

# Decision of the Workers' Compensation Appeal Tribunal

**Number: 2004-01441-RB**

**Date: March 23, 2004**

**Panel: Cecil S. Memory, Vice Chair**

**Subject: Failure to Appear at Oral Hearing — Abandonment of Appeal**

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## Introduction

The worker filed the above-noted appeal on October 23, 2002.

In a notice of hearing dated December 22, 2003 the Workers' Compensation Appeal Tribunal (WCAT) advised the worker that an oral hearing respecting the appeal would commence on Tuesday, February 17, 2004 at 9 a.m.

On the day and at the time set down for the hearing the worker did not appear.

By letter dated February 18, 2004 the registrar's office of WCAT invited the worker to provide reasons for his failure to attend the hearing.

The worker responded in a faxed letter dated February 17, 2004.

## Issue(s)

Section 246 of the *Workers Compensation Act* (Act) states as follows:

- (1) Subject to any rules, practices or procedures established by the chair, the appeal tribunal may conduct an appeal in the manner it considers necessary, including conducting hearings in writing or orally . . .
- (5) If, in an appeal, a party fails to comply with the procedures of the appeal tribunal including any time limits specified for taking any actions, the tribunal may, after giving notice to that party,
  - (a) continue with the proceedings and make a decision based upon the evidence before it, or
  - (b) determine that the appeal has been abandoned.

The chair of WCAT approved a *Manual of Rules, Practices and Procedures* (MRPP) effective as of March 3, 2003, pursuant to her authority under section 234(2) of the Act. Item #9.23 of the MRPP sets out rules, practices, and procedures respecting the late appearance or failure of an appellant to appear for a hearing. It states as follows regarding the failure of the appellant to appear:

The registrar's office will invite the appellant, within 14 days, to provide reasons for the failure to attend the hearing. The panel will then decide whether to [s.246(5)]:

- (a) reschedule the oral hearing;
- (b) continue the proceedings and make a decision based upon the written evidence before it;
- (c) determine that the appeal is deemed to have been abandoned.

A failure to appear at an oral hearing without prior notice, would normally only be justified by a personal emergency and re-scheduling of a hearing may be considered in those circumstances.

The issue for determination is whether the oral hearing will be rescheduled, or whether the panel will continue the proceedings and make decisions based upon the written evidence before the panel, or whether the appeal is deemed to have been abandoned by the worker's failure to appear at the scheduled oral hearing.

## **Relevant Facts**

On January 23, 2004 the worker telephoned WCAT and spoke with an appeal liaison officer. He requested a postponement of the oral hearing on February 17, 2004, stating that he was a student and had three exams in mid February. The appeal liaison approached the assigned vice chair for instructions.

The vice chair advised the appeal liaison that the worker must provide more than a telephone call and instructed that the worker be asked to supply a copy of the examination schedule on the basis that the oral hearing may fit between the exams.

The appeal liaison subsequently advised the vice chair that when the worker was asked for his examination schedule he advised that he had decided to proceed with his hearing on February 17, 2004.

WCAT arranged, as requested by the worker, for an Iranian interpreter to attend at the oral hearing on February 17, 2004.

At the appointed time on February 17, 2004 the interpreter appeared but the worker did not appear.

In a letter dated February 17, 2004, faxed to the WCAT on February 17, 2004, and received by WCAT on February 17, 2004, the worker stated,

. . . could not make it to the hearing, because my wife is pregnant with our child and she is coming up to 6 month of her pregnancy. She has been through a very rough periods and unfortunately last night was one of those night and I was concern about my family that I totally forgot about the hearing.

Please reconsider me for another hearing date.

[reproduced as written]

## **Finding and Reasons**

I find that the appeal is deemed to have been abandoned by the worker.

Item #9.23 of the MRPP sets out that a failure to appear at an oral hearing without prior notice will normally only be justified by a personal emergency.

The apparent rationale for a “personal emergency” as justification for rescheduling an oral hearing is that the emergency was not predictable by the appellant and not within the appellant’s control. Examples would include an intervening family or medical emergency or a personal emergency of some kind. This worker’s reasons for failing to appear by reason of forgetting about the hearing because of concern for his family are not outside of his control nor unpredictable by him. Accordingly, the worker does not qualify for the normal justification provided in item #9.23.

The use of the word “normally” in item #9.23 implies that there may be other justification for failing to appear for an oral hearing. There may be events which are predictable and not within the appellant’s control, or vice versa, such as driving to the wrong address for the oral hearing, or getting lost and unable to find the hearing location, or being held up in traffic due to closure of a bridge or roadway by reason of an accident. In this worker’s case, there is no evidence of this kind of event.

In summary, I find that there is no basis for rescheduling of a hearing by reason of a personal emergency or other justification as contemplated in item #9.23 of the MRPP.

In summary, I find that the appeal has been abandoned and will not be rescheduled or continued.

