

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

THOMAS SHUCHUK

Plaintiff

- and -

RANDY WOLFERT, THE WORKERS' COMPENSATION BOARD, GENE MUDRY, DR.  
PAUL GREEN AND DR. GORDON KING

Defendants

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MEMORANDUM OF DECISION  
of  
M. FUNDUK, Master in Chambers

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APPEARANCES:

J. R. Nickerson  
Nickerson Roberts  
Counsel for the Plaintiff

W. P. Ostapek  
Workers Compensation Board  
Counsel for The Workers Compensation Board,  
Randy Wolfert and Gene Mudry

[1] Anyone who has not been living in a sealed glass bubble on an ocean floor for the last 25 years knows that there is a measure of dissatisfaction by some injured workers with The Workers Compensation Board. That is what this lawsuit is about.

[2] What this lawsuit comes down to is Mr. Nickerson's view that The Workers Compensation Board is just a glorified insurance company with a monopoly. He then wants to progress from that to conclude that like private insurers The Workers Compensation Board must act *uberrimae fide*, which normally exists only in certain contract situations. But The Workers Compensation Board is not a private insurer and the relationship between injured workers and The Workers Compensation Board is not one of contract. Its duties are statutory.

[3] Here the Plaintiff was assessed as having temporary total disability. Some time later the Plaintiff was reassessed, which The Workers Compensation Board can do: s. 33 Worker's Compensation Act. The Plaintiff complains about his being reassessed, which is a complaint about how his file was handled. As I interpret his position, the Plaintiff essentially wants to be classified as having a permanent total disability and he should never be reassessed notwithstanding the fact that s. 33 gives The Workers Compensation Board the jurisdiction to reassess.

[4] It is not the Court's function to rewrite legislation.

[5] I agree with Mr. Ostapek's submissions that the Friedman report is irrelevant, that Ms. Stewart's evidence is irrelevant and that there is no reasonable prospect of success for the Plaintiff's claim against the Workers Compensation Board, Randy Wolfert and Gene Mudry.

[6] The application is allowed with costs on column 5.

HEARD on the 5<sup>th</sup> day of April, 2001.

**DATED** at Edmonton, Alberta this 13<sup>th</sup> day of June, 2001.

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M. FUNDUK  
M.C. C.Q.B.A.