IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Carpenter v. Worksafe BC Review Division,* 2026 BCSC 908

Date: 20260519
Docket: S10982
Registry: Courtenay

Between:

Dylan Carpenter

Petitioner

And:

Worksafe BC Review Division

Respondent

Before: The Honourable Justice Young

Reasons for Judgment

Appearing in Person:	D. Carpenter
Counsel for the Respondent:	K. Brar C. Cruz, Articling Student
Place and Date of Hearing:	Courtenay, B.C. March 23, 2026
Place and Date of Judgment:	Courtenay, B.C. May 19, 2026

[1] The petitioner seeks a judicial review of the Workers' Compensation Board (the Board) Review Division decision dated October 9, 2025 denying him an extension of time to request a review of a decision that he did not receive. The parties agree that this judicial review should be of the December 15, 2025 reconsideration decision of the Review Division (the Reconsideration Decision).

[2] On or about January 31, 2025 the Board issued a decision in relation to the petitioner's permanent disability claim (the Permanent Disability Decision). The petitioner says he did not receive that decision letter. The petitioner was outside of Canada until mid-February and the petitioner moved house in the last week of February. The petitioner says he only learned of the Permanent Disability Decision in September 2025 during a call from the long term disability officer. This prompted him to seek an extension of time to request a review of the Board decision. He submits the Permanent Disability Decision contains material factual errors which if not corrected will result in an injustice to the petitioner.

[3] On October 9, 2025 the Review Division issued its decision denying the petitioner's request for an extension of time to request a review of the Permanent Disability Decision.

[4] The petitioner submitted a review request of the October 9, 2026 Review Division decision with additional information that was not included in his original request. He believed that the Review Division closed this review without formal communication declining to examine any additional evidence submitted by him. He filed this petition before the Reconsideration Decision was made.

[5] The respondent says that the petitioner has failed to explain his failure to meet the 90-day deadline. It does not accept that special circumstances precluded him from filing a request for review on time.

Statutory Provisions

[6] According to s. 270 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 (the Act) a request for review must be filed within 90 days of the Board's decision.

[7] Section 270(2) of the Act allows the Chief Review Officer to extend the time to file a request for review if the Chief Review Officer is satisfied that:

> a) special circumstances existed that preclude or precluded the filing of a request for review within the applicable time period required by subsection (1), and
>
> b) an injustice would otherwise result.

[8] Section 344(1)(b) and (2) of the Act provides that a document sent by mail to a party's last known address is deemed to have been received on the 8th day after it was mailed.

[9] Section 344(4) states that the deeming section referred to above does not apply if through absence, accident, illness, or other cause beyond the party's control, a party who acts in good faith does not receive the copy until after the 8th day.

[10] Most Board decisions are subject to review by the Review Division which is internal to the Board. The Review Division has authority under Part 6 of the Act to review decisions of the Board. Pursuant to s. 338 of the Act the Review Division has published a manual of practices and procedures of the Review Division (the Review Board Manual).

[11] A Review Division decision may be reviewed by the Chief Review Officer. Certain decisions of the Chief Review Officer may be appealed to the Workers' Compensation Appeal Tribunal (WCAT). The underlying decision for this judicial review is about the conduct of review and timelines and may not be appealed to WCAT (s. 288(2)(a) of the Act).

[12] Item A2.4.2.1 of the Review Board Manual addresses special circumstances regarding a decision not received. It states that s. 344(1)(b), (2) and (4) create a rebuttable presumption that a party has received a properly addressed document within 8 days of mailing. It goes on to say the following:

> In order to rebut the presumption, it is not sufficient for the applicant to simply state that he or she did not receive the decision when it was sent or to make general statements about the postal system or the Board. The applicant must also provide evidence of specific circumstances that led, or may reasonably have led, to a decision not being received. Examples include evidence of previous interference with a party's mailbox or previous incidents of confusion between mailboxes or addresses due to their similarity or proximity.

[13] Item. A2.4.2.6 of the Review Board Manual discusses reconsideration of decisions on the extension of time applications and states:

> The Chief Review Officer will, at the request of an applicant, consider again and make a new decision on a request for an extension of time application that has been previously denied. The limits on reconsideration set out in section 273 of the *Act* do not prevent this because, as discussed in item A5.2.2 the *Act*'s limitations on reconsideration apply only to final decisions on review made under section272 (9) of the *Act*. However, an application for a new decision is more likely to be successful if made without unreasonable delay and supported by the provision of new information or an error in the previous decision.

Facts

[14] The petitioner was injured in the course of his employment on January 16, 2024. His claim was accepted for a lumbar back strain on April 9, 2024. On April 22, 2024 the Board decided the petitioner would no longer be entitled to wage loss benefits beyond April 14, 2024 as he was no longer temporarily disabled.

[15] The petitioner requested a review of that decision. On December 3, 2024 the Review Division varied the Board's initial wage loss decision and determined that the petitioner was entitled to wage loss benefits beyond April 14, 2024. The Review Division referred the matter back to the Board to determine the nature and extent of the petitioner's benefits beyond April 14, 2024.

[16] On January 31, 2025 the Board issued the Permanent Disability Decision. The Board determined that the petitioner's lumbar back strain resolved and his pain condition stabilized by July 16, 2024.

[17] The Board submits that it mailed the Permanent Disability Decision to the petitioner's mailing address on January 31, 2025. It provides no evidence to prove that this was done.

[18] On September 18, 2025, the petitioner called the Board and inquired about his long term disability referral for assessment. On September 23, 2025 the long term disability officer called the petitioner to discuss implementation of a loss of functional impairment of 2.5%. During this phone call the petitioner indicated that he did not recall ever seeing the Permanent Disability Decision.

[19] On September 25, 2025, the Board issued a written loss of function decision awarding the petitioner a lump-sum loss of function payment of $35,626.57.

[20] On October 1, 2025 the petitioner filed a request for review of the Permanent Disability Decision. He stated in his application "I did not receive the letter from Ms. Jane Galloway dated 31 January 2025. I only learned of its existence when talking to the LTD case manager on 23 September 2025".

[21] The Review Division denied the petitioner's request for an extension of time to seek review of the Permanent Disability Decision because the petitioner did not provide information to explain a failure to receive the permanent disability decision. The Board submits that the Permanent Disability Decision letter was not returned as undeliverable to the Board. There was no information on the claim file from the petitioner after December 16, 2024 advising the Board of his change of address.

[22] On November 3, 2025, the petitioner filed a request for reconsideration of the extension denial decision. He submitted that he had been absent from the country around the time that the Permanent Disability Decision was issued, the Canada Post strike created backlog in the mail and that he had moved in February 2025 and he provided his moving address. He submitted that this constellation of facts constitutes special circumstances.

[23] The petitioner accessed the WorkSafeBC portal showing that his request for a second review by the Chief Review Officer was marked as “will not be conducted”. Accordingly he filed the petition prior to receiving the Reconsideration Decision.

The Reconsideration Decision

[24] On December 15, 2025 the Chief Review Officer confirmed the extension denial decision and denied the petitioner’s request for an extension to seek a review of the Permanent Disability Decision. The Chief Review Officer rejected the argument that there was a backlog in mail. She based her decision on her finding that the Canada Post strike ran from November 15, 2024 to December 17, 2024. After that the Board returned to mailing its decisions. I interpret that to mean that the Chief Review Officer determined that there was no backlog of mail after the end of the postal strike.

[25] The Chief Review Officer noted in the Reconsideration Decision that the petitioner provided “no evidence” to confirm he moved in February 2025. She noted that the Permanent Disability Decision letter was not returned to the Board as undeliverable. She also noted in the decision that the permanent disability decision was always available on the petitioner’s online WorkSafeBC portal once it was issued. The Chief Review Officer concluded that the factors listed by the petitioner did not explain the petitioner’s inability to submit a request for review by the 90-day time limit.

The Petitioner’s Submissions

[26] The petitioner argues that the Chief Review Officer’s decision is not reasonable because the Board has not proven that the letter was mailed to him. The Board did not take into consideration the fact that he was “absent” which is a factor to consider under s. 344(4) of the Act. He submits that it is unreasonable for the Board to not consider the fact that he moved. He concludes that the Permanent Disability Decision contains material factual errors which if not corrected would result in an injustice to the petitioner.

[27] The petitioner argues that the presumption set out in s. 344(1)(b) and (2) cannot replace the actual evidence that he did not receive the decision. He assumed that his assertion that he was moving was sufficient evidence of his move. When he received the Board's decision denying his request he searched for a receipt corroborating his evidence that he had moved. He submits that posting the decision on the WorkSafeBC portal is not service. He acted promptly once he found out about the Permanent Disability Decision.

[28] The petitioner argues that he has complied with the terms of the Act itself and is not required to comply with the provisions of the Review Division Manual which does not have statutory status. He was "absent" from the jurisdiction when the decision was allegedly mailed to him. It is unreasonable for the Review Officer to ignore his evidence.

[29] The petitioner submits that the Chief Review Officer owed him a duty of procedural fairness citing *Baker (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 which requires a decision-maker to consider all relevant material factors before making a decision that affects an individual's rights.

[30] He submits that the Canada Post backlog after the strike, travel outside Canada and a change of residence were material to whether the statutory deadline for review could reasonably be extended.

[31] The petitioner submits that s. 270(3) of the Act provides that an extension may be allowed where special circumstances existed which precluded the request for review being made within the prescribed time and where an injustice would otherwise result. The Chief Review Officer's decision improperly restricted the meaning of "special circumstance" by suggesting that only events such as interference with mail or repeated confusion of addresses would rebut the statutory presumption of delivery.

[32] The petitioner submits that the Chief Review Officer applied the presumption of service mechanically without investigating whether it reflected reality in the

circumstances. Failure to consider the petitioner's evidence renders a decision unreasonable. He submits that the respondent applies an overly restrictive interpretation of special circumstances requiring extraordinary or highly specific events.

The Respondent's Submissions

[33] The respondent notes in its response that the proper name of the Board is the Workers' Compensation Board and the style of cause should be amended to reflect that. I will make that order that the style of cause in these proceedings be amended to replace "Work Safe BC Review Division" with "Workers' Compensation Board".

[34] The respondent submits that it has exclusive jurisdiction in relation to compensation provisions. Since the underlying decision for this judicial review is about the conduct of review and timeliness, the respondent submits the decision of the Review Division may not be appealed to WCAT: s. 288(2)(a) of the Act. Any review decisions that cannot be appealed to WCAT are subject to judicial review on the reasonableness standard. I accept this submission.

[35] The respondent submits that the Chief Review Officer followed the Act and the Review Division Manual provisions and that her decision was reasonable. The Review Board Manual provides that to rebut the presumption it is not sufficient for the party to simply state that he did not receive the decision when it was sent. The party must also provide evidence of specific circumstances that led or may reasonably have led to a decision not being received.

[36] The Chief Review Officer carefully considered all three of the reasons the petitioner gave for not receiving the Permanent Disability Decision and rejected them. She determined that the fact that the mail strike ended on December 17, 2024 was sufficient proof that there was no mail backlog.

[37] The respondent submits that the Chief Review Officer considered the fact that the petitioner provided no evidence that he moved in February 2025.

[38] The respondent further submits that the petitioner knew that a decision was imminent and always had access to the online portal. Even if the petitioner did not receive the decision, he did have access to it on the online portal.

Decision

Standard of review

[39] I accept the respondent's submission that the standard of review applicable to the Reconsideration Decision is reasonableness. The petitioner must satisfy the Court that the decision is not sufficiently justified, intelligible and transparent.

[40] On December 15, 2025 the Chief Review Officer reviewed the October 9, 2025 decision. She emphasized that the applicant must provide evidence of specific circumstances that led or that may reasonably have led to a decision letter not being received. She appears to accept the respondent's statement that he was outside of Canada until mid-February however she did not consider this as a reason to explain his inability to request a review by the 90-day time limit which was by May 9, 2025. She neglected to consider the possibility that the respondent did not receive the decision letter which would of course prevent him from requesting a review until he did receive the letter.

[41] The petitioner also said that he moved houses in mid-February the week after he returned from being outside of Canada. The Chief Review Officer relied on memos on the file which showed that the petitioner was in telephone contact with various Board staff in late January 2025. There was no reference to the petitioner being out of the country or moving in February and therefore she rejected his evidence on the basis that no one referred to it in an internal memo. These conversations are not relevant. They do not discredit the evidence of the petitioner that he was out of the country and that he had to move his residence.

[42] It is my view that the Chief Review Officer unreasonably failed to consider the evidence of the petitioner that he did not receive the letter. I agree with the petitioner that failure to consider his evidence renders the decision unreasonable. His not

receiving the letter is an explanation for him not filing a review within the 90-day time limit. The petitioner had no obligation to access the WCB portal to look and see if the decision had been rendered. The onus is on WCB to serve the letter by mail. The Board provided no proof that the Permanent Disability Decision was mailed. The fact that the letter was not returned to the Board as undeliverable does not prove or disprove the petitioner's statement that he did not receive the letter.

[43] The petitioner was not aware that he had to provide corroborating proof of his statements that he was out of the country and that he moved. In fact, he did not realize when he filed the petition that the Chief Review Officer was considering his request for review. In support of this petition, he provided corroborating evidence showing that he was on an Air Canada flight from Vancouver to Santa Ana, California on February 2, 2025 and that he returned on February 12, 2025. He provided proof that he rented a 24-foot van on February 23, 2025 which corroborates his statement that he moved his residence then.

[44] The respondent referred me to the case of *Machado v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2015 BCSC 769 which also dealt with the decision to disallow an extension of time to appeal. The standard of review in 2015 was patent unreasonableness which is a stricter standard than the one before me today. What is remarkable about that case in my view is the fact that WCAT corresponded repeatedly with the worker asking them to provide additional evidence to give them an opportunity consider her request and to explain the delay. No such courtesy was extended to the petitioner. The petitioner gave evidence that he did not receive the decision, that he was out of the country and that he had to move shortly after returning to the country. He was clearly not aware that his statements would not be accepted without corroboration. It is apparent that the Chief Review Officer disregarded his statements, which in my view are evidence, and searched for evidence to discredit them but did not give the petitioner an opportunity to provide that corroboration prior to making the decision.

[45] The petitioner is being asked to prove a negative. It is impossible to prove that something was not delivered beyond a statement that he did not receive it. He did give evidence that he did not receive the decision. He provided some plausible explanations for why he did not receive the Permanent Disability Decision.

[46] The petitioner's allegation that there was a backlog of mail after the Canada Post strike is supposition which I agree cannot support a finding of special circumstance. The Chief Review Officer says "I note the Canada Post strike ran from November 15, 2024 to December 17, 2024 when the board returned to regular mail delivery." She does not state the source for this information. I glean from her statement that she has concluded that mail was back to regular delivery after the strike ended. Whether or not this is true again is supposition.

[47] Section 344(2) of the Act sets out the presumption that if a document is mailed the document is deemed to have been received 8 days after it was mailed. However s. 344(4) says that section does not apply if "through *absence*, accident, illness or other cause beyond the parties control, a party who acts *in good faith* does not receive the copy until a later date than the date provided under subsections (2) or (3)" (emphasis added).

[48] The petitioner was *absent*. He has given evidence that he did not receive the decision letter. The fact that he applied for an extension of time as soon as he became aware of the decision letter suggests that he was acting in good faith. His absence due to a business trip followed immediately by a need to move residence is a possible explanation for his failure to receive the letter.

[49] The good faith of the petitioner appears to be questioned by the Chief Review Officer because she undermines his statement that he had to move by reference to the fact that he did not mention the move a month earlier. Unlike *Machado*, there is no interaction between the Chief Review Officer and the petitioner to provide a further explanation that may assist the Chief Review Officer in making an informed decision on his good faith. It appears to me that he is presumed to lack credibility. I find that unreasonable.

[50] If he did not receive the decision letter that is an explanation for his inability to submit a request for review by the 90-day time limit. The Board cannot offload its obligation to serve a decision by saying that the worker should have found it on the online portal.

[51] To be denied an opportunity to challenge a substantive decision about his entitlement to wage loss benefits and long term disability benefits because of a misdelivered decision letter is an injustice.

[52] This decision should be referred back to the Chief Review Officer to consider the petitioner's statement that he did not receive the decision letter and his additional evidence showing that he was out of the country for two weeks and immediately after his return he had to move. He should be allowed to provide further evidence of the timing of the move.

"B. M. Young, J."
The Honourable Justice Young