aware of the worker's injury Mr. K stated:

> I don't know if, October 22, I'm really not sure, I'd have to look back and see what date that was, but. if it was on the graveyard shift that I'm guessing that [Mr. E] was the supervisor at the time and that [Mr. E] did call me and notify me…. I believe at the time she was able to continue to work. There [were] no issues there. I ended up, I believe, coming in at some point that week. We might have done, you know just sit down with [the worker] to see hey how's it going, what's working and what's not. Again, all I remember was that she wasn't sure what had happened, like what had actually happened and where the injury occurred and how it occurred. Like I said, there wasn't an actual incident that happened to her so we kind of worked with her through that. Like I said, she either mentioned that it might have occurred from playing darts on the weekend with her girlfriend….

[119] When the Board field investigator asked Mr. K. if the worker had specifically said that her injury had occurred while working, Mr. K stated:

> I don't believe so, but I can't recall, it was a while ago. All I remember is that she couldn't tell me how it happened, but obviously it was at work, while she was working but she couldn't tell me what had happened, what was the incident, what occurred. Her thoughts [were], okay well maybe I'm just getting used to the work, that it's not something that she is used to. So sometimes muscles take a bit to kind of get into motion. But yeah, it wasn't an actual incident that she could clearly refer to, but it was at work that she brought it up.

[120] When the Board field investigator asked Mr. K about the conversations he had with the worker about her injury, Mr. K. stated that the worker had met with him and Mr. F and they went through what had happened, what was going on, asked whether there was an actual incident and discussed what could be done to ensure this did not happen again or get worse.



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2026 CanLII 21252 (BC WCAT)

[121] When the Board investigator told Mr. K that the worker said that when she met with him and Mr. F that they had questioned her about why she went to the doctor for her injury and began asking what she had told the doctor, Mr. K. said that he did not remember much about that meeting. Mr. K said that during these meetings they did ask questions to understand if it was going to be a WorkSafe claim so that they could ensure that their side of the paperwork was done. He advised that a lot of people go into the doctor for non-work-related things and say they happened at work and then the doctor reports that it happened at work, so they want to make sure that their side of the paperwork is ready just in case something comes through. Mr. K said: "So yeah the question might have been asked around that but that's my understanding of the reason for asking something like that."

[122] When the Board field investigator advised Mr. K that the worker indicated that she felt uncomfortable and felt like he and Mr. F were trying to figure out if she had told her doctor that she had hurt her arm at work, Mr. K said:

> We do want to understand if the incident happened at work and what happened so that we can prevent it from happening again. Now I don't recall, we normally, we are never aggressive in the interviews. It's just trying to fact-find and understand and obviously for different reasons. One is making sure that it doesn't happen to somebody else and to understand what actually happened, and to understand you know if this is also a [legitimate] incident or not.

[123] When the Board investigator advised Mr. K that the worker said that during their meeting he told her that the computer said that her arm problems were unlikely to have been caused by work, Mr. K responded: "I don't recall saying something like that."

- Interview of Mr. F

[124] When the Board field investigator interviewed Mr. F on June 27, 2023 and asked him about the worker, Mr. F said: "I know very little of her. She never worked for me at all". Mr. F told the Board field investigator that he had sat in on two injury investigations involving the worker; an injury investigation with Mr. K and an injury investigation with Mr. O. Mr. F said that he remembered very little about these meetings/investigations. He advised that he asked a series of questions and got the worker's answers to the questions.

[125] The Board field investigator told Mr. F that the worker stated that she had initially sustained an injury to her arm/shoulder in and about October 2019 but had continued to work and then had sustained an injury to her neck in and around February of 2020. She then asked Mr. F when his injury investigation meetings with the worker had taken place in relation to these injuries, and Mr. F said that he could not recall.

[126] When the Board field investigator advised Mr. F that the worker advised that during the October 2019 injury investigation he and Mr. K had questioned her about why she had gone to the doctor for her injury and that this had made her feel uncomfortable, Mr. F. said that he could not recall the specifics of that meeting.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[127] When the Board field investigator advised Mr. F that the worker said that during the same meeting Mr. K had filled out some questions on a computer and told her that the computer indicated that the problems that she was having were unlikely to have been caused by work, Mr. F stated that he did not recall that.

[128] In response to the Board field investigator advising Mr. F that the worker said Mr. K had also asked her whether she had done anything else to cause problems to her arm and that she had responded to this question by saying that she had been playing darts on the weekend, Mr. F stated that this may have happened but that he could not recall the specifics of the conversation.

- Interview of Mr. L

[129] When the Board field investigator interviewed Mr. L on June 30, 2023, Mr. L advised that during his initial conversations with the worker he learned that she was dealing with stress, anxiety, and depression which was related to being a single mother to a teenager and to injuries which she had sustained in the past.

[130] Mr. L told the Board field investigator that during their initial meeting the worker was excited because she had gotten a job with the employer; a job which would provide her and her child with some financial security and enable her to get out from underneath the need to rely on unhealthy individuals in her life. Mr. L indicated that the worker relayed to him, that when she was interviewed for this job, the manager who was making the decisions for the employer had made it clear that:

> …[T]hey sort of valued employees that weren't going to be, you know, calling WorkSafeBC and would be trying, to work through, you know, whatever things that may happen, injuries etc. and that if she was to make a WorkSafeBC claim, then the impression that [the worker] had based on what I can recall was that if she was to make a claim, that would certainly put in jeopardy her position itself.

[131] Mr. L also advised that this manager had put personal pressure on the worker by telling her: "You know I'm kinda taking a risk hiring you so don't let me down." Mr. L stated that this was additional stress that the worker was functioning under, noting:

> Not only was she going to have to live up to the statements that she made which, you know, implied that she was willing to maybe possibly work through some pain but that, you know, this was sort of a personal favour that this boss was doing for her and that it was a matter of her trying to keep her word to not let him down. In other words, to not, you know, file a claim regardless of whether or not there was a need to do so, or I guess a valid justified reason for doing so.

[132] Mr. L told the Board field investigator that there was a tremendous amount of pressure trying to help the worker cope with the idea of wanting to go to work but being hurt/injured. He stated that the worker felt that she had a choice, stop working and file a claim which would put her employment in jeopardy or keep working while hurt/injured in order to keep her job. Mr. L said

2026 CanLII 21252 (BC WCAT)

that the worker was internally conflicted due to her promise she had made to this manager, and this created anxiety and distress for the worker which perpetuated the physical pain that she was experiencing.

[133] Mr. L told the Board field investigator that the EAP mandate was to work with the client to ensure that they can access the necessary mental health supports to actually stay on the job and get back to the job as quickly as possible and that his mandate/employment contract as an EAP counsellor prevented him from advocating for a client in work-related matters. Mr. L advised that this is why he could not provide the worker with the support she needed when/after she filed the WorkSafe claim.

[134] Mr. L told the Board field investigator that he did not have access to all of his records regarding the worker at the time of their interview but once he had located and reviewed the notes from all of his counselling sessions with the worker that he would provide them to the field investigator.

*Documents Provided to the Board Field Investigator by the Parties*

[135] After the Board field investigator had completed her interviews, the worker provided her with copies of several documents including an email which she had sent to Mr. A on March 2, 2023 in which she wrote: "I've been emailing with HR and I'm asking you when are you going to tell the truth about me? This isn't right."

[136] After the Board field investigator had finished her interviews, the employer also sent her copies of several documents including several pages of typewritten comments attributed to a case manager for the disability insurer who handled the worker's STD claim. According to these comments the worker's STD claim was initiated on March 18, 2020 and concluded on March 16, 2021.

*Documents Provided to the Board Field Investigator by Mr. L*

[137] After the Board field investigator had completed her interviews, Mr. L provided her with copies of his notes from his counselling sessions with the worker. These notes indicate that his first counselling session with the worker was on January 24, 2020 and that his last counselling session with her was on March 18, 2021.

[138] According to Mr. L's chart note for the worker's March 11, 2020 counselling session the worker reported that she was off work due to medical leave.

[139] According to Mr. L's chart note for the worker's June 23, 2020 counselling session the worker reported on that date that she was concerned about performing the way that she wanted to when she had to return to work and was worried about letting down her boss, who she said had put pressure on her not to initiate a Board claim in the event of an injury.



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2026 CanLII 21252 (BC WCAT)

*Documents Submitted to WCAT By the Employer Prior to the Oral Hearing*

[140] On October 9, 2023 the employer submitted screen shots of text messages which the worker and Mr. A had exchanged on the following dates: April 16, 17, 23, 24, and 30, 2019, May 1, 3, 4, 5, 6, 13, and 14, 2019, June 13 and 29, 2019, July 17 and 18, 2019, September 23, 2019 and January 1, 2020.

[141] On July 4, 2024 the WCAT Registry received documents from the employer. which included, but were not limited to, the following:

- A copy of the report generated as a result of the aptitude test which the worker took on May 1, 2019. The report indicates that the purpose of this test was to provide the employer with information regarding the worker's aptitude for the types of activities typically performed by production employees who work in the manufacturing industry. The report indicates that the worker's test results produced a mechanical aptitude score in the 41st percentile (which was interpreted to mean that she was likely to adequately perform tasks that required an understanding of the principles of physical forces and mechanical elements in practical situations). The report indicates that the worker's test results produced a work style compatibility score in the 83rd percentile (which was interpreted to mean that she was a good fit based on the work styles required for successful performance as a production employee within the manufacturing industry). The report indicates that the worker's test results produced an overall fit score in the 64th percentile (which was interpreted to mean that it was likely that she was a good fit for a production employee position within the manufacturing industry).
- A copy of *WCAT Decision A2102306* wherein the panel confirmed Board and Review Division determinations that the worker (who filed the present appeal) had not sustained an injury to her neck which had arisen out of and in the course of her employment on February 17, 2020. The panel acknowledged that the employer had argued that the worker's claim for a February 2020 neck injury should be denied because the worker had delayed in reporting this injury to the employer and had delayed in filing a compensation claim for this injury until November 2020, but the panel concluded that it was unnecessary for her to address these arguments since she had denied the worker's claim on its merits.

  In *WCAT Decision A2102306* the panel referenced an April 3, 2020 letter from a counsellor, Dr. de Bois, that the worker began seeing on June 1, 2020[17]. This letter, which the worker had submitted to the Review Division, contained the following evidence regarding the worker's reasons for not reporting her February 2020 neck injury to the employer and the Board until November 2020:

  - The worker experienced low self-esteem and a lack of assertiveness due to a long history of adverse experiences and her difficulties in initiating her compensation

[17] The date referenced by the WCAT panel is a typographical error; the letter from Dr. de Bois which the worker submitted to the Review Division is dated April 30, 2021, not April 3, 2020.

2026 CanLII 21252 (BC WCAT)

claim stemmed from this and from being told by her manager at the beginning of her employment to avoid reporting work-related accidents.

- The worker was told by her manager upon being hired that, "if [you] were to ever go to WorkSafe you would have over 200 people pissed off at you"; "the employer has a good safety record", and that she "does not want to be the one to change that".
- The worker struggled for many months with what she felt was betraying her manager should she initiate a claim, and she also had fears about causing trouble for her coworkers should she report her accident.
- The worker was experiencing extreme stressors related to the health of her child, an unhealthy relationship, finances and homelessness, and there was no doubt that [these] stressors contributed to the worker's difficulties in submitting her claim.
- The worker had a long history of not reporting wrong doings in her life at the expense of herself and her children - she never wants to get anyone in trouble and have anyone disappointed in her.

*Oral Hearing October 9 to 11, 2024*

[142] On October 9, 2024 I convened a three-day in-person oral hearing at a location near to the worker's residence and the employer's place of business. During this hearing the worker and three witnesses for the employer provided testimony under affirmation.

[143] At the outset of day 1 of the oral hearing, I talked to the parties about the scope of the appeal and the issues in dispute. I reminded the parties that in making my decision on this appeal I would be considering the entire written record and not just the evidence and arguments presented during the oral hearing. I explained that this meant that I would be considering all of the evidence that was before the Board when they made the decisions giving rise to this appeal as well as all of the evidence which WCAT had obtained and/or received prior to the oral hearing (including the results of the Board's field investigation.)

[144] When I asked the worker whether she intended to argue on appeal, as she had on review, that March 10, 2020 was not the date of disablement which applied when it came to determining whether she had filed her application for compensation within the time prescribed in section 151(3) of the Act, the worker indicated that she was not sure. The worker said that there were different factors which had led to her going off work in March 2020, and that she was not clear regarding how the Board determined when someone was disabled by an occupational disease.

[145] Given the worker's uncertainty regarding this matter, I advised the parties that I would be proceeding on the basis that determining whether the Board and Review Division decisions were correct in identifying March 10, 2020 as the date of disablement from occupational disease which applied in this case, was still a live issue.



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2026 CanLII 21252 (BC WCAT)

*Worker - Examination in Chief*

- *What Mr. A Said and Did on May 1, 2019*

[146] The worker testified that as part of the hiring process for getting a job in the mill she took an aptitude test. The worker testified that Mr. O had provided her with the link for this aptitude test and she was heading to the library to do this test when Mr. A had called her to see where she was with the aptitude test. The worker testified that she told Mr. A that she was just heading over to the library to do the test. She said that she thought that this was around 4 to 4:30 p.m. The worker said:

> And [Mr. A]'s like, no, just come up here. And I'm like, no, no, it's okay I'm going to go over, I'll do the. I'm just heading over to the library, it's free to use their computers, it's not a big deal. And he said, well no, just come up here. He's like, there's nobody here, you can sit in the boardroom and do it. So, I went in there and I did the aptitude test, and [Mr. A] told me after that, he's like, you didn't pass. And I was like, what? And he's like, yeah, you failed. He's like, I don't know what happened you were doing so good to begin with. And I'm like, yeah I don't know, I just had other things on my mind, and at that point, that's when I got upset.

[147] The worker testified that when she was listening to Mr. A's interview with the Board field investigator it sounded to her like Mr. A told the investigator that the aptitude test that she had taken before she was hired to work in the mill was not mandatory. The worker said:

> So when I heard him talking about this…. I was like okay, well why wasn't I told that? That wasn't, like, because when he told me that I'd failed it, and then that's when I was just obviously upset, I don't think I started crying, but I'm sure that I was upset with myself, and, he didn't say "well no, don't worry about it, it's not mandatory." What he said was… that he would have [Mr. O] just put me through anyways and just not tell anybody that he was doing that. And I said of course I wouldn't say anything.
>
> So I guess [Mr. O] put me through and that's when this whole conversation had come up. There was obviously probably some back and forth conversation and that's when [Mr. A] had said, "and whatever you do", and that's how, I don't know what we were talking about before or after, but that's, "whatever you do, don't go, if something happens, don't go to WorkSafe". And then that's where the "if you do you will have over two hundred people pissed off at you: comment came. And to not make him regret hiring me. I'm not saying it all came like one after the other. I'm sure when he said, you know, about reporting to WorkSafe, I agreed. I said okay. And then maybe there was conversation after, but when he said the "don't make me regret hiring you", like obviously that's not what I would have wanted to do. So I agreed to that as well.





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2026 CanLII 21252 (BC WCAT)

[148] The worker testified that when she was listening to Mr. A's interview with the Board field investigator she heard Mr. A say that he had offered her money because she told him that she and her child had no food and this made him feel sick to his stomach. The worker testified that she never would have said such a thing to Mr. A because it would not have been true. The worker testified that when she was hired to work at the mill she was not getting many hours of work at the bank and so things were tight financially. The worker testified that on the date she took the aptitude test, before she left the mill office, Mr. A had asked her if she had enough money for food and made a comment about not wanting her kid to go without. The worker testified that she told Mr. A that this was not an issue but admitted to being stressed and asked him if he knew when she would be starting work. The worker testified that following this conversation Mr. A had given her $80 cash for groceries and filled up her car with gasoline using a company card. The worker testified that she was unable to recall whether Mr. A had given her the money for groceries before they left the mill office or after when they were at the gas station.

- Onset of Right Upper Extremity Symptoms

[149] The worker testified that her right upper extremity symptoms started with a tight right forearm and progressed from there. The worker testified that initially she thought that her symptoms. were the result of doing work that she was unaccustomed to but then her symptoms kept on getting worse, especially when she was using a pike pole. The worker testified that when her right forearm pain moved into her elbow her doctor told her that she had tennis elbow, which was something that she had never experienced before.

[150] The worker testified that there were certain tools that she had to use in her job at the mill and using these tools aggravated her right arm. The worker testified that eventually this resulted in the pain in her right elbow radiating from her right elbow up into her right shoulder. The worker testified that she made sure that Mr. K knew this, during the meeting that she had with him and Mr. F, that she made sure that she told Mr. K and Mr. F what was aggravating her right arm, and what she was having a hard time with.

[151] The worker testified that after her right upper extremity got to this point she was unable to perform her duties without an arm brace, she had to constantly wear an arm brace overtop of her long sleeved shirt and her coworkers had to come and help her to use a pike pole to un-jamb the strip rack.

[152] The worker testified that as time moved on there were times when she was simply unable to perform the work duties that she was trained to perform with a pike pole even when she was wearing her arm brace. The worker testified that when this happened Mr. Q would let her go do cleanup or other duties.

2026 CanLII 21252 (BC WCAT)

- Injury Investigation Meeting with Mr. F and Mr. K

[153] The worker testified that when she met with Mr. K. and Mr. F regarding her right upper extremity complaints Mr. F asked her if she had seen her doctor and she told him that she had. The worker testified that when Mr. F asked her what she had told the doctor:

> I didn't say anything, just that I wanted to get, I thought I needed a referral for physio. And [Mr. F] had asked me why I would go to my doctor for a referral to physio when you don't need to get a referral for physio, and I said okay, well I just didn't know that, or whatever my answer was. And he asked me what I had told my doctor. And I, because of my conversation with [Mr. A] and already having that, I was getting uncomfortable because the take that I'm getting from this is they wanted to know if I said it was work-related or not. And at that time I had told my doctor when he had asked me what had happened with my arm, or what was happening, I told him at that time, I made sure to tell him at that time, that I didn't know, because I didn't want it to be connected to work, even though it was connected to my duties at work.

- Date of Disablement from Occupational Disease

[154] The worker testified that the reason that she was not sure whether March 10, 2020 was her date of disablement from occupational disease was because she was not sure whether her date of disablement from occupational disease was the date that she decided that she was unable to work or the date that her employer said or decided that she was unable to work.

[155] The worker testified that she had stopped working prior to March 9 or 10, 2020 because she was unable to use her right arm anymore, but her employer had paid her weekly indemnity benefits for this period.

[156] The worker testified that she thought perhaps her date of disablement from occupational disease might be after her weekly indemnity benefits had ended and she had tried to go back to work but was told by Mr. Q to stay off work until she was 100%. The worker testified that this happened circa June or July (year not specified) when she was working on a return-to-work plan with the employer's disability insurer.

- Filing a Claim for Her Right Upper Extremity

[157] The worker testified that how she ended up filing her claim for her right arm injury is that she was talking to a WorkSafe CCA about her neck and trying to do so without talking about her right arm problems. The worker testified that this was difficult to do because her neck and arm problems were so closely related. The worker testified that she had ended up mentioning the problems with her arm and the CCA had asked her if she had reported these problems to WorkSafe. The worker testified that when she told the CCA that she had not reported her arm problems to WorkSafe because her employer had told her that these problems were not due to a work-related injury, the CCA told her that this was not a decision for her employer to make.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[158] The worker testified that she had been though the WorkSafe claims process before, but she had never been in a situation before where her employer told her that her problems were not work-related like Mr. K did when he did "that computer thing" with her when she was talking to him and Mr. F about her arm.

- Special Circumstances

[159] The worker testified that she believed that there were special circumstances which had precluded her from filing her right upper extremity claim within time. She said:

> But I do feel that I have special circumstances because as I shared, WorkSafe wasn't an option for me at any point in time. And I wasn't ready, I guess, to tell my truth back in October when I was with my doctor because I could've very well have just been honest about well this is just what happened, and this is what is bothering me, and it is bothering me at work. I wasn't ready to tell the truth about anything, anything to do with [Mr. A] especially, until finally in November, I guess November of 2020. So even in October of 2019 and moving forward, and yeah, I just, I didn't, I wasn't, I didn't want to lose my job, I think that was the whole thing. And, I mean, [Mr. A] can sit there and deny it. He has every right to deny my allegations against him, but, yeah, that's what happened…

*Cross-examination of Worker*

- What Worker Told her Doctor

[160] During cross-examination the worker confirmed that following the onset of her right upper extremity symptoms, and prior to meeting with Mr. F and Mr. K , she had seen her doctor about these symptoms, but she had not advised her doctor that her symptoms were work-related and consequently her doctor had not treated her right upper extremity condition as an occupational injury/claim. During cross-examination the worker testified that the reason that she had not advised her doctor that her right upper extremity symptoms were work-related when she first saw him about these symptoms was because she was not sure at the time whether her symptoms were work-related or not.

[161] During cross-examination, the worker confirmed that she had eventually gone on weekly indemnity and then on STD benefits as a result of her right upper extremity symptoms/injury.

- Computer Used by Mr. K.

[162] During cross-examination the worker confirmed that it was her evidence that during her meeting with Mr. K (and Mr. F) Mr. K had used a computer to determine whether her right upper extremity injury was caused by work or not.

[163] During cross-examination, when the ER asked the worker to describe whether Mr. K had a computer on his desk and some program that he had opened, the worker responded: "Yeah, I



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2026 CanLII 21252 (BC WCAT)

don't remember the name of it. What the program is." When the ER asked the worker whether Mr. K had asked her questions about how her injury had happened in order to input data into this program, the worker said: "Yeah, probably." When the ER asked the worker what questions she had been asked, the worker responded that she did not remember the questions that she had been asked.

[164] During cross-examination, when the ER asked the worker if she could tell him anything about what Mr. K was doing, whether Mr. K was just typing her answers on the keyboard, the worker said: "I think so, yes". When the ER said: "And then the computer would just come up with an answer that it was work-related or not, do you know how that worked?" The worker said: "I don't know how it worked."

[165] During cross-examination, when the ER suggested to the worker that she had not told Mr. K that her right upper extremity injury was work-related, the worker stated that she had told Mr. K that she did not know the exact thing that had happened to cause her injury, or the exact moment that her injury had happened, but that she had told Mr. K when she noticed her injury, what made her injury worse and about her work with the pike pole.

[166] During cross-examination, the worker confirmed that when Mr. K had asked her if she had been doing anything else that could have caused her injury, that she had told him that she had been playing darts. The worker also stated: "I said that answer because [Mr. K] had already at that point told me that it probably was caused from something else…."

- Worker's Cell Phone Service

[167] During cross-examination the worker confirmed that she had told the Board field investigator that she got a lot of phone calls from Mr. A.

[168] During cross-examination, when the ER put it to the worker that in 2019 she had to rely on WIFI in order to send text messages because she did not have a data plan or cell phone plan which enabled her to send text messages when she was not near WIFI, the worker testified that she did not know whether she had a data plan or cell phone plan in 2019 which enabled her to send text messages when she was not near WIFI.

[169] During cross-examination, when the ER put it to the worker, that she had no WIFI access at her home in early 2019, the worker testified that she did have WIFI access at her home in early 2019.

- Not Wanting to Work with Mr. A

[170] During cross-examination, the worker confirmed that she had told the Board field investigator that she did want to work in the mill office and did not want to work with Mr. A. When the ER asked the worker when she had come to the realization that she did not want to work in the



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2026 CanLII 21252 (BC WCAT)

office with Mr. A, the worker advised that she had come to this realization before she was hired, when Mr. A offered her the office position and then the cleaning position, because she felt that "something was a little off".

[171] During cross-examination, when the ER asked the worker to explain what was going through her mind that she decided that she did not want to work with Mr. A., the worker said:

> [Because] I went to the mill to apply for a job in the mill and these other positions were being offered to me and there was this time lapse happening and I started to get the feeling that something just wasn't right. And at that point I just didn't know what. …But then it was obvious when I was at the office, and when I went to do the aptitude test, that I wouldn't want to work by Mr. A.

[172] During cross-examination when the ER queried whether the worker was reluctant to work with Mr. A because she did not trust his motivations the worker said:

> It's not that I didn't trust his motivations, initially, I just didn't know what was happening. I, it was, it was just a strange situation that was happening, initially, and I just didn't understand.

[173] During cross-examination when the ER suggested that the worker wanted to keep her distance from Mr. A, the worker responded: "Initially? Or? I just wanted to get into the mill. I was just hoping to get hired and then go to work in the mill."

[174] During cross-examination when the ER suggested that the worker wanted to avoid Mr. A if she could, the worker responded: "As time went on, yes."

- The Aptitude Test

[175] During cross-examination, the worker confirmed that she had done an aptitude test as part of the employer's hiring process. The worker testified that Mr. A had called her to tell her that the employer needed her to get her aptitude test done and that she had told Mr. A that she was going to the library to do this test.

[176] During cross-examination, when the ER sought to confirm that it was the worker's evidence that Mr. A had invited her to the mill office in order to complete her aptitude test, the worker stated: "Well I think I said he kind of, he insisted that I do it up there, yes".

[177] During cross-examination when the ER put it to the worker that Mr. A had offered her the option of doing her aptitude test at the mill office instead of the library, but had not insisted that she do so, the worker said:

> Yeah, I'm just, I don't, I'm not saying like in a demanding way, but more of, I already said that this is where I am going and this is where I'm headed and he



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2026 CanLII 21252 (BC WCAT)

> said, no, come on up here and do it and I said it's fine I can do it at the library, and he's like well come up here there's nobody else here you can do it up here. So if insisting is not the right word to use…

[178] During cross-examination the worker confirmed that it was her evidence that she had done the aptitude test at the mill office and that Mr. A had advised her before she left that office that she had failed this test.

[179] During cross-examination, when the ER advised the worker that the employer had obtained the results of her aptitude test from HR, that these records showed that she had passed the aptitude test, and he asked the worker if she was aware that she had passed this test, the worker said: "No, I'm not, because I was told that I failed it."

[180] During cross-examination when the ER advised the worker that Mr. A would testify that he had no idea whether she had passed or failed this aptitude test, and that he had not seen the results of her aptitude test until he was preparing for the oral hearing, the worker said:

> He got a hold of [Mr. O], and it was evening by this time, and he got a hold of [Mr. O] whether he phoned him, texted him, emailed, I don't know, because that's how he got the results, and he ended up telling me that he would have [Mr. O] put me through that evening as well, because he told me I failed it. And I didn't? I passed it?

[181] During cross-examination, when the ER advised the worker that Mr. A would testify that on the day that she wrote her aptitude test, he never saw her tests results, that he never said that he would "put her through", that he never asked Mr. O to "put her through" even though she had failed her aptitude test, and that he did not have a discussion with her about her tests results and the ER asked the worker whether this refreshed her memory, the worker said:

> No, I. Honestly, I was told that I failed the aptitude test and that's why I was upset when I heard that news, but anyways, that's just something else, then, to talk to [Mr. A] about.

[182] During cross-examination, when the ER showed the worker a copy of her aptitude test results the worker acknowledged that this document said that she had passed the test, expressed surprise regarding her test mark scores, and reiterated that on the same date that she had written this test, that Mr. A had told her that she had failed this test.

[183] During cross-examination, the worker testified that she had written her aptitude test using a laptop in the boardroom at the mill office, that Mr. A was present in the boardroom for a period of time after she started writing the test, and then he had left the room.

[184] During cross-examination, the worker was unable to recall how long she had remained at the mill office after she wrote her aptitude test. The worker testified that she was still at the mill office when Mr. A told her that he was going to contact Mr. O to find out the results of her aptitude test. The worker testified that she did not know what method Mr. A had used to contact

2026 CanLII 21252 (BC WCAT)

Mr. O about her aptitude test results and that she did not recall whether Mr. A had phoned or texted anyone while she was in his office. The worker also testified that she did not know how much time had elapsed between her completion of her aptitude test and Mr. A advising her that she had failed it.

[185] During cross-examination, the worker testified that after Mr. A had advised her that she had failed her aptitude test, he asked her what had happened, noting that she had been doing so well before he left the boardroom. The worker testified that she told Mr. A that she did not know what had happened but that she had a lot of stress going on.

[186] In response to the ER asking the worker if she'd had a conversation with Mr. A while she was in his office on May 1, 2019 about how tight things were for her financially, the worker testified that she did not know if she'd had a conversation like this with Mr. A on May 1, 2019, but that it was her belief that she had talked to Mr. A about how tight things were for her financially on more than one occasion before May 1, 2019.

- The Hug

[187] During cross-examination when the ER sought to confirm that the worker had told the Board field investigator that before she left the mill office on the day that she wrote her aptitude test, Mr. A had put his arms around her and asked for a hug, the worker stated:

> No, that's not what I said. I said that he put his arms out when we were getting ready to leave and asked for a hug because I was so excited because he'd put me through; he got Mr. O to put me through after this aptitude test that I had failed and I was excited.

[188] During cross-examination, the worker confirmed that she had responded to Mr. A's request for a hug by sharing a hug with him even though she did not want to.

- Groceries and Gas

[189] During cross-examination, the worker confirmed that on the day she wrote her aptitude test Mr. A had given her $80 for groceries and filled her car up with gas using his company gas card.

*Text Messages Exchanged by Worker and Mr. A*

[190] During cross-examination, when the ER noted that Mr. A had provided the Board field investigator with records of text messages which he and the worker had exchanged and that these text messages had been included in the disclosure file which had been provided to the worker. When the ER provided copies of these text messages to the worker and asked her if she had seen them the worker responded that she had not read through the disclosure file which had been provided to her.



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2026 CanLII 21252 (BC WCAT)

- Text Message Worker sent to Mr. A at 9:15 p.m. on April 23, 2019

[191] During cross-examination, when the ER noted that the worker had texted Mr. A at 9:15 p.m. on April 23, 2019, noted that this was during non-business hours, and asked the worker if there was a reason why she was texting Mr. A in the evening. The worker responded to this query by testifying that she did not know why she was texting Mr. A at this time.

- Text Message Exchange starting at 3:26 p.m. on May 1, 2019

[192] During cross-examination, the ER read the following text message exchange which the worker and Mr. A had regarding her aptitude test starting at 3:26 p.m. on May 1, 2019:

> 3:26 p.m. Worker: Hi [Mr. A's first name]. I've been at the library doing some practice tests. I've hit a wall. Not because I can't work under stress or focus but because I'm so stressed and I'm afraid I'll fail because my mind is so heavy. I wanted to have the results by the end of your work day. I'm sorry. The library is open until 9 tonight so I will have it done today. Thanks.
>
> 3:33 p.m. Mr. A: [Worker's first name] I'm going to need to move forward. I'm not sure what I can do to help. Let me know.
>
> 3:34 p.m. Mr. A: If you need a place to do the test we can make office space available this afternoon to do it here.
>
> 3:35 p.m. Mr. A: But we need to move forward at this point.
>
> 3:40 p.m. Worker: Of course. I have the library. I'll go in half hour? Is that okay?
>
> 3:43 p.m. Worker: I'm going right now.
>
> 3:44 p.m. Mr. A: Just in a meeting it does not need to be this second. ½ is fine. You can also do it here in a private space. I'm going to be here anyway.
>
> 3:46 p.m. Worker: Thank you. Let me know when I can come there. Sorry.
>
> 4:14 p.m. Mr. A: You can come anytime. Text me when you arrive. Or you can go to the library. Whatever works best for you. It's totally your call. If the library is easier no worries.

[193] When the ER suggested to the worker that in these text messages Mr. A did not sound like he was demanding that she go to the mill to do her aptitude test, the worker responded:

> Well, as I recall speaking, I thought I was talking to [Mr. A] on the phone. Whether obviously if these had taken place, and obviously they took place, but I thought there was a phone call that had taken place.



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2026 CanLII 21252 (BC WCAT)

[194] When the ER asked the worker whether she was confusing a text with a phone call and put it to her that if she and Mr. A were texting that there was no need for them to have a phone call, the worker stated: "Well you can text somebody and still phone them, right?"

[195] During cross-examination the ER put it to the worker that it was clear from these text messages that Mr. A had not demanded that she come to the mill to do her aptitude test; that Mr. A had suggested that the worker come to the mill to do her aptitude test but had also indicated that it was "totally her call", the worker stated: "In these text messages yes, like I said, yep".

[196] In response to the ER stating: "[s]o you had the option of staying at the library or going to the mill and you chose to go to the mill, correct?" the worker responded: "[in] these text messages, yes."

[197] When the ER put it to the worker that these texts messages were inconsistent with the evidence which she had given in chief earlier in the day, the worker stated:

> Well like I said I thought he, I thought we also had a phone conversation about it, And if you have evidence that we didn't have a phone conversation about it as well, then like, ….

[198] When the ER asked the worker if these text messages helped to refresh her memory that her evidence on this point was wrong, the worker said: "I'm not saying that this isn't what happened. I'm just saying I thought that we also had a phone conversation about it, that's all I'm saying."

[199] When the ER said to the worker: "You would agree with me that it's pretty clear from these text messages that it was your call where you took the aptitude test" the worker responded: "In these text messages that is what it says, yes".

- Text Message Exchange starting at 7:26 p.m. on May 1, 2019

[200] During cross-examination the ER reviewed with the worker the following text message exchange that she had with Mr. A starting at 7:26 p.m. on May 1, 2019.

> 7:26 p.m. Worker: Thank you for everything.
>
> 7:26 p.m. Mr. A: No problem. Just please do well.
>
> 7:34 p.m. Worker: This will seriously change our lives. It's such a big deal.
>
> 7:45 p.m. Mr. A: I know. That's what I'm hoping for.
>
> 7:56 p.m. Worker: I told my [child] we patiently wait and see so I will be in touch of course :) This is so surreal right now.
>
> 7:57 p.m. Mr. A: I talked to [Mr. O] and asked him to get you an offer letter tomorrow.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[201] After the worker confirmed that she had sent the aforementioned text messages to Mr. A starting at 7:26 p.m. on May 1, 2019 the worker and the ER had the following verbal exchange:

> ER: Now this is a guy who just gave you a hug that you did not want and you did not want to be with this guy because he kind of creeped you. out is that right?
>
> Worker: Um, yeah.
>
> ER: And you're initiating a discussion with him at 7:30 at night?
>
> Worker: Yep.
>
> ER: So it doesn't seem like you have problems communicating with [Mr. A]. You do so during out of office hours. Correct?
>
> Worker: Yeah because that's what happened but I mean I also just got the job in the mill so whether or not I, however I felt about [Mr. A] I was happy that I still had that and I wanted to thank him for that because he was my boss.
>
> ER: And his line was "no problem just do well". [Mr. A] will say that was in relation to the test that you took. I hope you do well on the test.
>
> ER: You go on to say "this will change our lives it's such a big deal. I told my [child] we patiently wait and see so I'll be in touch of course. This is so surreal now. You are very excited. You continue to send him texts for an extended period of 45 minutes. You are thanking him for offering you a job, is that right?
>
> Worker: I think I'm thanking [Mr. A] for choosing to put me through when he didn't have to because I was told that I had failed that stupid test and I'm thanking him for having me put that anyway because otherwise, if he didn't then I wouldn't be getting this job that I am so happy to have.
>
> ER: On page 16 of this document, you tell this guy, that you think is so creepy, that you think that he is awesome, is that right?
>
> Worker: Yep. It was a big deal. I remember when all this was happening.
>
> ER: If we turn the page we see that you say: "Oh my god [Mr. A's first name] I am so thankful. I can't wait to see you really. Thank you from my heart." So you are saying that you can't wait to see him.
>
> Worker: Yeah, and you know you can take it however you want to take it. You could also take it for the simple fact that he did me a huge favour. …I believed at the time that he had done me a huge favour. That's why I'm thanking him so much. I want him to know how thankful and grateful I am that he did what he did for me.

2026 CanLII 21252 (BC WCAT)

- Text Message June 13, 2019

[202] During cross-examination the worker confirmed that she had sent Mr. A a text message on June 13, 2019 in which she wrote:

> I'm feeling super grateful. Just wanted to say thank you again for making this happen. Also I'll have to give you back your money back on payday. Let me know when.

[203] The worker confirmed that the money that she was talking about paying back to Mr. A in this text was the $80 dollars that he had lent to her and that she had sent this text message to Mr. A, well after she had signed the employer's offer letter.

- Text Message July 17, 2019

[204] During cross-examination, the ER noted that that the worker had sent an email to Mr. A on July 17, 2019 in which she disclosed personal and confidential information regarding her child before asking to be allowed to leave work early in order to be with her child.

[205] The ER suggested to the worker that her voluntary disclosure of this information to Mr. A in a July 17, 2019 text message was inconsistent with her evidence that Mr. A had pried into her child's affairs, was inconsistent with her evidence that she felt uncomfortable providing this information to Mr. A, and was inconsistent with her evidence that she did not want to provide this information to Mr. A.

[206] The worker responded to the ER's suggestions by testifying that prior to sending this text message to Mr. A on July 17, 2019 she had had discussions with Mr. A about her attendance and the fact that there was something going on with her child and Mr. A had told her at that time that she had to tell him what was going on so that he could help her (the worker).

- Text Message Exchange January 1, 2020

[207] During cross-examination the worker confirmed that she had sent Mr. A a text message on January 1, 2020 which contained a Happy New Years greeting but she said that she was not sure that this greeting was actually intended for Mr. A. The worker testified that Mr. A was one of two people she knew with the same first name whose contact information was in her phone and that she considered it possible that she had sent this text to Mr. A by accident. The worker also testified that she considered it possible that this greeting that she had sent to Mr. A was part of a mass text that she had sent to all of her contacts.

[208] During cross-examination, the ER put it to the worker that she had sent this Happy New Years text to Mr. A personally and deliberately, and suggested to her that texting Mr. A on New Years Eve was inconsistent with her statement that she was scared of Mr. A (worker denied saying that she was scared of Mr. A), that she did not like Mr. A, and that she wanted to minimize contact with Mr. A. When the ER asked the worker why she was texting Mr. A on New Years

2026 CanLII 21252 (BC WCAT)

Eve of 2020 the worker indicated that if she had not sent this text message to Mr. A by accident or as part of a mass text that she was: "not quite sure [why] because I don't deliberately remember saying that I was going to text [Mr. A]. Or unless I did because he was still my boss. I don't know."

*WCAT decision A2102306*

[209] During cross-examination, the ER read the following portion of *WCAT Decision A2102306*:

> She was not aware of anyone in the workplace having gotten in trouble for reporting an injury, but she did know one co-worker who had an eye injury; this co-worker had "kind of reinforced the no report WorkSafe policy." He may not have been in trouble, but he was made to come back to work on modified duties because of something to do with not having a time loss. This co-worker told her about safety bonuses, which she did not previously know about.

[210] When the ER asked the worker whether it was still her evidence that she was not aware of anyone in the workplace having gotten into trouble for reporting an injury, the worker confirmed that she was not aware of anyone in the workplace having gotten into trouble for reporting an injury.

[211] When the ER asked the worker if she had received any discipline or gotten into trouble for filing her claim for a neck injury on November 20, 2020, the worker indicated that she had not.

[212] When the ER noted that the worker had testified when providing her evidence in chief that she was not prepared to "tell her truth" until November 2020 and the ER asked the worker whether telling her truth was in reference to how her injury had occurred, the worker indicated that telling her truth was about the conversation that she had with Mr. A about (not) reporting work injuries (to WorkSafe).

*Worker Redirect*

[213] On redirect the worker testified that the fact that Mr. A indicated during the text message exchange which they had on the evening of May 1, 2019 that he would get hold of Mr. O in order to get her an offer letter proves that she had already been hired and that all she needed was a formal offer letter from Mr. O.

[214] On redirect the worker testified that she no longer had access to the original text messages which she had exchanged with Mr. A. The worker advised that she was not questioning the veracity of the text messages which the employer had provided to the Board field investigator, but she indicated that if these text messages were going to be entered into evidence that they should show that the texts attributed to her had been sent from her phone (number) and not from a different phone (number) so as to eliminate any possibility that the texts attributed to her had been sent to Mr. A from another phone by someone purporting to be her.



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2026 CanLII 21252 (BC WCAT)

[215] The worker also testified that she was concerned that that there was no way to tell whether the text messages which the employer had provided to the Board field investigator were in their original form; and/or that they had not been altered or deleted before they were provided to the Board field investigator.

*My Questions for the Worker*

[216] After the worker finished testifying in redirect I asked her questions.

[217] I started by asking the worker to explain to me why what Mr. A had said to her when she was hired in May 2019 had prevented her from filing a compensation claim for her right upper extremity injury until April 7, 2021 when it had not prevented her from filing a claim for her neck injury on November 20, 2020. The worker responded by testifying the difference between filing the claim for her neck injury (in November 2020) and filing a claim for her right upper extremity injury (in April 2021) was that she already knew (as a result of her October 2019 meeting with Mr. F and Mr. K) that her employer did not think that her right upper extremity injury was a work-related injury; that she did not have her employer's support.

[218] The worker testified that she felt that her right upper extremity injury "had already been deemed as non-work-related" by her employer, and as a result she believed that she did not have the option of filing a claim for this injury. The worker testified that in the past when she had sustained work injuries her employer had been the one to notify the Board and the Board had contacted her about filing a claim. The worker testified that prior to October 2019 she had never encountered a situation in which she had reported a work injury to her employer, and her employer had responded by telling her that it did not think that her injury was work-related.

[219] When I asked the worker what had transpired after she filed her neck injury claim in November 2020 which had resulted in her deciding to file a claim for her right upper extremity injury on April 7, 2021, the worker testified that even after she had filed her neck injury claim in November 2020, after she had lost her home and she and her child had been forced to move into separate living accommodations (circa December 2020), and after the Board had denied her neck injury claim (in December 2020) she was still not prepared to file a claim for her right upper extremity injury. The worker testified that this was because she did not want any repercussions, because she wanted and needed to keep her job with the employer, and because she wanted to get better in any way that did not involve dealing with the Board for the reasons which she had already shared.

[220] The worker testified that the only reason that she ended up filing a claim for her right upper extremity injury on April 7, 2021 was because a Board CCA told her that the employer did not have the right to decide if her injury was work-related or not.

*ER's Questions for the Worker*

[221] After the worker had testified in redirect, the ER asked her further questions.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[222] When the ER put it to the worker that Mr. K and Mr. F had not said to her during the October 2019 injury investigation meeting that she could not file a WorkSafe claim, the worker agreed that Mr. F and Mr. K had not said this. When the ER stated: "But you got the impression that if you did file they might have opposed your claim because they might argue that it wasn't work-related", the worker said:

> Well as I said there was reasons why I would feel like that, and it was the way the meeting went with them. It was the intimidation from Mr. F, and it was the questions that they asked and it's the way that they were asked, and the tone that was used.

[223] When the ER put it to the worker that by November 2020 she was not worried about what repercussions there might be from the employer if she filed a compensation claim, the worker testified that she would not say that she was not concerned about repercussions in November 2020 but that repercussions were not at the forefront of her mind in November 2020.

[224] When the ER suggested to the worker that by November 2020 thoughts of claim suppression were not preventing her from filing a claim, the worker testified that thoughts of claim suppression were not at the forefront of her mind in November 2020, but they were still there.

[225] When the ER said to the worker: "You'll agree with me that anything that [Mr. A] said to you back in 2019 did not prevent you from filing your claim in November 2020, because you did it. The worker responded: "Okay".

[226] When the ER suggested to the worker that she had not experienced any repercussions from the employer as a result of filing her November 2020 claim, the worker confirmed that she had not been disciplined for filing that claim; that she had not been called into Mr. A's office to have a discussion about why she had filed that claim; and that no supervisor had asked her why she had filed her November 2020 claim.

[227] When the ER said to the worker: "So it's fair to say, that at the very latest, by November of 2020, you knew that there would be no employment consequences for filing a WCB claim", the worker responded: "I don't know that. I didn't know that. No, I don't think that's true." The worker testified that she was still fearful of the possibility of repercussions down the road such as constructive dismissal. When the ER acknowledged that the worker had fears but had not experienced any of them, the worker stated: "No, because I didn't get to come back to work."

*Direct Examination of Mr. A*

- Circumstances Which Led To Worker Being Considered for a Job in the Mill

[228] During direct examination, Mr. A testified that around 2019 he, an accountant, and Ms. X had met with the worker in the boardroom at the employer's R location and interviewed her for an office position. Mr. A testified that after he and the two other staff had interviewed the worker for the office position he had offered the position to the worker. Mr. A testified that the worker responded to the offer by indicating that she was interested in a job that paid a higher wage.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

Mr. A advised that when the worker learned that it was not possible to make a higher wage working in the office she made the decision that she would rather take a job in production which paid more. Mr. A confirmed that the worker was subsequently hired to work in production.

[229] When the ER asked Mr. A what the next steps were to get the worker set up in production, what the onboarding process was and what sorts of hoops the worker had to jump through Mr. A said:

> To go through the production process there would have been stuff that should have been set up for, the aptitude testing, I can't say for sure what all [Mr. O] would have had to have done, but some testing and some orientations and things like that. Paperwork to be gone through.

- The Aptitude Test

[230] In response to the ER asking: "What was the process to get an employee to take an aptitude test and who saw those results?" Mr. A stated: "I believe it's an online test; it was an online test." When the ER asked: "Who set it up?" Mr. A responded: "Human resources".

[231] In response to the ER stating: "So the employee does the online test, who gets the test results?" Mr. A said: "Human resources." When the ER asked Mr. A: "Do you ever get the test results? Mr. A said: "Not that I recall".

[232] When the ER asked Mr. A: "Were there any issues getting [the worker] to take this test?" Mr. A said:

> I think she wanted to take it, I think there is issues around internet access or computer access or something. I don't think there was an issue with her wanting to take the test. I think it was the ability to take the test.

[233] When the ER asked Mr. A: "Do you recall any discussions with her to help her facilitate her taking this test? Communications? Mr. A said: "Yeah, I think it was either go to the library or come out to the office and take the test, but the test had to be done."

[234] When the ER asked Mr. A: "How did you communicate with her about, you know, here's your options how to get the test done?" Mr. A said: "Text message".

[235] When the ER asked Mr. A whether he had phoned the worker about this or whether it was just text messages Mr. A said:

> I recall that it was mostly text messages, because if I recall correctly there was something with the phone plan or minutes or available, that she needed WIFI to send messages.

2026 CanLII 21252 (BC WCAT)

[236] In response to the ER asking Mr. A what he recalled about the discussions or communications that he had with the worker leading up to the test being taken and then later on during the rest of that day, Mr. A said:

> Uh, I recall that we needed to get the test done and there was delays for some reason. And I can't remember the reasons for the delays, but it needed to get done and to find a place. I don't recall why the delays.

[237] When the ER said: "Do you recall any text communications with [the worker] earlier on May 1 which led her to come to the mill?" Mr. A said: "Yeah I think that I said that you can go to the library or come to the mill it doesn't matter but it's got to be somewhere. I think there was a, there'd been a delay, and it didn't matter where to go but it had to get done."

[238] When the ER said to Mr. A: "Did you personally have a preference whether she went to the library or went to the mill?" Mr. A said: "No".

[239] When the ER asked Mr. A whether he recalled what time the worker had arrived at the mill to take this test Mr. A said: "Sometime in the afternoon." When the ER advised Mr. A that the worker had sent him a text message at 5:15 p.m. on May 1, 2019 Mr. A said that was probably when she had arrived at the mill.

[240] When the ER asked Mr. A what happened after the worker arrived at the mill on May 1, 2019, Mr. A said: "I think she went and took the aptitude test. There might have been some problems getting online I can't remember for sure. I'd never done one of these before."

[241] When the ER asked Mr. A: "Where was she set up to take the test?" Mr. A said: "The boardroom probably, or I think maybe, either yeah I think the boardroom. It's hard to remember, it's five years ago". Mr. A stated that there was a full-time computer in the boardroom.

[242] When the ER asked Mr. A: "While she was doing the test, did you have any interaction with her?" Mr. A said: "No, not that I recall."

[243] When the ER told Mr. A that the worker's evidence was that when she was starting the test he had come in and given her encouragement that she was doing well or words to that effect, Mr. A said: "That she was doing well on the aptitude test?" When the ER responded "Yes. What do you say about that?" Mr. A said: "How would I know how she was doing on the aptitude test?"

[244] When the ER asked Mr. A directly: "Did you come into the boardroom while she was taking the test and encourage her or say something to the effect that she was doing well?" Mr. A said: "I don't recall doing that".

[245] When the ER said to Mr. A: "You don't recall?" Mr. A said: "No I didn't. No I don't. No, I didn't go into the boardroom and I didn't say you're doing good on the aptitude test, I have no way of knowing that [ER's first name]. I don't have any way of knowing how that's going."



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[246] When the ER said to Mr. A: "You say you have no way of knowing. Have you ever done the test yourself?" Mr. A said: "No". When the ER asked Mr. A whether he was familiar with any of the questions on the test, Mr. A said: "No". When the ER asked Mr. A whether he had ever seen a scoring guide which would let him know what answers were good or bad, Mr. A said: "No". When the ER asked Mr. A if he had any ability at all to comment on how the worker was doing as she was writing the test, Mr. A said: "No".

- After the Aptitude Test

[247] In response to the ER asking Mr. A whether the worker had come into his office after the test was complete, Mr. A said: "I think so. Once the test was complete." In response to the ER asking Mr. A if he recalled what happened when the worker came into his office, Mr. A said:

> …[T]he biggest thing that I remember from that meeting was that she was worried about whether or not she had done well on the exam, and she was emotionally upset about whether or not she would be able to afford to get to work and to have money for basic necessities and I remember that bothered me a lot.

[248] When the ER asked Mr. A how the worker's demeanor was when she described some of these challenges, Mr. A said: "She teared up a little bit". When the ER asked Mr. A what he did in response to the worker disclosing these challenges, Mr. A said: "I opened my wallet, and I gave her whatever cash I had so that she could get what she needed to be able to get by."

[249] When the ER asked Mr. A if he remembered how much money he had given the worker that day Mr. A indicated that he could not remember that he remembered opening up his wallet and seeing twenties and that he took them out and gave them to the worker. When the ER advised Mr. A that it was the worker's evidence that he had given her $80 on that day, and he asked Mr. A if this sounded about right, Mr. A said: "Probably".

[250] When the ER advised Mr. A that the worker's evidence was that in addition to giving her $80 Mr. A had driven with her to a gas station and used his gas card to fill up her vehicle, Mr. A stated: "I don't remember doing that". When the ER asked Mr. A whether there was any reason that he would do that given that he had just given the worker $80, Mr. A said: "No. That was the point of the money, was for food and fuel." In response to the ER asking him whether in addition to giving the worker money he had gone with her to the gas station to fill her [vehicle] up, Mr. A said: "No".

- Aptitude Test Results, Job Offer and Reporting to WorkSafe

[251] When the ER asked Mr. A when he knew the results of the worker's aptitude test Mr. A said: "I don't recall. Sometime later when [Mr. O] phoned me and told me what the results were". In response to the ER asking Mr. A whether the worker was with him when [Mr. O] phoned him with the results of her aptitude test, or whether the meeting had already concluded, Mr. A said:



Workers' Compensation Appeal Tribunal
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2026 CanLII 21252 (BC WCAT)

"No she was not with me". When the ER asked Mr. A: "At any time when you were in your meeting with [the worker] on May 1, did you know the results of her aptitude test? Mr. A said: "No".

[252] In response to the ER advising Mr. A that it was the worker's evidence that during their meeting on May 1, shortly after she completed her aptitude test, Mr. A had advised her that she had failed her aptitude test, Mr. A said: "I believe that's inaccurate. I wouldn't have that result."

[253] When the ER advised Mr. A that the worker also alleged that after Mr. A told her that she had failed this test that he also told her that he would "work with [Mr. O] and essentially make it go through notwithstanding she had failed the test". Mr. A said: "No, there's no way to do that. There's no way to change the results of an aptitude test".

[254] When the ER asked Mr. A whether he had any discussion with the worker about incident reporting or WorkSafe during this May 1 meeting, Mr. A said: "Are you referring to the allegation that I said not to report?" When the ER said "yes" Mr. A. said:

> I did not say you can't go to WorkSafe. Look, what I do tell people quite often, and you'll hear many people hear me say this is, that you don't go to WorkSafe first you come to us first so that we can investigate. That the first step isn't to go straight to WorkSafe, the first step if there is an incident is that you tell us.

[255] When the ER told Mr. A that the worker alleged that he said to her (ER indicated that he was paraphrasing what the worker said) "If you go to WorkSafe you'll get two hundred people pissed off at you". Mr. A said: "No. So I, no". When the ER told Mr. A that the worker also alleged that after he made the previous statement Mr. A had also said: "Don't let me regret hiring you", and the ER asked Mr. A if he ever said that to the worker. Mr. A said: "I don't believe so. We're talking about five years ago. A brief meeting. The thing I remember from that meeting is giving money."

[256] When the ER asked Mr. A if he said anything to the worker about claim suppression, like "don't file a claim, you can't file a claim, or people will be pissed at you if you file a claim", Mr. A said: "No".

[257] When the ER asked Mr. A if, in his history as a mill manager, anyone (else) had ever accused him of saying anything like that to them, Mr. A said: "No, I encourage people to report incidents, so we can get to root cause".

- The Hug

[258] When the ER advised Mr. A that the worker alleged that during their meeting on May 1, Mr. A had held out his arms and asked the worker for a hug and that "against her will" the worker had given Mr. A a hug, and the ER asked Mr. A what he had to say about this, Mr. A said: "No".



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2026 CanLII 21252 (BC WCAT)

[259] When the ER explicitly asked Mr. A if he had held out his arms and asked the worker for a hug Mr. A said: "No". When the ER asked Mr. A if at any time he had engaged in a hug, Mr. A said: "No". When the ER asked Mr. A if he was "a huggie kind of person", Mr. A said: "No. I don't like people touching me. I have reasons that I don't like being touched."

- Text Messages in General

[260] During direct examination, when the ER asked Mr. A where the text messages which the employer had provided to the Board field investigator had come from, Mr. A testified that they had come from his phone.

- Text Message Exchange on January 1, 2020

[261] During direct examination the ER noted that the worker and Mr. A had exchanged text messages on January 1, 2020 which started with the worker sending Mr. A a text at 12:07 a.m. which said: "Happy 2020". The ER noted that Mr. A had responded to this text by sending the worker a text which said, "To you as well. I hope the back half of 2019 was better for you and that you have a great 2020". When the ER asked Mr. A if he had received a reply from the worker to this last text, Mr. A said" No". When the ER asked Mr. A if he ever received a text message from worker again, Mr. A said: "No".

- Text Message Worker Sent to Mr. A on April 24, 2019

[262] During direct examination the ER read aloud the following text message which the worker had sent to Mr. A at 7:50 a.m. on April 24, 2019:

> I'm sorry I know you're super busy. I want to send my resume and references in one email but I can't from my phone for whatever reason. I would like to go to the library after work and send my stuff to you. Is that okay or do you want my references just send to you now? I feel like everything is so scattered.

[263] When the ER asked Mr. A: "What did you understand about what [the worker's] challenges were with WIFI, sending you messages and so on" Mr. A said:

> My understanding was that her phone plan didn't have cellular service, like when you need WIFI if you are out of minutes or if you're out of a plan because I think there was problems there for her to do stuff, so I don't know whether, I remember her referencing that she needed WIFI for stuff she needed to be where there was WIFI.

- Text Message Worker Sent to Mr. A at 3:26 p.m. on May 1, 2019 3:26 p.m.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[264] During direct examination when the ER read aloud the text which the worker had sent to Mr. A at 3:26 p.m. on May 1, 2019: and asked Mr. A what he made of it, Mr. A said:

> At that point if you are sitting in my chair it seems like, at this point: "I'm worried about doing the aptitude test, and the outcome", and it's avoidance. But you can't be sure. That's how it felt, that's probably where my next text came is coming from: "I'm going to need to move forward. I'm not sure what I can do to help".

- Text Message Exchange Re Aptitude Test - from 3:30 p.m. to 5:15 p.m. on May 1, 2019

[265] During direct examination the ER read aloud the text messages which Mr. A and the worker had exchanged on May 1, 2019 regarding where and when she could write her aptitude test. When the ER asked Mr. A whether he had cared where the worker took this test Mr. A said: "No. I just needed the test done if we were going to move forward. Just a yes or no."

[266] During direct examination when the ER advised Mr. A that it was the worker's evidence that he had encouraged her to come to the office (to do her aptitude test) as opposed to going to the library and asked Mr. A what he said about that, Mr. A said: "I say that's not true. I'm saying right here that I don't care, wherever is best for you. I just needed the test done whether it was at the library or at the office, I don't care".

[267] During direct examination when the ER advised Mr. A that the worker said that these texts may not be comprehensive because there may have been a phone call where Mr. A had encouraged her to come to the office, Mr. A said: "Not true."

[268] During direct examination when the ER explicitly asked Mr. A if he had phoned the worker during the period of time covered by these texts Mr. A said: "I don't believe so, no. I'm working. I'm doing a job."

[269] During direct examination the ER noted that the worker had sent Mr. A a text at 5:15 p.m. on May 1, 2019 in which she said "Hi" and that the worker had provided evidence that this was likely when she had arrived at the mill on May 1, 2019. When the ER asked Mr. A whether this sounded right to him Mr. A said: "Probably".

- Text messages starting at 7:26 p.m. on May 1, 2019

[270] During direct examination the ER reviewed the text message exchange that he had with the worker starting at 7:26 p.m. on May 1, 2019 and asked Mr. A questions about it.

[271] When the ER asked Mr. A if he knew where he was when he received the text message which the worker sent to him at 7:26 p.m. Mr. A testified that he was at home by this time. When the ER asked Mr. A what he meant when he said, "please just do well" in the text message that he sent to the worker at 7:28 p.m. on May 1, 2019, Mr. A said: "I don't remember [ER's first name], I don't know if that's well on the test, well on the job, I don't know." When the ER asked Mr. A whether he knew that the worker's test results were by this time, Mr. A said: "I don't know".



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2026 CanLII 21252 (BC WCAT)

[272] When the ER asked Mr. A if he had offered the worker a job by the time she sent him the text message at 7:34 p.m. on May 1, 2019 in which she said; "This will seriously change our lives, it's such a big deal". Mr. A said: "I don't know, but by 7:57 [p.m.] I'd asked [Mr. O] to get an offer letter together. So by then [Mr. O] must have cleared it". When the ER asked Mr. A what had happened prior to that, if he had received a phone call or text from Mr. O, Mr. A said, "[y]eah I think I was at home with the wife when he called".

[273] When the ER asked Mr. A what the purpose of Mr. O's call was and what Mr. O had said, Mr. A said, "I don't recall, obviously to say that it was good, because if it wasn't good there wouldn't have been an offer coming". When the ER said: "By 'it', you're talking about the aptitude test results?" Mr. A said, "Yep. They don't come to me; they come to him." In response to questions posed by the ER, Mr. A confirmed that once he knew the worker's test results he asked Mr. O to prepare an offer letter and then texted the worker to advise her of that.

- Matters Involving the Worker's Child

[274] During direct examination, when the ER asked Mr. A when the topic of any challenges the worker was having with her child come to his attention, Mr. A said:

> Some of the supervisors and superintendents were unhappy with her absenteeism from what I recall. That she was missing work, or part shifts, I don't recall exactly, and I remember that's when it came up that she was having issues with her [child].

[275] During direct examination, when the ER asked Mr. A to explain how it came to his attention that these supervisors and superintendents were unhappy with the worker's attendance, Mr. A said: "They had tried to talk to her, and she didn't want to talk to them about it and my understanding was that they said that she would like to talk to me about it."

[276] During direct examination, when the ER asked Mr. A what the worker said the issue was with her child, Mr. A indicated that at that point it time he believed that the worker was dealing with being a single mom to a teenager that was experiencing general life struggles and acting out. Mr. A testified that the worker felt that she needed to be there for her child and she was struggling with having to choose between being there for her child and being at work. When the ER asked Mr. A if he had a discussion with the worker about her attendance, Mr. A advised that he had a discussion with the worker in which he advised her that she had to take care of her family and assured her that the work and her job would still be there.

[277] During direct examination, when the ER asked Mr. A what the supervisors and superintendents wanted him to do about the worker, Mr. A said that they wanted him to terminate her employment. Mr. A said that he did not feel that termination was something that you do when somebody is having those kind of struggles or issues and is working through stuff. Mr. A said that he believed that the worker was still in her probationary period at that point in time.

[278] During direct examination, the ER read a portion of a text message which the worker had sent to Mr. A on July 17 2019 in which she disclosed that she had just learned that her child had

2026 CanLII 21252 (BC WCAT)

been the victim of crime, that her child was going to be meeting with the police later that day and asked that she be allowed to take time off from work so that she could be with her child when they met with the police. When the ER asked Mr. A if he knew that the worker's child had been the victim of a crime prior to receiving this text message from the worker, Mr. A said: "No".

[279] During direct examination, when the ER asked Mr. A what he did about this situation, Mr. A advised that he reached out to the supervisor or superintendent on site and advised that there was some family issues that needed to be dealt with, to make allowances for the worker to leave the worksite, and to arrange for coverage. When the ER asked Mr. A why he asked the worker to come by his office before she left the site that day, Mr. A said that he did this because he wanted to reassure the worker that she did not need to worry about asking for time off in this situation.

[280] During direct examination, the ER advised Mr. E that the worker alleged that at some point in time she and Mr. A had a meeting during which he asked her to tell him who had perpetrated the crime against her child. When the ER asked Mr. A if he had ever asked the worker who the perpetrator of this crime was, Mr. A said: "No, I don't recall asking who it was".

[281] When the ER said to Mr. A: "You say that you don't recall, what do you mean by I don't recall" Mr. A said: "No, I don't think I pried into that [ER's first name], I have no recollection of saying, wanting to know who this was."

[282] During direct examination, the ER advised Mr. A that the worker also said that she had a news release from the RCMP on her smart phone which had a picture of the perpetrator, that Mr. A had asked to see this picture, and that she had shown it to him. When the ER asked Mr. A if this had happened, Mr. A said: "No".

- Frequency of Mr. A's Phone Calls

[283] During direct examination, the ER advised Mr. A that the worker alleged that during the hiring process Mr. A would frequently telephone her to talk to her about whatever and indicated that she was annoyed by his phone calls. When the ER asked Mr. A if he frequently called the worker, Mr. A said:

> No, she didn't have phone access, that's why she would text me in the evenings. I wasn't the one initiating those texts. Look at the timelines. The only time I ever texted her in the evening was when we needed to know where the offer letter was if she was signing it.

*Cross-Examination of Mr. A*

[284] During cross-examination, the worker asked Mr. A a series of questions regarding the evidence which he had provided regarding how she came to be interviewed for an office position at the mill and then ended up being hired to work in production at the mill.



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2026 CanLII 21252 (BC WCAT)

[285] During her cross-examination of Mr. A, the worker became frustrated by the answers which Mr. A provided to these questions. The worker expressed a lack of confidence in her ability to cross-examine someone regarding inconsistencies in their evidence and advised me that she had decided that there was no point in continuing with her cross-examination of Mr. A because he was just going to tell "his truth" and "his truth" was not the same as "her truth".

*My Questions for Mr. A*

[286] After the worker decided to conclude her cross-examination of Mr. A, I asked Mr. A a series of questions.

[287] One of the questions which I asked Mr. A was whether there was anything in the employer's onboarding training program about rights of workers when it comes to being injured on the job. I prefaced this question by noting that the employer had provided a lot of evidence about the steps it takes to ensure that its employees know about their duty to report injuries/incidents to their employer but that I had not heard anything about what the employer tells its staff about their rights with respect to filing claims for compensation.

[288] Mr. A responded to my question by stating: "I believe we have a policy around workers' rights, but I think HR would probably be better suited to answer what was actually in the training policies."

[289] When I asked Mr. A how often he got involved in interviewing prospective employees or candidates for jobs, he testified that if there was somebody coming to work in the office he almost always sat in on the interview process and in the first few years after he came to work for the employer he helped out with interviewing (i.e. if people were busy he would sit in on interviews).

[290] When I asked Mr. A why he had remained involving in the hiring process after the worker turned down the office position that he had offered to her and the employer moved into considering her for a job in production Mr. A said:

> Just because I had already started the process. And at that point of time I was probably helping out with other stuff anyway and I checked with the guys. I remember talking to, I can't actually remember which superintendent, but is there an objection to bringing somebody that we interviewed for this process over into this side and they said no.

[291] When I advised Mr. A that the claim that the worker had filed in April 2021 was for a gradual-onset ASTD, noted that WorkSafe adjudicates these types of conditions as occupational diseases, and asked Mr. A what the employer tells its staff about reporting the types of injuries, Mr. A said:

> They're told that if they start to feel that pain, if they start to feel that discomfort, to let a supervisor know right away and we'll move them to alternate work and let

2026 CanLII 21252 (BC WCAT)

> things rest. So we have times where guys will come and say I'm getting sore I'm doing this or I'm doing that then we provide them different types of duties so that we don't aggravate whatever is going on.

[292] When I asked Mr. A if he knew that the worker had alleged that when she met with Mr. F and Mr. K in October 2019 that Mr. K had told her that he had a computer program in which he input the information that she had provided to him and that this program had told him that her injury was unlikely to be work-related, and I asked Mr. A if he was aware of a program like this being used by the employer, Mr. A said:

> There is no program like that at [the employer].There is no, I don't know where that would come from because we don't have a program that tells whether something is work-related or not. No such program exits. Never has. We don't have a 'here's how an injury happened' program. That's not something that we have.

*Direct examination of Ms. H*

[293] During the oral hearing of this matter, the employer called Ms. H to testify regarding HR matters related to the worker's employment.

[294] During direct examination Ms. H testified that she was hired by the employer in 2021 but that the employer's disability program process and its WorkSafe process had been the same since before she was hired.

[295] Ms. H testified that the disability program at the employer's R location was a non-work-related program which was intended to compensate individuals who have injuries which they report as having taken place outside of the workplace.

[296] Ms. H testified that the STD program consisted of unemployment with top-up. She said that HR provided the employee with a package of forms to take to their physician to fill out and submit directly to a disability provider who adjudicated the claim based on the medical information and provided the employer with an update; typically whether the claim had been supported/ approved, and for how long. Ms. H testified that if the employee had any ability to continue working in a modified capacity the disability provider would advise the employer of this as well. Ms. H said that the decision to support (or not support) the STD claim was made entirely by the adjudicator who worked for the disability provider.

[297] During direct examination, when the ER asked Ms. H whether the employer was privy to any information that was provided to the insurer who administered the worker's STD claim Ms. H advised that the employer was not privy to any medical information that was provided to the insurer.

[298] During direct examination, when the ER asked Ms. H when the worker's application for LTD benefits had been denied, Ms. H said that she did not know.



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2026 CanLII 21252 (BC WCAT)

[299] During direct examination when the ER asked Ms. H about the aptitude test that the worker took, Ms. H testified that it was her belief that the aptitude test that the worker took in May 2019 was part of the pre-employment process for all production employees.

[300] During direct examination Ms. H testified regarding how the employer's aptitude testing process currently worked. She said that the aptitude test was set up by HR and that once the candidate completed the test it was emailed back to the HR person who issued the test.

[301] During direct examination, in response to the ER asking Ms. H whether the HR person who received the test results shared them with the mill manager, Ms. H testified that she was unable to speak to what the process was when Mr. O was the HR business partner (when the worker took her aptitude test in May 2019) but the current process, as she understood it, was that if a manager asked for it, HR would share the results of the candidates aptitude test with the manager but not the test itself. When the ER asked how long it would typically take for the results of an aptitude text to come back to HR, Ms. H advised that she had limited actual adjudication experience with the aptitude test but that she thought that this happened quite quickly.

*My Questions for Ms. H*

[302] After the worker had cross-examined Ms. H, I asked Ms. H a series of questions.

[303] When I asked Ms. H to explain to me the difference between WI and STD benefits, Ms. H indicated that she used these terms interchangeably, but they were basically the same thing. Ms. H explained that the mill [at the employer's R location] is a non-union operation so it is funded independently. She said that this means that a third party insurer adjudicates the claim, collects the medical, and makes the recommendation and the employer pays the benefit. Ms. H advised that because the employer pays the benefit, the employer can make the decision to pay the benefit even if the medical paperwork is delayed (as she understood it was in the worker's case) on the basis of its understanding that the paperwork is on its way. Ms. H advised that the situation is different when it comes to LTD benefits; with LTD claims the third party insurer is entirely responsible for the adjudication and payment of LTD benefits.

[304] When I told Ms. H about the worker's allegation regarding Mr. K and the computer program which he said could determine whether an injury was likely to be work-related, Ms. H. testified that she was not aware of any program like this. Ms. H advised that the employer captures all safety incidents and injuries reported in a very simple program called EDMS – Employee Data Management System. She also advised that the employer captures and tracks all safety incidences using a safety system called Corepoint. Ms. H advised that Corepoint is not a sophisticated program; that it does not take in information and spit out a likely scenario; but she advised that there were elements that were entered into Corepoint related to risk or severity, so there may have been reference to that (during the injury investigation meeting).

2026 CanLII 21252 (BC WCAT)

*Conclusion of Oral Hearing*

[305] Once the worker and the employer's witnesses had finished providing their testimony I advised the parties that I was of the view that it would be prudent to give them more time to prepare their final submissions/arguments and consequently I had decided not to hear final submissions/arguments orally but to have them provide me with those submissions/arguments in writing at a later date.

[306] After explaining to the parties how this written submission process would work the oral hearing of this matter was concluded.

**Parties' Written Submissions**

*Worker's Final Submissions*

[307] The WCAT Registry received the worker's final submissions regarding this appeal on December 23, 2024.

[308] What follows are the parts of the worker's December 23, 2024 final submission which I consider to be admissible and relevant to the matters at issue on this appeal.

[309] The parts of the worker's December 23, 2024 final submission which I have disregarded and my reasons for doing so are outlined later in this decision under the heading "Preliminary Matters".

- What Happened At The Oral Hearing

[310] The worker submitted that during the oral hearing of this matter the ER had disrespected her, intimidated and bullied her when he felt he was not getting the answers he wanted. The worker submitted that this had caused her "to feel unsafe and to shut down and not give the answers I wanted to or ask for clarity with his questions when I wasn't sure what he was asking."

[311] The worker also submitted that during the oral hearing, when she was being cross-examined by the ER about the text messages which she and Mr. A had exchanged the ER had given her no time to read through those messages in order to refresh her memory regarding what was happening when those text messages were exchanged and so she did not have a fair opportunity to answer the questions being asked. The worker submitted that the ER had employed this strategy in order to try to "trip her up" when providing her answers or recalling events.

- Using Text Messages as Evidence

[312] The worker asked me to be cautious when considering the validity of the text messages which the employer had produced and cross-examined her about. She submitted that individual text messages can be deleted, and she indicated that she was not confident that these text messages had not been altered in order to benefit the employer's position.

2026 CanLII 21252 (BC WCAT)

- Evidence Provided by Mr. A

[313] The worker noted that Mr. A told the Board field investigator that she had not reported her right arm issues to anyone and that everyone was unaware of her right arm injury until she filed a Board claim. The worker submitted that this was untrue as evidenced by the sworn statements which Mr. E and Mr. K provided to the Board field investigator wherein they indicated that she had reported her right arm issues to them.

[314] The worker submitted that as time went on and she was unable to fulfill her regular duties because of her right arm issues, Mr. Q would put her on alternate duties such as clean-up or fire-watch.

- *Special Circumstances Existed Which Precluded Her From Filing Her Claim Within Time*

[315] The worker submitted that she had been discouraged from ever filing a claim with the Board, first by Mr. A, and then by Mr. F and Mr. K.

[316] The worker submitted that it was a Board representative who told her that it would be in her best interest to file a claim for her right upper extremity injury and that she had told this Board representative that her employer had already told her that this injury was not work-related.

[317] The worker submitted that the fact that the employer said that her injury was not work-related meant to her that what Mr. A had told her when she was hired was serious and that her employer would not support her even though the statement that Mr. E had provided to the Board field investigator supported the conclusion that her right upper extremity issues had been caused by her work.

[318] The worker submitted that she was afraid of the consequences of not doing what Mr. A told her; that she was afraid of going through what she has gone through since she filed her claim for this injury and that she wanted to prevent this from happening. The worker submitted that she was afraid that she would lose her job if she filed a Board claim (most likely by way of constructive dismissal). The worker submitted that she believed that the employer would not allow her to go through WorkSafe and that the fact that the employer is still trying to prevent her from claiming compensation for this injury is proof that she was right.

[319] The worker wrote:

> [Mr. A] proved nothing by denying everything but you do have to look at the facts. Evidence shows that my right arm issues started at work and got worse. I did report it to the supervisor and later the site superintendent. I was discouraged that my right arm issues had anything to do with my duties at work. I was afraid to stand up for myself because I was afraid I would lose my job. I did not have my employer[']s support to even say this was a work-related issue. They would have done then exactly what they are doing now.



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2026 CanLII 21252 (BC WCAT)

[320] The worker also wrote:

> In closing, I did exactly as my employer said I was told to do involving any and all injuries. My initials and signature was my agreement with [the employer] that I would follow their procedures in the event an injury should arise.
>
> [The employer] did not fulfill their obligations to me as an injured worker. [The employer] also must have legal obligations with WSBC that they have agreed to and steps and procedures they must follow in the event an employee is injured and I have not seen any evidence showing they did.

[321] In her final submission the worker stated that she felt that she was taken advantage of by Mr. A; that the personal questions that he asked, and she answered put him in a position of absolute power. The worker submitted that she desperately needed the production job in the employer's mill and that Mr. A had the power to give or not give her this job and that it she believed that this is why he felt that he could ask her for a hug. The worker said that she felt ashamed that she allowed that to happen; that she just did what Mr. A asked her to do and expected her to do so that she could have the job.

*Employer's Final Submissions*

[322] On January 20, 2025 the WCAT Registry received the employer's written submission regarding this appeal.

[323] The employer submitted that during the oral hearing the worker had declined to cross-examine the employer witnesses stating that they would speak "their truth" and not "her truth". The employer suggested that as a result, when it comes to assessing credibility, I have the evidence of the worker, which was subject to cross-examination, and the evidence of the employer's witnesses that "for the most part" was not challenged in cross-examination.

[324] The employer submitted that the worker was not credible in her recounting of the history.

[325] The employer submitted that the text messages which the worker and Mr. A exchanged were difficult for the worker to explain and were inconsistent with the overall evidence and argument of the worker.

[326] The employer submitted that the text message which the worker sent to Mr. A in response to being offered a janitorial position in which she said: "I am hoping to be selected for the office or perhaps the mill if not would be happily (sic) to apply for the position absolutely." was completely at odds with the worker's evidence that she only applied for a position at the mill. The employer submitted: "While this discrepancy does not go to the heart of the issue it does point to the inaccuracy of the worker's current version of events surrounding her initial hiring."

[327] The employer submitted that the text messages which the worker and Mr. A exchanged indicate that the worker initiated the majority of these text conversations, that she initiated text conversations with Mr. A after office hours, and that she was grateful for the efforts taken by

2026 CanLII 21252 (BC WCAT)

Mr. A to find her a position at the mill, all of which the employer submitted was "contrary to the worker[']s allegation that she was essentially fearful of [Mr. A.] and avoided contact, when possible, with him".

[328] The employer submitted that the worker's unsupported allegations that Mr. A frequently telephoned her could not possibly be true because the text messages which she and Mr. A exchanged indicate that she did not have a cell plan at times throughout the relevant period, and thus had to be in a location with WIFI in order to send text messages.

[329] The employer submitted that the text messages that the worker and Mr. A exchanged on May 1, 2019 very clearly support Mr. A's evidence that he offered the worker the option of doing her aptitude test at the mill office and do not support the worker's evidence that Mr. A directed her to attend the mill in order to do her aptitude test. The employer submitted that this text message exchange is significant because:

> This is the evidence leading up to the meeting in which the alleged statement upon which the claims suppression allegation is made. In keeping with the worker's claim, she was vulnerable and was directed to attend the [m]ill so that she would be alone with [Mr. A].[Mr. A] had total control over the situation. This narrative is unsupported by the evidence.

[330] The employer also noted that there is a discrepancy between the worker's evidence and Mr. A's evidence regarding the meeting they had at the mill on May 1, 2019. The employer noted that the worker's evidence was that while they were at the mill on May 1, 2019 Mr. A told her that she had failed the aptitude test but that he would overlook this and proceed with her application. The employer noted that Mr. A's evidence was that he did not have any information about whether or not the worker has passed her aptitude test at the time of their meeting at the mill on May 1, 2019.

[331] The employer noted that after their meeting at the mill on May 1, 2019 the worker sent Mr. A a text message in which she thanked him and Mr. A sent a text in reply in which he said: "Just do well", and the worker responded with a text in which she said: "[W]e will wait patiently". The employer submitted that these text messages support Mr. A's evidence that he did not have any information about whether the worker had passed her aptitude test or not when they met at the mill on May 1, 2019.

[332] The employer submitted that the fact that the worker passed the aptitude test that she took on May 1, 2019 is undisputed. The employer submitted that the contested evidence is whether this was known at the time of the meeting at the mill on May 1, 2019 and what was said during that meeting regarding the worker's aptitude test.

[333] The employer wrote:

> The lack of credibility of the worker[']s evidence surrounding the alleged claims suppression comment is helpful in assessing credibility about whether the comment was ever made. It is important to note that the worker[']s case hinges




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2026 CanLII 21252 (BC WCAT)

> upon whether her evidence of a comment made in 2019 is accurate, or whether the evidence of [Mr. A] about that meeting is accurate. With respect, the text messages are of significance in making that assessment.

[334] The employer submitted that the grateful/thankful text messages which the worker sent to Mr. A after she received the employer's job offer were inconsistent with the worker's current evidence about how she feared Mr. A, essentially viewed him as a predator, and wanted to avoid contact with him.

[335] The employer submitted that the text messages that the worker sent to Mr. A "reveal an unusual amount of disclosure of personal information that was offered unsolicited", such as: "One more trip to the food bank"; "I found out last night that [name of her child] was [the victim of a crime]; and "This is why [name of her child ] ended up in the hospital." The employer submitted that sending these text messages to Mr. A was inconsistent with the worker's evidence that she avoided contact with Mr. A.

[336] The employer noted that the worker said that the Happy New Year text that she sent to Mr. A was a misdirected message. The employer wrote:

> How else would you explain a greeting to a person you are avoiding contact with at midnight on January 1, 2020? Sometimes the obvious explanation is the right one. The relationship the worker[']s current version of events is inconsistent with the nature, frequency and content of the text messages to [Mr. A].

[337] The employer submitted that Mr. A had given evidence that none of the text messages in evidence had been altered or edited. The employer asserted that these text messages were the best and (most) reliable evidence of the nature of the communications between the worker and Mr. A.

[338] The employer submitted that during the oral hearing the worker had not provided any explanation for the discrepancies between the text messages and her version of events but had provided the following explanations for these discrepancies in her final submission:

- I was given no time to refresh my memory
- I should have been given a chance to read through them
- [The ER] has "stacked" questions
- [The ER] used sleazy strategy.

[339] The employer submitted that there is no way to reconcile the text messages with the tenor and substance of the worker's evidence.

[340] The employer submitted that the worker's allegation that a brief comment made by Mr. A at the time of her hiring was the reason that she did not file her claim in a timely manner fails to take



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2026 CanLII 21252 (BC WCAT)

into account the training that she received once she commenced work. In this regard the employer specifically referenced the documents at Tabs 8, 9, 10, 11, 16, 17, and 18 of the employer's book of documents (EBOD).

[341] The employer noted that the worker alleged that upon being hired Mr. A told her "if you were ever to go to WorkSafe you would have over 200 people pissed off at you"; the employer has a good safety record, and she 'does not want to be the one to change that."

[342] The employer noted that the worker had also provided a different wording of the comments, alleging that Mr. A stated: "Never report to WorkSafe. Ever! If you do you will have 200 people pissed off with you", followed by "Don't make me regret hiring you" (EBOD-Tab 3-page 20).

[343] The employer noted that Mr. A denied these allegations, that he stated that during his conversation with the worker he said that any incidents or workplace injuries must be reported to the employer, and he never discouraged her from filing a WorkSafe claim nor was he aware of any other employee discouraging the worker from filing a claim.

[344] The employer also submitted that Mr. A provided evidence that he did not ask for and receive a hug in the office or use his gas card to fill up the worker's car after giving her a handful of cash in the office.

[345] The employer noted that the panels in *WCAT Decision A1606928* and *WCAT Decision* A2201870 indicated that when considering whether special circumstances existed which precluded a worker from filing a claim within the prescribed period under s[ection] 151 [of the Act], WCAT applies a test of "unusual or extraordinary circumstances" to determine whether the worker is hindered or prevented from making their claim within the one-year time limit.

[346] The employer noted that in *WCAT Decision A1606928* the panel noted that WCAT has previously considered a non-exhaustive list of circumstances which may demonstrate special circumstances, such as:

i. Did the worker know and understand there was a system for compensation and how to access it?

ii. Did the worker have language difficulties which might impair their access and understanding of the compensation system?

iii. Did the worker have a lack of knowledge that their injury was work-related because of a delayed onset or minor nature of injury?

iv. Was the worker reliant on the advice of an employer or a doctor, owing to such language difficulties?

[347] The employer submitted that claim suppression may be considered a special circumstance which precluded a worker from filing a claim within the one-year time limit. However, the employer noted that the panel in *WCAT Decision A1606928* stated that a worker must provide



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2026 CanLII 21252 (BC WCAT)

more than bare assertions that their claim was precluded by the claim suppression. That a worker must provide compelling evidence that claim suppression was the reason that they could not bring their claim forward.

[348] The employer submitted that it is simply not believable that the comments that Mr. A is alleged to have made to the worker in May 2019 precluded her from filing a claim for her right upper extremity injury until April 2021 given that they did not preclude her from filing a claim for her neck injury in November 2020.

[349] The employer submitted that there were no other alleged claims suppression activities following the alleged claim suppression comments made by Mr. A in May 2019. The employer submitted that the worker's evidence that the employer has some sort of computer program which could determine whether an injury was work-related is inaccurate, defies credibility and colours the rest of the worker's evidence. The employer submitted that each of its witnesses provided evidence that it has never operated any such software and that to their knowledge no such program exists.

[350] The employer submitted that by filing her neck injury claim in November 2020 the worker demonstrated that she had knowledge of the worker's compensation system and when to file a claim and that she was able to file a claim despite the comments that Mr. A was alleged to have made to her in May 2019.

[351] The employer submitted that if the alleged claim suppression comments made by Mr. A in May 2019 did not preclude the worker from filing her neck injury claim in November 2020 it is not possible that the same comments precluded her from filing her right upper extremity/forearm injury claim within time. The employer also submitted that it does not accord with common sense or logic that the worker was unable to file her right upper extremity injury claim until nearly six months after she filed her neck injury claim even though her right upper extremity/forearm injury claim arose prior to her neck injury.

[352] The employer submitted that *WCAT Decision A1606928* was factually similar to the current matter and is instructive to the panel. The employer noted that in that case the worker filed an application for worker's compensation benefits on March 16, 2016, in relation to complaints of bullying and harassment by a coworker for a three-year period starting in 2010. The employer noted that the worker argued that they did not pursue a bullying and harassment claim as they feared reprisal from the employer; however, the evidence demonstrated that the worker had been in contact with the Board in August and November of 2013 regarding the potential bullying and harassment claim. The employer noted that the panel held that this evidence weakened the worker's suggestion that fear of reprisal from the employer was a major concern. The employer submitted that in view of the foregoing I ought to view the worker's willingness to file a neck injury claim prior to filing the forearm injury claim, as evidence that the worker did not view reprisal from the employer, or Mr. A. as a major concern.

[353] The employer noted that the panel in *WCAT Decision A1606928* also found that the employer's alleged actions of "empathically stressing" to the worker to not go to WorkSafe about the



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2026 CanLII 21252 (BC WCAT)

bullying and harassment was suggestive of claim suppression. However, the panel noted that the evidence did not establish that any claim suppression on the employer's part was the sole reason why the worker waited until March 2016 to file a Board claim .

[354] The employer submitted that claims suppression must be the sole reason for the worker's delay in filing a claim in order to be considered a special circumstance which would allow for late filing of a claim. The employer submitted that like the evidence in *WCAT Decision A1606928* the evidence in the present case suggests that even if the alleged claim suppression occurred, it was not the sole reason for the worker's extended delay in filing her claim for her right forearm injury.

[355] The employer noted that in *WCAT Decision A1701002* the worker argued that claims suppression was the special circumstances which had precluded him from filing his claim within time. The employer noted that the worker testified that the employer offered to pay him in relation to his left knee injury and threatened to fire him if he filed a claim with the Board. The employer noted that when the worker realized the employer had broken his promise the worker sought advice from his friends and was advised to consult the Board following which the worker then reported the claim.

[356] The employer noted that in *WCAT Decision A1701002* the employer disagreed with the worker's evidence and stated that it did not engage in claims suppression, that it was simply unaware that any injury had occurred because an injury was not reported to them. The employer noted that *WCAT Decision A1701002* turned on credibility with the panel stating at paragraph 47:

> In summary, I have not considered whether claims suppression is in fact a special circumstance that might have precluded the worker from filing his claim within the appropriate time period. Such consideration was not necessary because I found the worker's evidence to contain too many inconsistencies, the net result being that I am simply unable to accept his version of events as credible overall.

[357] The employer submitted that like the worker in *WCAT Decision A1701002* the worker in the present case has numerous inconsistencies within her evidence, and that I ought not to accept her version of events as credible overall.

[358] The employer submitted that in *WCAT Decision A2201870* the worker argued that his mental health conditions and alleged claim suppression from his supervisor amounted to special circumstances which precluded the timely filing of his claim. The employer noted that the panel in *WCAT Decision A2201870* did not make a finding regarding whether claim suppression had occurred but accepted that the worker had experienced several obstacles that likely made it difficult for him to submit his claim within the one-year period. However, the panel also concluded that these obstacles were not so significant that the worker was precluded from submitting his claim in a timely manner and so the claim was dismissed.

[359] The employer submitted that the worker in the present case also faced obstacles which could have prevented her from filing her claims in time, but the employer submitted that the evidence




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2026 CanLII 21252 (BC WCAT)

demonstrated that the worker had overcome those obstacles by November 20, 2020 when she filled her neck injury claim within time. In view of these circumstances the ER submitted that the alleged claim suppression comments could not have been an obstacle so significant as to preclude the worker from filing a claim for her right upper extremity injury within the ensuing six months.

[360] The employer submitted that an assessment of credibility must be made regarding the worker's allegations that she was precluded from filing her claim within time as a result of comments made by members of the employer's management team and the record clearly indicates that the worker's version of history is demonstrably inaccurate.

[361] The employer submitted that the worker's appeal should be dismissed because her claim was filed grossly out of time and there are no special circumstances which excuse this significant breach of the statutory time limit.

*Worker's Rebuttal Submission*

[362] On March 9, 2025 the WCAT Registry received a rebuttal submission from the worker.

[363] In this submission the worker reiterated her request that the text messages which the employer submitted as evidence on this appeal not be used as evidence or relied on as proof because they could have been altered in order to show only what Mr. A wanted them to show.

[364] In this submission the worker stated that she did not recall saying that she was fearful of Mr. A but she admitted to being fearful of the consequences of having secret agreements with Mr. A involving the mill ( i.e. his offer to pay her a mill wage in order to do a temporary job in accounts payable, not reporting injuries to WSBC, not telling anyone that she had failed the aptitude test and not telling anyone that he had filled her car up with gas).

[365] The worker submitted that the reason that she was grateful to Mr. A after she wrote the aptitude test was because Mr. A had told her that he would have "[Mr. O] put [her] though" even though she had failed this test. The worker stated that she was "super thankful to [Mr. A] for doing that" and that she knew when she left his office that she had the job.

[366] The worker submitted that she had already explained, when providing her oral hearing testimony, why she blurted out what had happened to her child in a text message to Mr. A.

[367] The worker submitted that she had not filed her claim within time because Mr. F and Mr. K told her that her issues with her arm were not caused by her duties at work. The worker stated that she was intimidated and that this reinforced what Mr. A had told her about work injuries.

[368] The worker submitted that she was injured doing her job and that there was evidence of this. The worker submitted that she reported her injury to her employer and that there was evidence of this. The worker submitted that her injury got worse and that there was evidence of this. The worker submitted that she reported the worsening of her condition and that there was evidence



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2026 CanLII 21252 (BC WCAT)

of this. The worker submitted that her employer did nothing and there was evidence of this. The worker stated: "I was just afraid and clearly I had every right to be and there is evidence of that".

[369] The worker submitted that she came forward regarding what had happened to her because what happened with Mr. A was wrong from the very beginning. The worker submitted that it took her months of therapy to come forward, that she just wanted to avoid all of this.

[370] The worker submitted that since telling the truth about what happened she has been treated like a villain and what she was afraid would happen, has happened; she has lost her job, she has lost everything. The worker submitted that if she had managed to get through this injury on her own, without reporting to WorkSafe, this would not have happened, and that is what she had tried to do.

**Preliminary Matters**

*Employer's Objections To Worker's Submissions- New Evidence*

[371] In its final submission the employer argued that the worker had used her final submission to introduce new evidence that was not introduced during the oral hearing. The employer submitted that this was improper as this evidence could not be tested in cross-examination.

[372] The employer acknowledged that the worker is a lay person not legally trained who is likely unaware of the principles of administrative law and procedure. The employer said that it appreciated that the worker was not able to easily make a distinction between argument and evidence. The employer noted that some leeway is often afforded to lay litigants by courts and administrative tribunals in order to provide access to justice, but the employer submitted that leeway was different from the abrogation of procedural fairness.

[373] The employer enclosed a copy of the worker's final submission and advised that the portions of this document which it had highlighted were where the worker had attempted to introduce new evidence. The employer requested that this new evidence, which had not been subject to cross-examination, be disregarded in the interests of natural justice.

- *Worker's Submissions Which I Have Not Disregarded*

[374] The employer argued that the italicized portion[18] of the following paragraph from the worker's December 3, 2024 written submission should be disregarded because it constituted new evidence which could not be tested on cross-examination:

> Unfortunately for me [the ER] used the oral hearing to purposely disrespect me, intimidate me and bully me when he felt he wasn't getting the answers he wanted and it caused me to feel unsafe and to shut down *and not give the answers I*

[18] I have italicized the portions of the worker's submission which the ER has highlighted.

2026 CanLII 21252 (BC WCAT)

> *wanted to or ask for clarity with his questions when I wasn't sure what he was asking.* I was there to give honest answers from nothing else than the facts and the truth to the best of my ability and recollection

[375] I do not find that the italicized portion of the foregoing paragraph constitutes new evidence which I should disregard on the basis that it cannot be tested on cross-examination. I say this because the conduct of the ER when cross-examining the worker during the first day of the October 2024 oral hearing; the fact that the worker stated during cross-examination that the ER's conduct was having an adverse impact on her ability to respond to the questions that he was posing; the fact that I concluded the first day of the oral hearing early due to the level of distress that the worker was expressing; and the fact that I admonished the ER at the outset of the second day of the oral hearing about the way that he had conducted himself during the first day of the oral hearing; are all matters of record. As a result I have treated this portion of the worker's final submission as argument, not new evidence.

[376] The employer also argued that the following paragraph taken from the worker's final submission constituted new evidence which should be disregarded because it could not be tested on cross-examination:

> During the questions involving the text messages that were submitted, I was purposely given no time to refresh my memory or clearly understand the events that were happening at those times. I should have been given a chance to read through them and relate them to memory and would have a fair opportunity to answer the questions being asked. …

[377] I disagree. How much time the ER gave the worker to read through the text messages which he cross-examined her about during the first day of the oral hearing of this matter is also a matter of record. As a result I have treated the foregoing paragraph as argument, not new evidence.

[378] I also do not agree with the employer's suggestion that the following portions of the worker's final submission constitutes new evidence which I should disregard because it cannot be tested on cross-examination*:*

- The worker's assertion that she had told a Board representative that the employer had told her that her right arm injury was unlikely to be work-related. I say this because the record establishes that the worker provided this evidence to the Board in her letter dated June 8, 2021 and when she gave her evidence in chief during the oral hearing of this matter.
- The worker's assertion that she was afraid of losing her job if she filed a Board claim. I say this because the record establishes that the worker said this when she gave her evidence in chief during the oral hearing of this matter.
- The worker's assertion that the statement that Mr. E provided to the Board field investigator confirms that her right arm issues were caused from her duties at work, that her right arm issues worsened over time due to her duties at work, and that she had




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2026 CanLII 21252 (BC WCAT)

gone off work for her right arm issues. I say this because I find that this assertion constitutes argument not evidence.

- The worker's assertion that when Mr. K told her that her injury was unlikely to be work-related that she interpreted this to mean that what Mr. A had told her was serious and that the employer would not support her if she filed a claim. I say this because this assertion is consistent with the evidence which the worker provided when she testified during the oral hearing of this matter.
- The worker's assertion that during the week prior to going off work on March 9, 2020 she kept in touch with Mr. Q about how her right arm was doing and that Mr. Q told her that it was getting too hard to do the scheduling. I say this because I find that this assertion constitutes argument regarding evidence which the worker had already provided to the Board in her letter dated June 8, 2021 and to the Board field investigator on June 26, 2023.
- The worker's assertion that Mr. A, Mr. F, and Mr. K discouraged her from ever filing a Board claim. I say this because I find that this assertion constitutes argument not evidence.
- The worker's assertion that she has no interest in working in an office and would not work in an office with Mr. A. I say this because this assertion is in keeping with the evidence the worker provided to the Board field investigator in June 2023 and to this panel during the October 2024 oral hearing.

- *Worker's Submissions Which I Have Disregarded*

[379] I agree with the ER that the following portions of the worker's final submission constitute new evidence which cannot be tested on cross-examination and as a result I have disregarded this evidence:

- The worker's reference to prior life experiences involving men in positions of authority and how they informed the way that she responded to Mr. A. and to the ER.
- The explanation that the worker provided for not continuing with her cross-examination of Mr. A.
- The worker's suggestion that a familial relationship exists between two of the employer's witnesses and that the existence of this relationship proves that these witnesses lied about certain matters.
- The worker's evidence regarding what she would have said about the timing of the text which Mr. A sent to her in which he wrote "please just do well" in relation to the timing of his statement "don't make me regret hiring you" when being cross-examined if she had been given time to familiarize herself with the timing of these messages and relate them back to memory.



Workers' Compensation Appeal Tribunal
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2026 CanLII 21252 (BC WCAT)

- The worker's suggestion that the employer did not submit an employer's report to the Board about her right arm issues because this gave the employer the option of offering her STD benefits instead of submitting a claim to WorkSafe.
- The worker's assertion that when she was faced with having to take time off again because of what had happened to her child she texted Mr. A to tell him this because she felt more comfortable texting him about this than taking to him about this in person.
- The worker's assertion that Mr. A could tell how well she was doing on the aptitude test initially because she did this test in the boardroom at the mill on a laptop which was connected to the projector screen in that room and Mr. A was in the boardroom watching her at the beginning of this test.
- The worker's assertion that Mr. B provided evidence that the employer was willing to lie during an investigation.
- The worker's assertions regarding how she has suffered and what she and her child have lost as a result of the employer's actions.

[380] I do not consider it is necessary to determine whether the following portions of the worker's final submission constitute new evidence which should be disregarded because they cannot be tested on cross-examination (as the employer has suggested) because I have decided to disregard the following portions of the worker's final submission on the basis that they are not relevant to the issue which I must decide on this appeal:

- The worker's evidence regarding the date she created the labour resumé that she provided to the employer when applying for a job in the mill and the date that she created the other resumé that she provided to the employer when being interviewed for a job in the office.
- The worker's evidence regarding the questions that she would have asked Mr. A if she had not discontinued her cross-examination of him.
- The worker's assertion that Mr. C did not feel safe enough to testify regarding what he knew about safety bonuses for "no time loss incidents".
- The worker's assertion that if Mr. A had the power to interview her alone, and hire her to work in the mill when there were no openings in the mill, Mr. A had the power to hire her to work in the office for the same rate of pay as she was making in the mill.
- The worker's assertion that she was told by Mr. B that she would not have been denied a graduated return-to-work if she was working in another division or belonged to a union.
- The information the worker provided regarding steps she took in an effort to locate Ms. X so that she could ask Ms. X to provide testimony in support of her appeal.



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2026 CanLII 21252 (BC WCAT)

- The worker's evidence regarding how far her home was from the library where she was going to complete her aptitude test and how long it would take her to get there in comparison to how far the mill office was from her home and how long it would take her to get there.
- The information that the worker provided regarding the employer hiring a pool of new workers to work in the mill within months of her being hired and how she could have been part of this new hire pool and skipped everything that happened with Mr. A.
- The information that the worker provided regarding the challenges she experienced receiving treatment for her right rotator cuff/shoulder during COVID and after Dr. Inkpen's office closed down.
- The worker's submissions regarding the conflicting evidence which Mr. B provided to the Board field investigator and to this panel regarding what he said when the worker told him what Mr. A had said to her when she was hired in May 2019.

*Employer's Objections To Worker's Submissions- The Rule in Browne v. Dunn*[19]

[381] In its final submission the employer argued that there were portions of the worker's final submission which should be excluded because they offended the "rule" in *Browne v. Dunn*

[382] The "rule" in *Browne v. Dunn* was stated as follows by Lord Herschell:

> My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case but is essential to fair play and fair dealing with witnesses.

[383] In *WCAT-2011-01146*, the panel commented on the application of the "rule" in *Browne v. Dunn* as follows:

> However, we do not agree with the workers that the "rule" in *Browne v. Dunn* has no application to WCAT proceedings. The "rule" is reflected in WCAT's *Manual of Rules of Practice and Procedure* (MRPP), which states, in item #11.5.3:
>
> > *In oral hearings, panels should allow witnesses to comment on externally inconsistent evidence. For example, where a worker's evidence regarding an injury event is inconsistent with that of a co-worker, the panel should allow the worker to comment on the inconsistency where it is significant.*
>
> The WCAT MRPP also discusses procedural fairness, at item #1.5.3, which includes the right to be heard as one of the pillars of natural justice. The right to be heard in turn includes being given a fair opportunity to state one's case and to

[19] *Browne v. Dunn*, (1893) 6 R. 67 (House of Lords)



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

> correct or contradict relevant statements or evidence with which one disagrees. The MRPP also underscores the point that the more important the decision is to those affected and the greater its impact on a person or persons, the more stringent the procedural protections that will be required.

[384] In a more recent decision, the panel in *WCAT Decision A2202471* wrote as follows*:*

> While I understand that the WCAT is not bound by court-like rules of evidence, it is still appropriate even within the less formal context of administrative tribunal proceedings to have regard to the underlying principles that animate the rules of evidence and to the corresponding persuasiveness of such evidence[20]. A central principle in this regard, which finds expression in many formal rules of evidence but also bears consideration in administrative tribunal proceedings, is the ability of a party to test key opposing evidence.
>
> An illustration of this point, for example, is found in the "rule" from *Browne v. Dunn* (1893), 6 R. 67 (U.K.H.L.) where it was held that, "if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him." It is now understood that this "rule" is not dispositive; however, it still merits consideration, and non-compliance may result in giving such untested evidence less weight. Shergill J. provides a helpful summary of this point in *McCarthy v. McCarthy*, 2018 BCSC 1210 at paragraph 48:
>
> > As noted in the recent decision of *North America Construction (1993) Ltd. v. Yukon Energy Corporation*, 2018 YKCA 6 at para. 62, the failure of a party to put certain testimony to a witness in cross-examination may engage the rule in *Browne v. Dunn*. When the rule is engaged, the trial judge has broad discretion to determine the appropriate remedy, **but may not use the rule to exclude evidence**. The trial judge may rely on the breach of the rule as part of her evaluation of the reliability and credibility of the contradictory evidence.
> >
> > [emphasis in original]

[385] I interpret the foregoing to mean that in situations where a party seeks to introduce evidence that is contrary to what an opposing witness stated, without first giving that witness an opportunity to respond to and explain any conflict in the evidence, that it would be inappropriate to exclude the untested evidence. That an appropriate remedy would be to take into account the fact that this contradictory evidence had not been tested when evaluating its credibility and reliability, which in some cases might mean giving less weight to the contrary untested evidence.

[386] That is my approach when confronted with evidence which I believe offends the rule in *Browne v. Dunn.*

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[20] See item 11.1 of the WCAT MRPP.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[387] In the present case the employer did not identify any specific instances where it believed that the worker had introduced evidence which offended this rule. I considered the possibility that the worker stating in her final submission that Mr. A "lied" about not using his fuel card to fill up her gas tank offended the "rule" in Browne v. Dunn because the worker had not put this allegation to Mr. A during cross-examination. However I concluded that this was not a true violation of the "rule" because the testimony which the worker characterized as a lie was provided by Mr. A in direct response to being told by the ER (during direct examination) that it was the worker's evidence that he had used his fuel card to fill up her vehicle with gas.

[388] In fact, after I disregarded the parts of the worker's final submission which I found contained new evidence which could not be tested on cross-examination and/or evidence which I did not consider to be relevant to the issues which I needed to determine on this appeal I did not find any instances where the worker had introduced evidence which could be legitimately characterized as offending the "rule" in *Browne v. Dunne*.

*Employer's Submissions Which I Have Disregarded*

[389] I have also disregarded the following portions of the employer's January 20, 2025 final submission on the basis that they are not relevant to the issue which I must decide on this appeal:

- Submissions regarding the merits of the worker's claim, which start on page 5 (with the following sentence) and continue until the end of page 7:

  > With respect to the injury of her right arm, neck and back, the evidence is certainly less than clear that any of this was work related or had been reported as such

- Submissions on page 12 and 13 which reference section 73 of the Act.

**Decision and Reasons**

[390] At issue on this appeal is whether the worker applied for compensation for a gradual-onset right upper extremity injury within the one-year statutory timeframe set out in subsection 151(3) of the Act; if not, whether special circumstances existed which precluded her from doing so, as contemplated in section 151(4) of the Act; and if so, whether discretion should be exercised in favour of considering her claim on its merits.

*Was the Worker's Application Filed Within Time?*

[391] Section 134(1) of the Act provides that compensation is payable for an injury which arises out of and in the course of a worker's employment. Policy item C3-12.00 (Personal Injury) of the RSCM II, states that it is not a bar to compensation if an injury results from a series of incidents



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

occurring over a period of time rather than from a specific incident; but it also states that where a condition develops over a lengthier period of time, it will generally be adjudicated under the occupational disease provisions of the Act and policy.

[392] Section 136 of the Act provides that compensation is payable for an occupational disease that is due to the nature of a worker's employment. Subsection 136(1) of the Act indicates, in part, that compensation is payable in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of employment, if the worker has an occupational disease that disables the worker from earning full wages at the work at which the worker was employed and the occupational disease is due to the nature of any employment in which the worker was employed.

[393] The Board recognizes epicondylitis as an occupational disease by regulation of general application under section 138(2) of the Act, and more specifically as an ASTD.

[394] Policy item C4-27.30 (A) (Epicondylopathy) of the RSCM II, explains that epicondylitis is an ASTD recognized by regulation. If the evidence establishes that the nature of the work caused or aggravated the worker's ASTD, the injury will be compensable. The policy explains that medical/scientific evidence does not clearly relate epicondylopathy to any particular process or industry; the Board assesses work causation in the context of each individual case based on consideration of all relevant risk factors. Policy item C4-27.30 (A) explains that where the worker was performing frequent, repetitive, forceful, and unaccustomed, employment-related movements (including forceful grip) of the wrist that are reasonably capable of stressing the inflamed tissues of the arm affected by epicondylopathy, and in the absence of evidence suggesting a non work-related cause for the worker's epicondylopathy condition, a strong likelihood of work causation will exist.

[395] On her April 7, 2021 application for compensation the worker described the injury for which she was seeking compensation as a "gradual-onset injury" involving her right forearm, elbow and shoulder which she attributed to the nature of the work activities that she had engaged as a sawmill labourer during the period October 1 to 19, 2019. The worker described the nature of these work activities as repetitive, awkward and forceful; explicitly stated that her symptoms were not the result of a specific incident; and advised that on October 19, 2021 her family physician Dr. Screen had diagnosed her right lateral elbow pain as right lateral epicondylitis.

[396] In a routing memo dated April 26, 2021 the Board determined that the worker's April 7, 2021 application for compensation should be treated as an application for compensation for an occupational disease/ASTD because the worker had been diagnosed with right lateral epicondylitis.

[397] Neither party to this appeal has disputed the Board's decision to treat the worker's April 7, 2021 application as an application for compensation for an occupational disease. The employer has repeatedly suggested that the Board denied this claim because the worker filed it more than two years after her "alleged date of injury", but I interpret this as a mischaracterization of the June 18, 2021 Board decision giving rise to this appeal, not an assertion that the Board should have adjudicated the worker's claim as a personal injury rather than as an occupational disease.

2026 CanLII 21252 (BC WCAT)

[398] With respect to occupational disease claims, section 151(3) of the Act advises that no compensation is payable unless an application is filed, or a determination under subsection 151(2) of the Act is made, within one year after the date of the worker's death or disablement from an occupational disease. However, policy item C4-26.00 ("Date of Injury" For Occupational Disease) of the RSCM II notes that there are exceptions provided in sections 151(4) and 151(5) of the Act. If the worker is alive and if the occupational disease has never caused a disablement, then time has not yet started to lapse for the purposes of section 151. Where a worker has experienced more than one period of disablement from the occupational disease for which the worker intends to make a claim, then each period of disablement will have to be individually considered to determine if the requirements of section 151 are met with respect to that period.

[399] Policy item C4-25.30 (Disabled from Earning Full Wages at Work) of the RSCM II provides that in order to be considered disabled from occupational disease there must be some loss of earnings from the worker's regular employment as a result of the disabling effects of the disease, and not just an impairment of function.

[400] There is no definition of "disability" in the Act. The subsection 136(1) phrase "that disables the worker from earning full wages at the work at which the worker was employed" refers to the work at which the worker was regularly employed on the date the worker was disabled by the occupational disease.

[401] For example, disablement for the purposes of section 136(1) may result from:

- an absence from work in order to recover from the disabling effects of the disease;
- an inability to work full hours at such regular employment due to the disabling effects of the disease;
- an absence from work due to a decision of the employer to exclude the worker in order to prevent the infection of others by the disease;
- the need to change jobs due to the disabling effects of the employment.

[402] A worker who must take time off from the worker's usual employment to attend medical appointments is not considered disabled by virtue of that fact alone and a change of employment or lay-off from work for the purpose of precluding the onset of a disability does not amount to a disability for this purpose.

[403] In his June 17, 2021 decision memorandum and the June 18, 2021 decision letter giving rise to this appeal the Board adjudicator ignored the fact that the worker indicated on her April 7, 2021 application for compensation that she had not worked since October 9, 2020, concluded that the worker's last date of work was March 9, 2020, and concluded that March 10, 2020 was the worker's date of disablement for the right upper extremity condition for which she was seeking compensation.



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2026 CanLII 21252 (BC WCAT)

[404] On review the worker argued that the Board adjudicator had erred in concluding that March 10, 2020 was her date of disablement for the right upper extremity injury for which she was seeking compensation. The worker submitted that as of March 10, 2020 she was disabled by her (since disallowed) neck injury but was not disabled by her right upper extremity injury and did not indicate if or when she considered her right upper extremity injury to have become disabling.

[405] Like the Board adjudicator, the review officer who issued *Review Reference #R0282816,* concluded that the worker's date of disablement from occupational disease for her right upper extremity injury was March 10, 2020 without addressing the fact that the worker had reported on her April 7, 2021 application for compensation that she had not worked since October 9, 2020.

[406] At the outset of day 1 of the October 2024 oral hearing of this matter the worker indicated that she was not sure whether March 10, 2020 was the "date of disablement from occupational disease", which applied when it came to determining whether her April 7, 2021 application for compensation had been filed within the time prescribed in subsection 151(3) of the Act, because she was not sure how to determine when someone was disabled by an occupational disease. In view of the foregoing I advised the parties that I would be proceeding on the basis that determining whether March 10, 2020 was the date of disablement from occupational disease which applied when it came to determining whether the worker had filed her April 7, 2021 application for compensation within the time prescribed in subsection 151(3) of the Act, was still a live issue.

[407] Policy item #97.00 (Evidence) of the RSCM II (now item C12-97.00 of the RSCM II) explains that although there is no burden of proof on a worker, neither is there any presumption in the worker's favour. The Act contains prerequisites for benefits. Some basic evidence must be submitted by the worker to show that there is a proper claim. The correct approach is to examine the evidence to see whether it is sufficiently complete and reliable to arrive at a sound conclusion with confidence and, if not, the adjudicator should consider what other evidence might be obtained and must take the initiative in seeking further evidence.

[408] Policy item #97.10 (Evidence Evenly Weighted) of the RSCM II (now item C12-97.10 of the RSCM II) provides that the Board is required to decide an issue in a manner that favours the worker if it appears that "the evidence supporting different findings on an issue is evenly weighted in that case". This applies only if there is evidence of roughly equal weight for and against the claim. It does not come into play if the evidence indicates that one possibility is more likely than the other.

[409] Policy item #97.30 (Medical Evidence) of the RSCM II (now C12-97.30 of the RSCM II) and policy item #97.31 (Matter Requiring Medical Expertise) of the RSCM II (now consolidated with policy item #97.32 of the RSCM II in sections B and C of policy item C12-97.30) provide that if a matter is one requiring medical expertise, the decision must be preceded by consideration of medical evidence, and that it is for the Board to decide when medical evidence is needed, what kind of medical evidence is needed, and on what questions. This medical evidence might consist of information or opinion from an attending physician, or advice from a Board medical advisor or another doctor.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[410] Policy item #97.32 (Statement of Worker about Own Condition) of the RSCM II (now consolidated with policy item #97.31 of the RSCM II in sections B and C of policy item C12-97.30) provides that a statement of a worker about the worker's own condition is evidence insofar as it relates to matters that would be within the worker's knowledge, and it should not be rejected simply by reference to an assumption that it must be biased. There is no requirement that the statement of a worker about the worker's own condition must be corroborated. However, a conclusion against the statement of a worker about the worker's own condition may be reached if the conclusion rests on a substantial foundation, such as clinical findings, other medical or non-medical evidence, or serious weakness demonstrated by questioning the worker, or if the statement of the worker relates to a matter that could not possibly be within the worker's knowledge.

[411] Item #11.5 (Weight, Credibility and Reliability) from WCAT's MRPP provides that generally a WCAT panel will admit any type of relevant evidence and later decide what weight, if any, should be given to it. This involves a consideration of whether the evidence is believable, internally and externally consistent, plausible, and credible. Item #11.5.1 (Weight) mentions that weight or importance given by a panel is largely a matter of common sense and direct evidence is generally more reliable than indirect evidence.

[412] When it comes to identifying the date of disablement from occupational disease which applies in this case I have carefully considered the evidence contained in Dr. Mori's March 31, 2021 physician's report, in the worker's April 7, 2021 application for compensation, in the employer's May 19, 2021 report of injury or occupational disease, in the worker's June 8, 2021 letter to the Board, in the typewritten comments from the disability case manager for the insurer who adjudicated the worker's STD claim, and in the testimony which the worker and Ms. H provided during the October 2024 oral hearing.

[413] Since section 136(1) of the Act and policy item C4-25.30 of the RSCM II clearly indicate that a worker is only considered to be disabled by an occupational disease if they miss time from work which results in a loss of earnings, I find as fact that when the worker ceased to be able to perform her regular work duties in October 2019 but was provided with alternate work duties by the employer that she was not disabled by her gradual-onset right upper extremity injury within the meaning of compensation law and policy.

[414] The worker indicated when she provided her sworn statement to the Board field investigator on June 26, 2023 that when she was unable to perform her regular work duties due to her right upper extremity complaints in the week prior to March 9, 2020 that the employer had given her time off and continued to pay her regular wages. I accept the worker's uncontradicted evidence in this regard and find as fact that since she did not sustain a loss of earnings as a result of her inability to perform her regular work duties in the week prior to March 9, 2020, that during that period she was not disabled by her right upper extremity injury within the meaning of section 136(1) of the Act and policy item C4-25.30.

[415] When the employer filed its report of injury or occupational disease on May 19, 2021 it reported that the worker had been off work and in receipt of STD benefits since March 10, 2020 and had

2026 CanLII 21252 (BC WCAT)

not missed any pay. However the typewritten notes from the case manager who handled the worker's STD claim indicate that the worker's claim for STD benefits was not initiated until March 18, 2020.

[416] During the oral hearing of this matter Ms. H testified that the mill at the employer's R location is a non-union operation and so its STD benefit program is self-funded. Ms. H explained that this means that a third party insurer adjudicates the claims for STD benefits which are initiated by the employer's staff by collecting the necessary medical evidence and making a recommendation to the employer who then pays any recommended benefits. Ms. H explained that because this STD benefit plan is self-funded, the employer has the option to pay STD benefits to a staff member even if their medical paperwork is delayed. Ms. H said that it was her understanding that this is what had happened in the worker's case.

[417] I interpret the foregoing to mean that even though the worker did not initiate a claim for STD benefits until March 18, 2020 (as noted by the case manager who handled the worker's STD claim) the employer chose to pay the worker STD benefits commencing March 10, 2020 (as documented in the employer's report of injury or occupational disease).

[418] During the oral hearing of this matter the worker testified that the monetary value of the STD benefits which she received from the employer after she went off work in March 2020 was only a percentage of her regular wage. I accept the worker's uncontradicted evidence on this point and find as fact that the first time that the worker was disabled from earning full wages at work within the meaning of section 136(1) of the Act and policy item #C4-25.30 was on March 10, 2020 when she missed time from work as a result of her right upper extremity complaints and began to incur a loss of earnings as a result of the employer initiating the payment of STD benefits, the monetary value of which was less than her regular wage.

[419] In view of the foregoing I agree with the Board adjudicator and review officer that March 10, 2020 is the date of disablement from occupational disease which applies when it comes to determining whether the worker's April 7, 2021 application for compensation for a gradual-onset right upper extremity condition was filed within the time prescribed in section 151(3) of the Act.

[420] Since the written record clearly establishes that the worker's April 7, 2021 application was not filed within one year of the worker's March 10, 2020 date of disablement from occupational disease, I also agree with the Board adjudicator and review officer that the worker's application was not filed within the time prescribed in subsection 151(3) of the Act.

*Is there Evidence of Special Circumstances?*

[421] Section 151(4) of the Act provides that the Board may pay compensation for the period beginning on the date the Board receives an application for compensation if:

> (a) an application is not filed within the period required in [section 151] subsection (3),



Workers' Compensation Appeal Tribunal
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2026 CanLII 21252 (BC WCAT)

(b) the Board is satisfied that special circumstances existed that precluded filing within that period, and

(c) the application is filed within 3 years after the date referred to in [section 151] subsection (3).

[422] Policy item 93.22 (Application Made Out of Time) of the RSCM II, (now consolidated with policy item #93.21 of the RSCM II in policy C12-93.11) provides guidance in the interpretation and application of these sections of the Act. Before an application for compensation received outside the one-year period can be considered on its merits, it must satisfy the following two requirements:

1. Special circumstances must have existed that precluded the application from being filed within that period, and
2. The Board must exercise its discretion to pay compensation.

[423] "Special circumstances" is not defined in the Act or the Board's policies.

[424] Under the heading "Special Circumstances", policy item #93.22 of the RSCM II states:

> It is not possible to define in advance all the possible situations that might be recognized as special circumstances that precluded filing an application. The particular circumstances of each case must be considered and a judgment made. However, it should be made clear that in determining whether special circumstances existed, the concern is solely with the worker's reasons for not submitting an application within the one-year period. No consideration is given to whether or not the claim is otherwise a valid one. If the worker's reason for not submitting an application in time are not sufficient to amount to special circumstances, the application is barred from consideration on the merits, notwithstanding that the evidence clearly indicates that the worker did suffer a genuine work injury.

[425] Policy item #93.22 notes that "precluded" in this section of the Act means to have made more difficult or otherwise hindered.

[426] Policy item #93.22 provides an example of a situation where special circumstances were found to exist. A worker sustained a minor right wrist injury which at the time did not cause disablement from work and did not require medical attention. There was, therefore, no reason why the worker should claim compensation from the Board, nor any reason why his doctor or employer should submit reports to the Board. It was not until two years later when the worker began to experience problems with the right wrist, that he submitted a claim to the Board. It was then that the worker was incurring monetary losses for which compensation might be appropriate.



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[427] Policy item #93.22 provides that special circumstances might also include a lack of awareness that an injury might be work-related. If the nature, extent, or symptoms of the injury preclude a worker from filing within the time period, this may also constitute special circumstances.

[428] When it comes to determining whether there were special circumstances which precluded the worker from filing her application for compensation for her gradual-onset right upper extremity injury within one year of her March 10, 2020 date of disablement from occupational disease I have found helpful guidance in the following noteworthy[21] WCAT decisions.

[429] In *WCAT-2005-03006-RB,* the panel found that "preclude" should be interpreted broadly to mean hinder, exclude, or prevent by logical necessity. The panel noted that there were no set criteria for determining what amounted to "special circumstances" and that the following factors had been cited in previous Appeal Division decisions:[22]

- characteristics of the worker such as language difficulties, which would create obstacles to understanding that there is a system of workers' compensation and how to access it.
- lack of knowledge that an injury or disease might be work-related because of delayed onset of the condition, minor nature of the original injury, or failure to recognize that it is related to work; and
- reliance on the advice of others, such as a physician or employer, where the worker is dependent on such advice owing to language difficulties or other vulnerabilities.

[430] In *WCAT-2010-01650*, the WCAT panel noted that each case of special circumstances is unique and must be considered on its own merit. The panel stated that not only must special circumstances be shown, the hindrance that those special circumstances created must also be demonstrated. The panel also noted that the totality of the circumstances and their effect must be considered, rather than an approach that compartmentalizes and considers each circumstance and its effect separately.

[431] In *WCAT-2010-01291* the panel found that it was appropriate to consider what a reasonable person would have done when considering whether there were special circumstances, however that alone was not determinative of the issue. The panel stated that the appropriate approach was to consider whether unusual or extraordinary circumstances existed, and if so, whether the circumstances made it difficult or otherwise hindered the worker from filing an application in a timely manner.

[432] I am mindful that the factors set out in in *WCAT-2005-03006-RB, WCAT-2010-01650, and WCAT-2010-01291* are not exhaustive, and that policy advises that the particular circumstances of each case must be considered, and a judgment made, but as a general principle I agree with panels who authored these three noteworthy decisions, that the appropriate test under the Act is

[21] WCAT identifies some past decisions as noteworthy as they deal with an important point or give a useful explanation of how the law and policy was applied.

[22] The employer noted that these factors had been cited in *WCAT Decision A1606928*.



Workers' Compensation Appeal Tribunal

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Fax: (604) 664-7898 | wcat.bc.ca
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2026 CanLII 21252 (BC WCAT)

whether unusual and extraordinary circumstances existed, and if so, whether these circumstances made it difficult or otherwise hindered the worker from filing her Board claim within the time required.[23]

[433] I acknowledge that the panels in *WCAT-2005-03006-RB, WCAT-2010-01650 and WCAT-2010--01291* considered what was then section 55 of the Act which subsequently became section 151 after the reorganization and renumbering under the *Statute Revision Act*, RSBC 1996, c. 440, effective April 6, 2020. However I am satisfied that there is no substantive difference between former section 55 of the Act, and the current section 151 of the Act, which would weigh against the adoption of the approaches taken by the other panels as set out above.

[434] Determining whether the worker was precluded from filing an application for compensation for her gradual-onset right upper extremity injury within the time prescribed in subsection 151(3) of the Act, rests on my evaluation of the credibility and reliability of the evidence before me.

[435] The standard for evaluating the credibility and reliability of evidence was established in the case of *Faryna v. Chorny (Faryna).*[24] In cases where there is conflict of evidence, credibility cannot be gauged solely on the test of the conviction of a witness; not solely based on the person's belief as to what occurred. A decision-maker must test a witness's story to examine its consistency with the probabilities that surround the currently existing conditions; the story must be in harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in the circumstances. These factors were expanded by the B.C. Supreme Court in *Bradshaw v. Stenner.*[25] They include the ability of the witness to resist the influence of interest to modify his or her recollection; whether the witness's evidence harmonizes with independent evidence that has been accepted; whether the witness changes his or her evidence during direct and cross-examination (or between examination for discovery and trial – or over the history of the matter) or is otherwise inconsistent in recalling events; whether the witness's evidence seems unreasonable, impossible or unlikely; and the witness's demeanor. Fundamentally, the question is whether the evidence of the witness is consistent with the probabilities affecting the case as a whole. Also, the assessor may accept all, some, or none of the evidence of a witness and that truthfulness and reliability are not necessarily the same.

[436] The distinction between reliability and credibility, each of which is relevant to an assessment of a witness's evidence, was explained in *R. v. Morrissey.*[26] Testimonial evidence can raise veracity and accuracy concerns. The former relates to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility.

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[23] The employer cited *WCAT Decision A1606928* and *WCAT Decision A2201870* in support of the same principle.
[24] [1952] 2 D.L.R. 354 (BCCA)
[25] 2010 BCSC 1398, aff'd 2012 BCCA 296
[26] (1995), 22 O.R. (3d) 514 (O.N.C.A.)

2026 CanLII 21252 (BC WCAT)

When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. In *R. v. H.C.*[27] the court said credibility and reliability are different. Credibility has to do with a witness's veracity, and reliability with the accuracy of the witness's testimony. Accuracy engages consideration of the witness's ability to accurately observe, recall, and recount events. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence (referring to *R. v. Morrissey*).

[437] This is the standard that I have applied when assessing the credibility and reliability of the contested evidence before me.

*Circumstances Leading Up to Worker's Hiring by the Employer*

[438] During the course of this appeal the worker and Mr. A have provided conflicting evidence regarding the circumstances which led to the worker being considered for a production job in the mill at the employer's R location in 2019[28]. The worker has challenged the credibility and reliability of Mr. A's evidence, and the employer has challenged the credibility and reliability of the worker's evidence.

[439] I do not consider the fact that the worker and Mr. A have provided conflicting evidence regarding these matters to be an indictment of their credibility; I am satisfied that both the worker and Mr. A made a genuine effort to recall the circumstances which led to the worker being considered for a production job in the employer's mill to the best of their abilities. However I am unable to determine on the basis of the available evidence whose recollection of the circumstances which led to the worker being considered for a production job at the employer's R location is more accurate and should be preferred.

[440] I have considered whether I should ask the parties to provide me with further evidence in an effort to break this impasse, but I have ultimately concluded that this is not necessary. I say this because when it comes to determining whether or not Mr. A said and did what the worker has alleged that he said and did when she was hired in May 2019 and when it comes to determining whether or not Mr. F and Mr. K said what the worker has alleged that they said during the October 2019 injury investigation, I do not consider the circumstances which led to the worker being considered for a production job at the employer's R location to be of relevance. As a result I have not made any reliability findings with respect to the disputed evidence regarding these circumstances.

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[27] 2009 O.N.C.A 56

[28] i.e. when and how the worker and Mr. A met for the first time; what transpired during their first meeting; how the employer came to be in possession of the worker's resumé; when and how the employer/Mr. A learned that the worker wanted to work in production in the mill, when Mr. A offered the worker a temporary/maternity leave position and/or a job working in the office/accounts payable, and whether he did so on more than one occasion.

2026 CanLII 21252 (BC WCAT)

*Worker's Cell Phone Service and Frequency of Calls Received from Mr. A*

[441] When the worker was interviewed by the Board field investigator, and when she was cross-examined by the ER during the oral hearing of this matter, she provided evidence that prior to being hired to work in the employer's mill she had received "a lot" of phone calls from Mr. A which she found bothersome.

[442] During the oral hearing of this matter the ER advised Mr. A that the worker alleged that during the hiring process Mr. A had "frequently" telephoned her to talk to her about "whatever". When the ER asked Mr. A if he had "frequently" called the worker, Mr. A stated: "No, she didn't have phone access, that's why she would text me in the evenings".

[443] In its final submission the employer argued that the worker's allegation that Mr. A had "frequently" phoned her prior to her being hired to work at the mill could not possibly be true because the worker did not have a cell plan at times throughout the relevant period and as a result she had to be in a location with WIFI in order to send text messages.

[444] I am not persuaded by the employer's argument. I say this because the worker was not asked to define or quantify what she meant when she said that she had received "a lot" of phone calls from Mr. A prior to being hired to work in the mill. I also say this because I find insufficient evidence before me by which to determine how often the worker was without a cell phone plan AND without access to WIFI during the relevant period.

*Text Messages Sent By Worker To Mr. A - Reliability of the Evidence*

[445] During her examination in chief, and in redirect, the worker testified that she no longer had access to the original text messages which she had exchanged with Mr. A. The worker testified that she was not questioning the veracity of the text messages which the employer had provided to the Board field investigator, but she indicated that if these text messages were going to be entered into evidence they should show that the texts attributed to her had been sent from her phone (number). The worker also expressed concern that there was no way to tell whether the text messages which the employer had provided to the Board field investigator were in their original form (i.e. that they had not been altered or that portions of them had not been deleted before they were provided to the Board field investigator).

[446] I acknowledge the worker's concerns, but given that she explicitly stated during her examination in chief, and in redirect, that she was not questioning the veracity of these text messages, I am not persuaded that it is necessary, or would be worthwhile at this juncture, to require the employer to provide proof that the text messages which have been attributed to the worker were sent to Mr. A from her phone number (in order to eliminate any possibility that these texts were sent to Mr. A from another phone by someone purporting to be the worker).



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[447] Given that Mr. A testified during direct examination that none of these text messages had been altered or edited, I am also not persuaded that it is necessary, or would be worthwhile at this juncture, to require the employer to provide objective evidence that these text messages had not been altered or edited.

[448] Moreover, I find that it would be procedurally unfair at this juncture, to require the employer to provide further evidence in order to establish that the text messages which have been attributed to the worker originated from her phone and had not been altered or edited in any way. I say this because the worker was given ample opportunity to review these text messages and raise any concerns that she had about this evidence being used in these proceedings prior to the commencement of the October 2024 oral hearing but she did not[29].

*Text Messages Sent By Worker to Mr. A - At Odds With Worker's Evidence?*

[449] The employer submitted that the text messages which the worker and Mr. A exchanged were difficult for the worker to explain and were inconsistent with the overall evidence and argument of the worker.

[450] The employer submitted that review of the text messages that the worker sent to Mr. A "revealed an unusual amount of disclosure of personal information that was offered unsolicited" such as: "One more trip to the food bank"; "I found out last night that [name of her child] was [the victim of a crime]; and "This is why [name of her child ] ended up in the hospital."

[451] I am not persuaded that the text message which the worker sent to Mr. A on May 3, 2019 in which she said, "one more trip to the food bank" contained "an unusual amount of disclosure of personal information". I say this because the worker testified that she'd had several discussions with Mr. A regarding how tight things were for her financially before she was hired.

[452] I am also not persuaded that the text message in which the worker said, "one last trip to the food bank" is "inconsistent with the worker's evidence that she avoided contact with Mr. A". I say this because the worker testified that her wanting to keep her distance from Mr. A/avoid him if she could, was something that happened after she was hired to work in the mill, as time went on (paragraphs 170-174 above). Given that this text message was sent to Mr. A within minutes of the worker receiving the employer's offer of employment letter I consider it reasonable to conclude that the worker was not yet trying to avoid Mr. A.

[29] These text messages were included in the disclosure package which WorkSafe sent to the worker on December 29, 2023 and resent to her on September 12, 2024. They were also included in the Employer's Book of Documents which the WCAT Registry informed the parties by letter dated August 6, 2024, could be viewed through the WCAT Online Services Portal.





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2026 CanLII 21252 (BC WCAT)

[453] I am also not persuaded by the employer's suggestion that the text message, which the worker sent to Mr. A on July 17, 2019 in which she disclosed sensitive information regarding her child, "revealed an unusual amount of disclosure of personal information that was offered unsolicited." I say this because:

- The worker testified that she sent this text to Mr. A because she needed his support in order to be able to take time off to be with her child and Mr. A had told her during a previous meeting that she needed to tell him what was going on in order for him to help her (paragraph 206 above).
- Mr. A's testimony confirms that prior to July 17, 2019 he had met with the worker regarding problems with her attendance, during which he learned that the worker was having attendance issues because there was something going on with her child (paragraphs 274 to 277 above).

[454] I am also not persuaded by the employer's suggestion that the fact that the worker sent a text message to Mr. A on July 17, 2019 in which she voluntarily disclosed sensitive information regarding a situation involving her child is inconsistent with her evidence that she did not want to share personal and confidential information with Mr. A about her child's situation. I say this because it is clear from the sworn statement which the worker provided to the Board field investigator on June 26, 2023 that she made these comments about not wanting to share personal and confidential information with Mr. A about her child's situation after she had sent Mr. A the July 17, 2019 text message in which she disclosed that a crime had been perpetrated against her child.

[455] The employer submitted that the grateful/thankful text messages which the worker sent to Mr. A after she received the employer's job offer were inconsistent with her evidence about how she feared Mr. A, essentially viewed him as a predator, and wanted to avoid contact with him.

[456] I am not persuaded by this argument because in reviewing the written record, the audio recordings of the sworn statements which the worker provided to the Board field investigator, and the worker's oral hearing testimony, I found no support for the employer's assertion that the worker feared Mr. A, or viewed him as a predator. In fact the worker explicitly stated when she was cross-examined during the oral hearing of this matter that she never said that she was afraid of Mr. A.

[457] I am also not persuaded by the employer's suggestion that the grateful/thankful text messages which the worker sent to Mr. A after she received the employer's job offer were inconsistent with her evidence that she wanted to avoid contact with Mr. A. I say this because, as previously noted, the worker testified that wanting to avoid Mr. A was something that happened after she was hired by the employer, as time went on, and the record indicates that the worker sent these grateful/thankful text messages to Mr. A mere weeks after receiving the employer's job offer.

[458] In its final submission the employer asserted that the fact that the worker sent a Happy New Year's text greeting to Mr. A on January 1, 2020 was at odds with the worker's assertion that



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

she avoided contact with Mr. A, when possible. The employer also asserted that the worker's explanation that this text greeting was a misdirected message was not credible.

[459] I do not agree with the employer's assertion that the worker's explanation that this text greeting was a misdirected message is not credible. I am satisfied that the worker made a genuine effort to recall to the best of her ability why she sent this text greeting to Mr. A on January 1, 2020. I consider the worker's candor; the fact that she freely admitted when the ER asked her why she had sent this text, that she did not know/was not sure, makes her evidence all the more believable.

[460] The worker offered three possible explanations for why she sent this text greeting to Mr. A on January 1, 2020: 1) the text greeting was misdirected to the wrong person; 2) the text greeting was a group text greeting sent to all of her contacts; 3) if Mr. A was still her boss at the time then the text greeting was sent to him because he was still her boss. I consider all three of these explanations to be plausible and I find that the worker's lack of certainty regarding exactly why she sent this text message to Mr. A on January 1, 2020 does not diminish her credibility.

[461] With respect to the employer's assertion that sending this text greeting to Mr. A on January1, 2020 was at odds with the worker's evidence that she avoided contact with Mr. A, when possible, I make the following observations.

[462] The first two explanations which the worker has provided for sending this text greeting to Mr. A on January 1, 2020 suggest that she did not formulate a specific intention to send this text greeting to Mr. A. If this is the case, I do not consider the fact that the worker sent this text greeting to Mr. A on January 1, 2020 to be at odds with her professed desire to avoid contact with him, when possible.

[463] The third explanation which the worker has provided for sending this text greeting to Mr. A on January 1, 2020 suggests that this was an intentional act. If this is the case, I agree with the employer that this behaviour appears to be at odds with the worker's professed desire to avoid contact with Mr. A, when possible.

[464] The employer submitted that the fact that the worker initiated the majority of the text conversations that she had with Mr. A, and that she initiated text conversations with him after office hours, was contrary to her allegation that she was essentially fearful of Mr. A, and avoided contact with him, when possible.

[465] I am not persuaded by this argument because, as I have already noted, the evidentiary record does not support the conclusion that the worker ever claimed to be fearful of Mr. A .

[466] I am also not persuaded by the employer's suggestion that the fact that the worker initiated the majority of the text conversations that she had with Mr. A, and that she initiated text conversations with him after office hours, was contrary to her assertion that she avoided contact with him, when possible.

2026 CanLII 21252 (BC WCAT)

[467] I say this because:

- I consider the text conversations which the worker initiated with Mr. A on April 17, 23, 24, and 30, and May 1, 3, 5 and 6, 2019 (which were concerned with the employer's recruitment and hiring processes), and the text conversations which she initiated with Mr. A on May 14, and June 13, 2019 (in which she expressed her gratitude to Mr. A for helping her to get a job at the mill) to be conversations which the worker initiated with Mr. A prior to, or shortly after she was hired to work at the mill (i.e. before she started trying to avoid him).
- I consider the text conversation that the worker initiated with Mr. A on June 29, 2019 (about repaying the money that he had loaned to her), and the text conversation that she initiated with Mr. A on July 17, 2019 (regarding a family emergency involving her child) to be conversations which she had to initiate with Mr. A in order to maintain a professional working relationship.

[468] In the absence of further information or context, I am also not persuaded that the fact that the worker initiated a text message with Mr. A on September 23, 2019 in which she asked him if he was busy or had five minutes to spare, is at odds with the worker's assertion that she avoided contact with Mr. A, when possible.

*Text Message Exchange on May 1, 2019- Where to Do The Aptitude Test*

[469] In its final submission the employer submitted that the text message exchange which the worker and Mr. A had about the worker coming to the mill in order to do her aptitude test was significant because:

> This is the evidence leading up to the meeting in which the alleged statement upon which the claims suppression allegation is made. In keeping with the worker's claim, she was vulnerable and was directed to attend the Milll so that she would be alone with [Mr. A],[Mr. A] had total control over the situation. This narrative is unsupported by the evidence.

[470] The employer submitted this text message exchange supported Mr. A's evidence that he offered the worker the option of doing her aptitude test at the mill office and did not support the worker's evidence that Mr. A had directed her to attend the mill in order to do this test so that she would be alone with him. The employer submitted that this was significant because it meant that the worker's evidence leading up to the meeting during which Mr. A was alleged to have told her that if she was injured at work that she was not to report this to the Board, was lacking in credibility. The ER went on to say:

> The lack of credibility of the worker's evidence surrounding the alleged claims suppression comment is helpful in assessing credibility about whether the comment was ever made. It is important to note that the worker's case hinges upon whether her evidence of a comment made in 2019 is accurate, or whether





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2026 CanLII 21252 (BC WCAT)

> the evidence of [Mr. A] about that meeting is accurate. With respect, the text messages are of significance in making that assessment.

[471] I start by noting that I do not agree with the ER's characterization of the worker's evidence regarding why she completed her aptitude test at the mill office on May 1, 2019. When the worker was being interviewed by the Board field investigator she did not describe herself as "vulnerable" and she did not state that she had been "directed" by Mr. A to attend the mill office in order to do her aptitude test so that she would be alone with him, and/or so that he would have total control over the situation.

[472] I acknowledge that the worker testified during the oral hearing of this matter that the reason that she did her aptitude test at the mill office instead of the library on May 1, 2019 was because Mr. A had "kind of insisted" that she complete her aptitude test at the mill office. I also acknowledge that when the ER produced a record of the text messages which the worker and Mr. A had exchanged on May 1, 2019 and put it to the worker that these text messages indicated that Mr. A had offered her the option of doing her aptitude test at the mill office, but had not insisted that she do so, that the worker conceded that this is what the text messages showed.

[473] I note that the worker testified that it was her belief that she and Mr. A had also communicated by phone about her coming to the mill office in order to do her aptitude test on May 1, 2019, but that she did not provide any evidence regarding what was said during this/these phone call(s).

[474] I also note that when the ER advised Mr. A that the worker said that these texts may not be comprehensive because there may have been a phone call where Mr. A had encouraged her to come to the mill office that Mr. A said, "not true"; and that when the ER explicitly asked Mr. A if he had phoned the worker during the period of time covered by these texts that Mr. A said: "I don't believe so, no. I'm working. I'm doing a job.".

[475] In view of the foregoing I have based my findings regarding why the worker did her aptitude test at the mill office on May 1, 2019, instead of at the library as she had originally planned, on the evidence contained in the text messages which she and Mr. A exchanged before she attended the mill office on May 1, 2019, and on the oral hearing testimony which they provided regarding these text messages.

[476] I consider the worker's oral hearing testimony, that she did her aptitude test at the mill office on May 1, 2019, rather than at the library as she had originally planned, because Mr. A "kind of insisted" that she do so, to be credible but unreliable. I say credible, because I am satisfied that the worker made a genuine effort to recall to the best of her ability (before the ER showed her the text messages which she and Mr. A had exchanged on May 1, 2019) why she ended up doing her aptitude test at the mill office on May 1, 2019. I say unreliable, because in the text messages which Mr. A sent to the worker before she attended the mill office on May 1, 2019, he explicitly stated that it was up to her whether she wrote her aptitude test at the library or at the mill office.

2026 CanLII 21252 (BC WCAT)

[477] In contrast, I consider Mr. A's oral hearing testimony, that he offered the worker the option of doing her aptitude test at the mill office on May 1, 2019, but did not insist that she do so; and that he did not care where the worker did this test, only that she get it done; to be credible and reliable. I say this because I find that Mr. A's testimony accords with both the content and tone of the text messages which he sent to the worker regarding this issue prior to her attending the mill office on May 1, 2019.

[478] As a result of the foregoing, I find as fact, that when Mr. A gave the worker the choice of doing her aptitude test at the mill office or the library on May 1, 2019, that the worker elected to do her aptitude test at the mill office.

*What Was Said About the Aptitude Test After the Worker Completed It*

[479] In its final submission the employer asserted that the fact that the worker had passed the aptitude test that she wrote on May 1, 2019 was undisputed.

[480] I agree that there is no dispute that the employer produced a document on appeal which establishes that the worker passed the aptitude test that she wrote on May 1, 2019.

[481] In its final submission the employer asserted that what was said about the worker's aptitude test when she and Mr. A had their meeting at the mill on May 1, 2019 was contested evidence.

[482] I also agree with this assertion.

[483] In its final submission the employer asserted that whether it was known at that time of the worker's meeting with Mr. A at the mill office on May 1, 2019 that she had passed her aptitude test was also contested evidence.

[484] I do not agree with this assertion. I say this because my review of the record indicates that both the worker and Mr. A have provided evidence that they did not know at the time of their meeting at the mill on May 1, 2019 that the worker had passed her aptitude test. Mr. A provided evidence that he did not learn about the results of the worker's aptitude test until after he left that meeting and the worker testified that she was told during that meeting that she had failed this test.

[485] The worker indicated when she provided her sworn statement to the Board field investigator on June 26, 2023, and when she testified at the October 2024 oral hearing of this matter, that Mr. A told her before they left the mill on May 1, 2019 that she had failed this test but that he was going to hire her anyway and that she was not to tell anyone that she had failed this test.

[486] When the Board field investigator told Mr. A in June 2023 that this was the worker's evidence, Mr. A neither confirmed nor denied telling the worker on May 1, 2019 that she had failed her aptitude test, but he made it clear that the worker could have been hired even if she had failed this test, and that if this is what had happened, that he probably would not have wanted her to talk about it (paragraph 108 above).

2026 CanLII 21252 (BC WCAT)

[487] The evidence which Mr. A provided to the Board field investigator in June 2023, in response to being advised that the worker said that he had told her before they left the mill office on May 1, 2019 that she had failed her aptitude test, stands in sharp contrast to the evidence which Mr. A provided to this panel in October 2024 when the ER told him this during direct examination.

[488] During the October 2024 oral hearing, when the ER told Mr. A that it was the worker's evidence that shortly after she had completed her aptitude test on May 1, 2019 that he had advised her that she had failed this test, Mr. A stated: "I believe that that's inaccurate. I wouldn't have that result." When the ER advised Mr. A that the worker alleged that after he told her that she had failed her aptitude test that he had also told her that he would "work with [Mr. O] and essentially make it go through notwithstanding the fact that she had failed the test", Mr. A said: "No, there's no way to do that. There's no way to change the results of an aptitude test".[30]

[489] During the October 2024 oral hearing, Mr. A testified that he did not learn the results of the worker's aptitude test during their May 1, 2019 meeting at the mill, that he did not know when he had learned the results of the worker's aptitude test, only that Mr. O had phoned him with the results and that the worker was not with him when he received this call.

[490] It is clear to me from the language that Mr. A employed, when answering the questions which the ER posed to him after they had reviewed the text message exchange which he had with the worker starting at 7:26 p.m. on May 1, 2019 (paragraphs 272 and 273 above), that Mr. A was not testifying from memory. Mr. A did not testify that he had a specific recollection of receiving a phone call at home from Mr. O on May 1, 2019 in which Mr. O advised him that the worker had passed her aptitude test; Mr. A testified that Mr. O must have told him when he phoned him at home that evening that the worker had passed her aptitude test, because Mr. A sent the worker at text at 7:57 p.m. on May 1, 2019 in which he wrote: "I talked to [Mr. O] and asked him to get you an offer letter tomorrow"; which is something Mr. A advised would only have happened if Mr. O had said that the worker had passed this test.

[491] In its final submission the employer argued that the text messages which the worker and Mr. A exchanged after their meeting at the mill on May 1, 2019, in which the worker thanked Mr. A, and Mr. A replied, "No problem. Just please do well" (paragraph 200 above) supported Mr. A's evidence that he had no information at the time of the meeting at the mill regarding whether the worker had passed her aptitude test or not.

[492] I am not persuaded by this argument. I say this because it does not make sense for Mr. A to send the worker a text message after they left the mill office on May 1, 2019, in he which says "No problem, just please do well", about an aptitude test which he knew that the worker had completed before they left the mill office. I also say this because during the October 2024 oral hearing, when the ER asked Mr. A what he meant when he said, "please just do well" in the text message that he sent to the worker at 7:28 p.m. on May 1, 2019, Mr. A said: "I don't remember [ER's first name], I don't know if that's well on the test, well on the job, I don't know."

[30] The ER did not clarify for Mr. A that the worker's allegation was that he had told her that she had failed her aptitude test but that he was going to hire her anyway not that he had told her that she had failed her aptitude test but that that he was going to have Mr. O change her test results.



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2026 CanLII 21252 (BC WCAT)

[493] In my view the text message exchange which the worker and Mr. A had on May 1, 2019 starting at 7:26 p.m. is more in keeping with the evidence which the worker and Mr. A provided to the Board field investigator in June 2023 regarding what happened after the worker finished writing her aptitude test on May 1, 2019, and with the evidence which the worker provided to this panel in October 2024 regarding what happened after she finished writing her aptitude test on May 1, 2019, than it is with the account which Mr. A provided to this panel in October 2024 regarding what happened after the worker finished writing her aptitude test on May 1, 2019.

[494] As a result of the foregoing, when it comes to determining what, if anything, Mr. A told the worker about the results of her aptitude test while they were at the mill office on May 1, 2019, I accept and prefer the worker's evidence that before they left the mill office on that date, Mr. A told her that she had failed her aptitude test but that he was going to hire her anyway but that she was not to tell anyone that she had failed this test.

*Warning Regarding Reporting to WorkSafe*

[495] When the Board field investigator interviewed Mr. A in June 2023, Mr. A advised the field investigator that he had come to understand that the worker was saying that he told her that she was not allowed to go to WorkSafe.

[496] During this interview, Mr. A did not affirmatively state that he had not told the worker that she was not allowed to go to WorkSafe. What Mr. A said was:

> I don't remember a conversation like that, that would be pretty contrary to everything I believe. I don't believe you go to WorkSafe before you come to us, but I don't believe I've ever told anybody, or recall telling people to hide an injury or hide a claim.

[497] When the Board field investigator informed Mr. A that the worker alleged that he had said to her: "Whatever you do, do not go to WorkSafe if anything happens… if you do you will have over 200 people pissed off at you. Don't make me regret hiring you" Mr. A also did not affirmatively state that he had not said these things to the worker. What Mr. A said was:

> I don't remember that. What I typically [short pause] what I typically tell people is you come to us. I don't remember that quote. Is that the meeting where she brought up that she didn't have food or gas?

[498] When the Board field investigator told Mr. A that the worker said that he had said this to her when she had come in to do an aptitude test, Mr. A told the field investigator that he had not recalled that this is why the worker had come to the office to do her aptitude test, then added: "But I don't recall telling her that "two hundred people are going to be pissed off"".



Workers' Compensation Appeal Tribunal

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2026 CanLII 21252 (BC WCAT)

[499] When the Board field investigator asked Mr. A if he recalled telling the worker "do not go to WorkSafe if anything happens", Mr. A said:

> No, I don't recall that. What would be typical with me with new hires is saying is that you don't go directly to WorkSafe you come to us. I don't recall having that particular conversation with [the worker]. There are so many new hires and so many people who come through here and this is so many years ago. You know I typically give a fairly canned speech around that kind of stuff and its typically is, you come to us, and that has to do with we don't want to get blindsided when WorkSafe comes and says where is your paperwork. It's you come to us you report it.

[500] To say that you do not remember or recall saying something is not the same thing as saying you remember or recall the incident clearly and did not say the things alleged. They are similar, but not the same.

[501] To (repeatedly) assert that you have a canned speech which you typically give to people/new hires, which stresses the importance of reporting any work injuries to a supervisor/charge hand (i.e. someone who works for the employer) is not the same as saying that you did not tell a worker that if she was injured at work that she was not to report this to the Board.

[502] When the Board field investigator told Mr. A that she understood that it was frustrating for him to be providing a statement about this situation, Mr. A responded in part:

> I don't feel that I intentionally tried to suppress any claim. My intent is that claims should get reported and things should come to us. I don't remember this, we're talking years ago….

[503] When the Board field investigator asked Mr. A if the worker was discouraged from filing a Board claim, Mr. A initially stated in part:

> I hope I didn't give [the worker] the impression that you can never go to WorkSafe. The whole point of having an indoctrination is to ensure that these are the rules and all these things are ticked off and covered off. For me to sit here and say to you that I remember everything that I said to [the worker] five years ago would be a lie…. She seems to have a quote, right, and I don't remember that. I don't.

[504] Mr. A's equivocal statements, and his general inability to recall, when interviewed by the Board field investigator in June 2023, whether or not he had made certain incriminating statements to the worker in May 2019, stands in sharp contrast to the evidence which Mr. A provided to this panel during the October 2024 oral hearing of this matter.

2026 CanLII 21252 (BC WCAT)

[505] During the October 2024 oral hearing when the ER asked Mr. A whether he had any discussion with the worker about incident reporting or WorkSafe during the May 1, 2019 meeting at the mill, Mr. A said: "Are you referring to the allegation that I said not to report?" When the ER said "yes" Mr. A. said:

> **I did not say you can't go to WorkSafe.** Look, what I do tell people quite often, and you'll hear many people hear me say this, is that you don't go to WorkSafe first you come to us first so that we can investigate. That the first step isn't to go straight to WorkSafe, the first step if there is an incident is that you tell us.
>
> [emphasis added]

[506] If Mr. A's oral hearing testimony is to be believed, his memory of what he did and did not say to the worker when she was hired in May 2019, has improved since he was interviewed by the Board field investigator in June 2023.

[507] Given the exigencies of memory, I consider it unlikely that Mr. A's ability to recall what he said to the worker when she was hired in May 2019 has improved over time. I consider it more likely that Mr. A's evidence regarding what he said to the worker when she was hired in May 2019 has changed since June 2023 because he has been unable to resist the influence of interest to modify his recollection. As a result I do not consider Mr. A's assertion, "I did not say you can't go to WorkSafe" to be credible or reliable.

[508] When it comes to the contested evidence on this point, I prefer and accept the worker's evidence that when she was hired on May 1, 2019 that Mr. A said to her:

> …whatever you do, do not go to WorkSafe if anything happens…. If you do you will have over two hundred people pissed off at you…. Don't make me regret hiring you.

[509] I do so due to the consistency of the evidence which the worker has provided in this regard[31] and because I consider it likely that she paid very close attention to what Mr. A said to her when she was hired on May 1, 2019 because she was, by her own admission, desperate to get and keep a job working in the mill at the employer's R location.

[510] I find additional support for the worker's allegation that Mr. A told her that if she got injured at work that she was not to report this to WorkSafe, in the evidence which EAP counsellor Mr. L provided to the Board field investigator regarding his initial meeting/ counselling session with the worker on January 24, 2020 (paragraphs 130, 131 and 137 above). In my view, the fact that the worker told Mr. L in January 2020 that Mr. A had told her not to report to WorkSafe if she got injured at work, strongly supports the conclusion that this is not an allegation which the worker invented for claims purposes.

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[31] In the June 8, 2021 letter which she submitted to the Board, in the sworn statement which she provided to the Board field investigator on June 26, 2023, and in the oral hearing testimony which she provided to this panel in October 2024.

2026 CanLII 21252 (BC WCAT)

*The Hug*

[511] When it comes to determining whether Mr. A asked for and received a hug from the worker before they left the mill office on May 1, 2019, I found the evidence which the worker provided to the Board field investigator and to this panel on this point to be consistent, credible and persuasive.

[512] In contrast, I did not find the oral testimony which Mr. A provided in response to being asked by the ER whether he had asked for and received a hug from the worker before they left the mill office on May 1, 2019 to be credible or persuasive. I acknowledge that Mr. A testified that he did not ask for a receive a hug from the worker before they left the mill office on May 1, 2019. However, the fact that Mr. A went on to assert that he did not like people touching him, and that there were reasons why he did not like to be touched, struck me as gratuitous and a thinly veiled attempt to portray himself as vulnerable in the hope that vulnerability might be mistaken for sincerity.

[513] As a result, I prefer and accept the worker's evidence regarding this matter.

*Cash and Gas?*

[514] The parties agree that at some point Mr. A gave the worker cash money. Although the parties disagree about whether Mr. A gave the worker cash so that she could buy groceries and gasoline, or just groceries, their final submissions suggest that they are not asking me to make a finding in this regard.

[515] The parties' final submissions do indicate that they are asking me to determine whether Mr. A used his (company) gas card to fill up the worker's gas tank on May 1, 2019.

[516] When it comes to determining whether Mr. A used this company gas card to fill up the worker's gas tank on May 1, 2019, I prefer and accept the evidence of the worker. I do so because I found Mr. A's testimony regarding what transpired after the worker completed her aptitude test at the mill office on May 1, 2019 to be generally vague and lacking in credibility, and because I found the worker's evidence regarding what transpired after she completed her aptitude test at the mill office on May 1, 2019 to be credible and consistent with the probabilities affecting the case as a whole.

*October 2019 Injury Investigation Meeting with Mr. F and Mr. K*

- What Mr. F Said During This Meeting

[517] I found the evidence which the worker provided to the Board, the Board field investigator, and this panel, regarding what Mr. F asked her during the October 2019 injury investigation meeting, how she responded to Mr. F's questions, and why she responded to his questions in that way, to be consistent and persuasive. I found the account which Mr. K provided to the Board field investigator, of what the worker was asked and what she said, during the October 2019 injury

2026 CanLII 21252 (BC WCAT)

investigation meeting, to be in keeping with the worker's evidence, and as a result I have concluded that the evidence which the worker provided in this regard is both credible and reliable.

[518] In contrast, I found the sworn statement which Mr. F provided to the Board field investigator in June 2023, regarding the October 2019 injury investigation meeting to be unhelpful. Mr. F's manner of answering the Board field investigator's questions left me with the distinct impression that he made no real effort to recall any of his interactions or conversations with the worker. As a result I do not consider Mr. F's professed inability to recall anything that transpired during the October 2019 injury investigation meeting which he and Mr. K had with the worker to be credible.

[519] As a result of the foregoing, I prefer and accept as factual the worker's account of what Mr. F said during the October 2019 injury investigation meeting.

- What Mr. K Said During this Meeting

[520] Given the consistent and unwavering nature of the evidence which the worker has provided to the Board, Board field investigator and this panel, regarding what Mr. K said to her during the October 1, 2019 injury investigation meeting, and the fact that Mr. F and Mr. K did not explicitly deny (when interviewed by the Board field investigator) that Mr. K said these things, I also accept as factual the worker's account of what Mr. K said to her during the October 2019 injury investigation meeting.

[521] I acknowledge that Ms. H testified that the employer does not have a computer program that can determine whether an injury is likely to be work-related; and that Mr. A testified that the employer has never had a computer program that can do this; that no such computer program exists. I consider the testimony which Ms. H and Mr. A have provided in this regard to be credible and reliable.

[522] That said, I do not consider the testimony which Ms. H and Mr. A have provided on this point to be sufficient to rebut the worker's consistent and credible evidence that Mr. K told her during the October 2019 injury investigation meeting that the employer had such a computer program; that he would be using this computer program to determine whether or not her right arm complaints were likely to have been caused by her work; and then later, that this computer program indicated that it was unlikely that right arm complaints were the result of her work duties.

- *Impact on Worker of What Mr. A Said to Her In May 2019 and What Mr. F and Mr. K Said to Her in October 2019*

[523] I accept the worker's evidence that she interpreted what Mr. A said to her when she was hired in May 2019 to mean that if she got injured while working for the employer and filed a compensation claim for that injury that Mr. A and her coworkers would be angry and upset with her, that Mr. A would regret hiring her, and that she would be jeopardizing her employment.

2026 CanLII 21252 (BC WCAT)

[524] I also accept the worker's evidence that when Mr. A hired her in May 2019 that she agreed/promised that if she got injured at work that she would not report this to WorkSafe and/or would not file a WorkSafe claim.

[525] On the basis of the worker's own evidence, the information which EAP counsellor Mr. L provided to the Board field investigator in June 2023, and the information contained in the letter from Dr. de Bois which was referenced by the panel in *WCAT Decision A2102306*, I find as fact that the worker's genuine but mistaken belief that she had failed the aptitude test that she wrote on May 1, 2019, and that Mr. A had decided to hire her anyway, resulted in the worker believing that Mr. A had done her a personal favour.

[526] On the basis of the evidence that the worker provided to the Board field investigator, I find as fact that the worker's belief that Mr. A had done her a personal favour by hiring her to work in the mill resulted in the worker feeling obligated to/indebted to Mr. A. I consider it likely that the worker's sense of feeling obligated to/indebted to Mr. A increased as a result of Mr. A providing her with other forms of support (i.e. loaning her money for groceries, filling her car up with gas, making it possible for her to take time off from work (sometimes on short notice) so that she could support her child during a crisis).

[527] On the basis of the worker's own evidence, the information which Mr. L provided to the Board field investigator, and the information from Dr. de Bois' letter which was cited by the panel in *WCAT Decision A2102306*, I find as fact that the worker's sense of being obligated to/indebted to Mr. A had an adverse impact on her psychological and physical wellbeing, and on her ability to take the steps necessary in order to protect her own interests (by reporting to her doctor that her right upper extremity complaints were work-related, and by filing a compensation claim with WorkSafe for those complaints).

[528] I acknowledge but I am not persuaded by the employer's submission that "a brief comment" made to the worker by Mr. A at the time of her hiring in May 2019 was the reason that she did not file her claim in a timely manner fails to take into account the training that the worker received once she commenced work. I say this because my detailed review of the evidence provided by the employer and its witnesses does not corroborate Mr. A's statement that the worker was "given all the information on how to report a claim" during training/the employer's indoctrination process.

[529] My review of the evidence provided by the employer indicates that the worker was provided with information regarding her duty to report work incidents and injuries to her employer and information regarding the employer's duty to report certain work incidents and injuries to the Board, but my review of this evidence does not indicate the worker was provided with any information or training during the employer's indoctrination process which would have negated the fact that Mr. A had told her when she was hired in May 2019 that if she got injured at work that she was not to report this to WorkSafe.

[530] I accept the worker's evidence that she found the questions that Mr. F asked her during the October 1, 2019 injury investigation meeting, and the way in which he asked them, to be

2026 CanLII 21252 (BC WCAT)

intimidating, and that this led her to believe that what Mr. A told her when she was hired in May 2019, about not reporting to WorkSafe if she got injured at work, was serious.

[531] I interpret the worker's submissions, "I was discouraged that my right arm issues had anything to do with my duties at work" and "I did not have my employer's support to even say this was a work-related issue" to be references to the fact that Mr. K told her during the October 2019 injury investigation meeting that the computer app/program that he was using indicated that her right arm problems were unlikely to be work-related and then asked her whether she had been doing anything else that could have caused her arm problems.

[532] I accept the worker's evidence that what Mr. F and Mr. K said to her during the October 2019 injury investigation meeting led her to believe that her employer would not allow her to file a WorkSafe claim for her right upper extremity complaints.

[533] I interpret the worker's submission that she was afraid to stand up for herself because she was afraid that she would lose her job to mean that the worker was afraid that she would lose her job if she filed a compensation claim with WorkSafe for her right upper extremity complaints after having been told by Mr. A not to report to WorkSafe if she got injured at work, and also after being told by Mr. K that his computer said that her right arm complaints were unlikely to be work-related.

[534] On the basis of the foregoing I find as fact that what Mr. A said to the worker when she was hired in May 2019 and what Mr. F. and Mr. K said to her during the October 2019 injury investigation meeting hindered her ability to/ made it difficult for her to file a compensation claim for her gradual-onset right upper extremity injury once she became disabled by same on March 10, 2020.

**Special Circumstances**

[535] I am satisfied that what Mr. A said and did when the worker was hired in May 2019, and what Mr. F. and Mr. K said to the worker during the October 2019 injury investigation meeting, constitutes special circumstances which precluded her from filing a claim for her gradual-onset right upper extremity injury from her date of disablement on March 10, 2020, up to and including November 20, 2020 when she filed her (now disallowed) claim for an unrelated neck injury.

[536] I agree with the employer, that by filing her neck injury claim on November 20, 2020, the worker demonstrated that she had knowledge of the worker's compensation system and was able to file a claim despite what Mr. A said to her when she was hired in May 2019. However, I find as fact, that the worker was still precluded from filing a claim for her right upper extremity injury subsequent to November 20, 2020 as a result of what Mr. F and Mr. K said to her during the October 2019 injury investigation.



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2026 CanLII 21252 (BC WCAT)

[537] I say this because I accept the worker's oral hearing testimony that:

- The difference between filing a claim for her neck and filing a claim for her right upper extremity was that she knew (as a result of her October 2019 meeting with Mr. F and Mr. K) that her employer did not think that her right upper extremity injury was work-related.
- She believed that filing a claim for her right arm injury was not an option because her employer did not believe that this injury was work-related;
- She had never before encountered a situation in which she had reported a work injury to an employer, and the employer had responded by telling her that it did not think that her injury was work-related. As a result, it was not until she told a Board CCA that she had not filed a claim for her right arm injury because her employer did not think this injury was work-related, and this CCA told her that her employer did not have the right to decide whether or not her right arm injury was work-related, that she learned that filing a compensation claim for this injury was still an option.

[538] I consider it reasonable for the worker to have concluded, as a result of what Mr. F and Mr. K said to her during the October 2019 injury investigation meeting, that she did not have the option of filing a compensation claim for her right arm injury, until such time as she was disabused of this notion by a Board CCA.

[539] The worker told the Board field investigator in June 2023 that she believed that this conversation that she had with a Board CCA had taken place sometime in 2021, however the worker did not provide the field investigator, or this panel with a more precise date.

[540] According to *WCAT Decision A2102306* the worker filed her neck injury claim in November 2020, the Board denied the worker's neck injury claim on December 18, 2020, and the Board reconsidered and confirmed its denial of the worker's neck injury claim on February 16, 2021.

[541] Given the foregoing, I consider it to be more likely than not that the conversation that the worker had with a Board CCA about her neck injury, during which that CCA alerted the worker to the fact that she had the right to file a compensation claim for her right arm complaints even if her employer thought they were not work-related, took place on or before the worker's neck injury claim was definitively denied by the Board on February 16, 2021.

[542] Although I do not know whether the Board CCA in question told the worker that there were time limits for filing compensation claims, I am satisfied that by February 16, 2021 the worker no longer lacked the knowledge that it was open to her to file a claim for the gradual-onset right upper extremity injury which had been disabling her since March 10, 2020 and that she knew how to contact the Board and make enquiries if she required further information regarding her rights and obligations in this regard.



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2026 CanLII 21252 (BC WCAT)

[543] As a result of the foregoing. I find as fact that what Mr. F and Mr. K said to the worker during the October 2019 injury investigation meeting continued to preclude her from filing a compensation claim for her right upper extremity injury after she filed her neck injury claim on November 20, 2020, but only up to and including February 16, 2021.

[544] Since the worker has not pointed me to, and I have not found, evidence of any special circumstances which precluded her from filing a claim for her right upper extremity injury after February 16, 2021 and prior to the statutory deadline for doing so expired on March 10, 2021, I conclude that the claim which the worker filed on April 7, 2021 is statue barred because it was not filed within the time prescribed in section 151 of the Act

*Other Circumstances*

[545] In her final submission the worker wrote in part:

> [The employer] did not fulfill their obligations to me as an injured worker. [The employer] also must have legal obligations with WSBC that they have agreed to and steps and procedures they must follow in the event an employee is injured, and I have not seen any evidence showing they did.

[546] I interpret the foregoing to mean that the worker believes that she should not be penalized for failing to file her claim for her right upper extremity injury within the time prescribed in the Act because the employer did report her injury to the Board.

[547] The worker is correct in concluding that employers have certain reporting obligations under the Act, but the law is also clear that an employer's failure to comply with an obligation to report a worker's injury to the Board, does not relieve that worker of their obligation to file their claim within the statutory time period set out in the Act. In *Corcoran v. Workers' Compensation Appeal Tribunal,* 2014 BCSC 1087, the court articulated this as follows:

> Sections 54, 55 and 56 of the Act [now sections 150, 151, and 163] impose reporting obligations on employers, workers, and physicians in regard to compensation claims. They are independent of each other. A worker cannot escape an obligation to make the required report by purporting to pass it onto the employer as the petitioner appears to have done.

[548] For all of the foregoing reasons, I have denied the worker's appeal and confirmed *Review Reference #R0282816.*

**Conclusion**

[549] The worker's appeal is denied and *Review Reference #R0282816* is confirmed.

[550] The claim which the worker filed on April 7, 2021 claim for a gradual-onset right upper extremity injury is barred by section 151 of the Act because it was not filed within one year of the worker's March 10, 2020 date of disablement from occupational disease, and because the available

evidence does not establish that there were special circumstances which precluded the worker from filing this claim within time.

**Expenses**

[551] There has been no request made for the reimbursement of expenses associated with this appeal. Therefore, I make no orders in this regard.

Dawn Shaw-Biswas
Vice Chair

2026 CanLII 21252 (BC WCAT)



Workers' Compensation Appeal Tribunal

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