

# In the Court of Appeal of Alberta

**Citation: Zarooben v The Workers' Compensation Board, 2022 ABCA 50**

**Date:** 20220210  
**Docket:** 2103-0096AC  
**Registry:** Edmonton

**Between:**

**David Zarooben**

Respondent  
(Applicant)

- and -

**The Workers' Compensation Board**

Appellant  
(Respondent)

- and -

**Appeals Commission for The Workers' Compensation Board**

Respondent  
(Respondent)

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**The Court:**

**The Honourable Justice Thomas W. Wakeling  
The Honourable Justice Frederica Schutz  
The Honourable Justice Kevin Feehan**

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**Memorandum of Judgment**

Appeal from the Order by  
The Honourable Justice A. Loparco  
Dated the 26th day of March, 2021  
Filed on the 19th day of April, 2021  
(2021 ABQB 232, Docket: 1903 25604)

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## Memorandum of Judgment

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### The Court:

#### I. Overview

[1] The Workers' Compensation Board appeals the chambers judge's order quashing a decision of the Appeals Commission and remitting David Zarooben's appeal back to the commission for reconsideration. The chambers judge held the commission's decision was unreasonable in concluding that the board did not have ongoing responsibility for Mr Zarooben's mild traumatic brain injury after July 27, 2018, and that he was not entitled to temporary total disability benefits after that date.

[2] For the reasons below, the appeal is dismissed.

#### II. Facts

[3] On December 30, 2000, in Vancouver, Mr Zarooben was assaulted while employed driving a moving van and suffered compensable work-related injuries including ongoing anxiety and balance difficulties.

[4] On January 15, 2016, Mr Zarooben was employed in Alberta as a licenced class 1 truck driver when he slipped and fell off the icy ramp of his truck from a height of eight feet, striking his head against the pavement.

[5] On February 1, 2016, the board accepted his compensation claim for a concussion.

[6] On November 25, 2016, a dispute resolution and decision review body of the board upheld a determination of a case manager that the board did not have additional responsibility for Mr Zarooben's mild traumatic brain injury and he was not entitled to further temporary total disability benefits beyond February 18, 2016.

[7] On October 24, 2017, an Appeals Commission reviewed the medical documentation available to that date and determined there was insufficient evidence to decide whether Mr Zarooben had a mild traumatic brain injury related to the January 15, 2016 accident on a direct basis or on the basis of an aggravation factor. The panel returned this issue to the board for further investigation, assessment, and adjudication.

[8] On December 20, 2017, the board accepted additional responsibility for Mr Zarooben's mild traumatic brain injury, authorizing wage replacement benefits in the form of temporary total disability benefits from February 18, 2016. This category of benefits covered a compensable work-related injury resulting in temporary work restrictions preventing a worker from performing in any

concurrent or suitable employment. It is payable as long as the compensable temporary total disability lasts, generally until the weight of medical evidence indicates that the worker is considered fit to return to suitable employment, the remaining disability is considered to be permanent, or the worker dies.

[9] On July 27, 2018, a case manager for the board determined that Mr Zarooben's then current symptoms and difficulties were no longer related to his January 15, 2016 accident and that he was no longer entitled to benefits from the board. That determination was based in part upon additional medical reports received between October 24, 2017 and July 24, 2018.

[10] On October 31, 2018, the dispute resolution and decision review body upheld the decision of the case manager, finding that Mr Zarooben's ongoing symptoms were not related to his accident after July 27, 2018 and he was not entitled to temporary total disability benefits after that date. Mr Zarooben appealed that decision to the commission on November 14, 2018.

### **III. Appeals Commission Decision**

[11] In a written decision of July 24, 2019, the commission upheld the October 31, 2018 decision of the dispute resolution and decision review body of the board, pursuant to s 13.1(1) of the *Workers' Compensation Act*, RSA 2000, c W-15. It identified the following questions to be answered:

1. does the weight of medical evidence support a causal relationship between the worker's compensable injuries and any reported [mild traumatic brain injury] symptoms after July 27, 2018; and
2. is the worker entitled to temporary total disability benefits after July 27, 2018?

[12] The commission found the medical evidence did not support a causal relationship after July 27, 2018. It said a psychiatrist who assessed Mr Zarooben on May 1, 2017 did not see any benefit in seeing him further, and in a follow-up report of September 17, 2018 determined that he had insufficient information to confidently determine a causal relationship. Two clinical neuropsychologists who assessed him on November 29, 2017, and January 17 and 24, 2018, found invalidities in his assessment results and opined that he had an uncomplicated mild traumatic brain injury at most. Dr Grieve, the board's contract medical consultant, opined in her May 24, 2018 document review that the medical record did not support "that current symptoms are related to the date of accident injuries".

[13] Based upon the same medical review, the commission found that Mr Zarooben was not entitled to temporary total disability benefits beyond July 27, 2018, as he did not have temporary work restrictions resulting from his work-related injury that prevented him from resuming pre-accident employment or other suitable employment. In reaching these decisions, the commission

did not request that a medical panel be established to comprehensively address the medical issues relative to the claim as provided by s 46.3(1) of the *Act*.

#### IV. Chambers Judge's Decision

[14] On August 28, 2019, Mr Zarooben filed an originating application in the Court of Queen's Bench for a statutory appeal of those portions of the commission's decision limited to "a question of law or jurisdiction" pursuant to s 13.4 of the *Act*, and for judicial review of those portions of the decision determining questions of fact or mixed law and fact pursuant to rr 3.2 and 3.15 of the *Alberta Rules of Court*, AR 124/2010. See *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paras 45, 52, 441 DLR (4th) 1, and earlier decisions: *Alberta (Workers' Compensation Board) v Buckley*, 2007 ABCA 7, para 13, 277 DLR (4th) 1; *Chauvet v Alberta (Workers' Compensation Board, Appeals Commission)*, 2007 ABCA 155, paras 25, 26, [2007] 8 WWR 649; *Patrus v Alberta (Workers' Compensation Board)*, 2014 ABCA 117, para 26, 572 AR 250.

[15] The chambers judge stated that as a statutory appeal is only permitted on questions of law or jurisdiction, the standard of review is correctness. She said the standard of review is reasonableness with respect to facts, and mixed facts and law, whether the commission erred by ignoring the evidence, by failing to assign appropriate weight to relevant evidence, or in its interpretation and application of policy concerning temporary total disability benefits: *Vavilov*, paras 23, 25, 52.

[16] The chambers judge found the commission did not breach the principles of natural justice or procedural fairness.

[17] As to continuing causation of the injuries of January 15, 2016, she found the commission did not ignore any evidence in this matter; it "considered all the relevant evidence in its Decision and explained why it was rejecting evidence that was favourable to Mr. Zarooben".

[18] She found, however, that the explanations for its final decision lacked "rationality internal to the reasoning process" and lacked coherence with the purpose of the *Act* and board policies. She said the commission relied on evidence previously rejected by the first Appeals Commission as insufficient, the subsequent evidence before it was inconclusive on whether the ongoing symptoms were related to the initial diagnosis, and the document review of the board's internal consultant was flawed for the same reasons. She therefore found the decision "untenable in light of the relevant facts and legal constraints that bear on it": *Vavilov*, para 101. She said a decision must be based on reasoning that is both rational and logical, and here there was a fatal flaw; there was a "lack of evidence of Mr. Zarooben's recovery from his initial diagnosis". She said "there is [no] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived": *Vavilov*, paras 102-104. She set out in detail the reasons why she concluded the decision was unreasonable, and said the commission did not resolve apparent conflicts in the medical information before it. The chambers judge summarized:

... I respectfully find that the outcome is unreasonable. The Decision's weak evidentiary foundation led to two critical factors not being established: 1) Whether the worker objectively recovered from the compensable injury such that any ongoing symptoms are unrelated to it, and 2) Whether he was capable of pre-accident work as a truck driver (despite noting that his driver's license was suspended by his doctor).

[19] The chambers judge acknowledged restraints upon her ability to evaluate reasonableness. She said *Vavilov* held that the focus of a reasonableness review must be on the decision actually made by the tribunal, including the tribunal's reasoning process and the outcome; "the reviewing Court is to refrain from deciding the issue itself": *Vavilov*, para 83. She also acknowledged that a reviewing court is to avoid "reweighing and reassessing the evidence considered by the decision-maker": *Vavilov*, para 125; and see *Schroder v Alberta (Workers' Compensation Board)*, 2010 ABCA 344, paras 13, 16, 490 AR 298; *Allsop v Alberta (Workers' Compensation Board)*, 2011 ABCA 323, para 37, 29 Admin LR (5th) 321. The chambers judge indicated she was "very aware of the deference accorded to the Appeals Commission's panel" and did not arrive at her conclusion lightly, but said: "[w]ithout re-weighing or substituting my own analysis, I am unable to find a line of analysis that would reasonably lead to the Decision made": *Vavilov*, para 102.

[20] She noted the ability of the commission to request that a medical panel be established pursuant to s 46.3(1) and (2) of the *Act*, where there is a difference of medical opinion in the course of evaluating a claim, which was not done here. She said:

If the evidence was contradictory and based on a difference of medical opinion, which appears to be the case here, then the WCB and the Appeals Commission ought to have convened a medical panel.

[21] She concluded the most appropriate remedy "is to quash the impugned Commission Decision and remit it to the Appeals Commission for reconsideration".

## V. Grounds of Appeal

[22] The board says the chambers judge erred:

- (a) by misapplying the reasonableness standard of review; and
- (b) by applying the correctness standard of review to the commission's interpretation and application of its own procedural rules.

[23] The second ground of appeal concerns the chambers judge's finding that the commission decision did not breach the principles of natural justice or procedural fairness. Although the board's criticism may be well-founded, we leave for future determination the appropriate standard of review on this issue, where the issue is properly before this Court.

## VI. Standard of Review

[24] An appellate court must determine whether the chambers judge properly chose the correct standard of review and applied it correctly, a decision on which the appellate court affords no deference: *Dr Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, para 43, [2003] 1 SCR 226; *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, para 45, [2013] 2 SCR 559; *ARW Development Corporation v Beaumont (Town)*, 2011 ABCA 382, paras 25-27, 52 Alta LR (5th) 219.

[25] On appeal from judicial review, the appellate court in effect “steps into the shoes” of the chambers judge in reviewing the determination made by the decision-maker, such that the “appellate court’s focus is, in effect, on the *administrative* decision” (emphasis in original): *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3, para 247, [2012] 1 SCR 23; *Zenner v Prince Edward Island College of Optometrists*, 2005 SCC 77, paras 29-45, [2005] 3 SCR 645; *Buterman v Greater St Albert Roman Catholic Separate School District No 734*, 2017 ABCA 196, paras 23-24, 54 Alta LR (6th) 256; *Wheatland County v Federated Co-Operatives Limited*, 2019 ABCA 513, para 22; *Koebisch v Rocky View (County)*, 2021 ABCA 265, paras 16-17, 460 DLR (4th) 119.

[26] The standard of review of a decision of an administrative tribunal is reasonableness unless the legislature indicates it intends a different standard to apply, either where it prescribes the applicable standard of review, or where it provides a statutory appeal mechanism signaling the legislature’s intent that appellate standards apply. The presumption of reasonableness review is also rebutted if the rule of law requires the standard of correctness to be applied, as with constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to jurisdictional boundaries between two or more administrative bodies: *Vavilov*, paras 16, 17, 30. As the current ground of appeal is founded in judicial review, and not a statutory appeal, the reasonableness standard applies: *Vavilov*, para 23; and see *McLaughlin v Appeals Commission for Alberta Workers’ Compensation*, August 6, 2020, Edmonton 1603-21044 (Alta QB), unrep.

## VII. Analysis

### (a) Purpose and scheme of the legislation

[27] The preamble to the *Act* provides that the “purpose of the workers’ compensation system is to provide appropriate compensation to workers who suffer workplace-related injuries and illnesses”, and its focus is “the health and well-being of workers”. However, “it is recognized that the workers’ compensation system must be sustainable, affordable and fair in order to benefit workers and employers now and in the future”.

[28] Section 13.2(6.3) provides that the commission shall determine all matters and questions before it in a manner consistent with the provisions of the *Act*, the regulations, and workers' compensation principles.

[29] Subsections 24(1) and (2) provide that compensation is payable "to a worker who suffers personal injury by an accident", and if the worker is seriously disabled, compensation is payable notwithstanding that the injury is attributable primarily to the serious and willful misconduct of the worker.

[30] Section 56(1) provides that the board shall pay periodic compensation in the case of a temporary or permanent disability (see also board policy 02-01). Section 56(8) as it read on January 15, 2016 directed payment of periodic compensation for as long as the disability lasts.

[31] Section 46.3 provides that the commission may request that a medical panel be established to deal with a medical issue relative to the claim, and when there is a difference in medical opinion in the course of the commission's evaluation of a claim for compensation it shall request that a medical panel be established to address the matter.

[32] Board policy 03-01 requires that in cases where the relationship between the injury and the compensable accident is not obvious, the board is responsible for gathering additional relevant evidence. The nature of the injury must have a relationship with the compensable accident so it is more likely than not that the work activity caused the injury. If this relationship between the injury and the compensable accident is not obvious, additional information is needed to establish that relationship.

[33] Board policy 03-02 provides that when an accident causes a pre-existing condition to deteriorate or become symptomatic to the point where a worker is no longer able to perform all aspects of the job, the board is to allow entitlement based on an aggravation factor. Board policy 04-02 provides that if the work injury results in a temporary loss of earnings, the board is to pay the worker temporary total or temporary partial disability benefits based on the nature and degree of disability. A worker is eligible for temporary total disability benefits "when there is medical evidence the work-related injury has resulted in temporary work restrictions which prevent the worker from resuming pre-accident employment or other suitable employment". Such benefits are payable for as long as the compensable disability lasts.

[34] As indicated, the purpose of the *Act* is "to provide appropriate compensation to workers who suffer workplace-related injuries and illnesses". To meet that goal, the *Act* is to be "given a broad liberal interpretation, which allows compensation to be provided to as many workers in as many circumstances as the legislative scheme will reasonably permit": *Shuchuk v Alberta (Workers' Compensation Board)*, 2007 ABCA 213, para 46, 79 Alta LR (4th) 263.

**(b) Application of the reasonableness standard of review**

[35] The board submits that although the chambers judge correctly identified the reasonableness standard of review for questions of fact, mixed fact and law, and weighing the evidence, in actuality she applied a correctness standard.

[36] Elements that would be relevant in evaluating whether a decision is reasonable include the governing statutory scheme; other relevant statutory or common law; principles of statutory interpretation; evidence before the decision-maker and facts of which the decision-maker may take notice; submissions of the parties; past practices and decisions of the administrative body; and potential impact of the decision on the individual to whom it applies: *Vavilov*, para 106; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, para 34, 441 DLR (4th) 269; *Edmonton (City of) v Edmonton Police Association*, 2020 ABCA 182, para 31.

[37] As the chambers judge's reasons state, a reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision-maker", replacing the commission's weighing of the evidence with its own. In *Vavilov*, para 15, the Court said:

In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

See also *Vavilov*, paras 81, 86, 94-96, 98-100, 136.

[38] The Supreme Court identified instances in which a decision could be said to be unreasonable: where there is a failure of rationality internal to the reasoning process; and where the decision "is in some respect untenable in light of the relevant factual and legal constraints that bear on it". To be reasonable, a decision must be based on reasoning that is both rational and logical, and there must be a line of analysis within the reasons "that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived". The internal rationality of a decision may be called into question if the reasons exhibit "clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise", or the decision-maker has fundamentally misapprehended or failed to account for the evidence before it: *Vavilov*, paras 101, 102, 104, 126.

[39] It is expected that a reasonableness review would consider "the impact of a decision on an individual's rights and interests". When the impact threatens an individual's life, liberty, dignity or livelihood, "the reasons provided to that individual must reflect the stakes": *Vavilov*, para 133.

[40] The chambers judge determined that the decision of the commission was unreasonable based upon these criteria.

*(c) Changes in evidence between December 20, 2017 and July 24, 2019*

[41] As indicated above, on October 24, 2017, an earlier commission panel determined there was insufficient evidence before it and returned the matter to the board for further investigation. As a result of that investigation, on December 20, 2017, the board accepted responsibility for Mr Zarooben's mild traumatic brain injury. Then, on July 27, 2018, the case manager for the board determined that the symptoms and difficulties were no longer related to his January 15, 2016 accident. This decision was upheld on October 31, 2018 by the dispute resolution and decision review body and on July 24, 2019 by the commission. What was the new evidence, to result in this reversal of position between December 20, 2017 and July 24, 2019?

[42] The first medical report post-December 20, 2017 was the neuropsychological and psychological assessment by Dr Pachet dated February 1, 2018. He said Mr Zarooben complained of headaches, anxiety, depression, difficulty concentrating, dizziness, trouble remembering things, blurry or double vision, trouble thinking, irritability, fatigue, sensitivity to bright light, and sensitivity to loud noise. Mr Zarooben also reported hip and shoulder pain, balance issues, poor sleep, vertigo, nausea, and suicidal thoughts. However, Dr Pachet opined that many of these complaints were motivated by secondary gain, and subject to feigning and embellishment. He said it was possible Mr Zarooben was suffering from underlying psychological issues, but he could not provide a valid diagnosis at that time.

[43] On February 6, 2018, Mr Zarooben's family physician, Dr Barrow, reported symptoms of poor balance, dizziness, headaches, confusion, memory loss, and mental fatigue. He said these were severe and permanent, and Mr Zarooben was permanently disabled, suffering from severe traumatic brain injury, severe chronic depression, and severe permanent post-traumatic stress disorder. However, he said these symptoms were caused by the assault in Vancouver on December 30, 2000, but that he suspended Mr Zarooben's driver's licence eight times over the past 11 years "due to his mental health, assault and fall off...the truck January 2016".

[44] In a psychology consultation report of March 5, 2018, Dr Rose concluded that Mr Zarooben may have sustained a mild traumatic brain injury, but he had concerns about the validity of testing due to response bias. He noted concern with Dr Barrow's linking of the current symptoms to the previous injury in 2000.

[45] In a consultation report of March 26, 2018, Dr Hanson, neurologist, reported symptoms of anxiety, short-term memory loss, poor balance, and headaches. She said Mr Zarooben's anxiety was extreme and underpinned many of his other issues. However, she reported a "strong functional component" to his balance issues, and some embellishment.

[46] On May 7, 2018, Samantha Lowe, registered occupational therapist, found Mr Zarooben to be impaired on all physical and cognitive assessments. She said he was easily distractable; experienced fluctuating moods; and had significantly impaired memory, significant challenges with executive function related to organization and planning, poor temporal judgment, and significant impairment in visual-motor integration, motor-reduced visual perception, and general visual perception. She said his cognitive impairment appeared permanent. She found his performance on gait tests was inconsistent and ranged from impaired to normal with some exaggeration.

[47] By memos of May 24 and July 24, 2018, the board's contract medical consultant, Dr Grieve, indicated that on her record review of the medical file the weight of evidence did not support a finding that current symptoms were related to the 2016 accident.

[48] Dr Barrow's note of June 20, 2018 said he had observed a decline in Mr Zarooben's cognitive ability between 2016 and 2017, and that Mr Zarooben was now permanently disabled and unfit to hold a class 1 commercial driver's licence.

[49] Dr Quickfall's psychiatric report of September 17, 2018 indicated Mr Zarooben was reporting symptoms of anxiety, headaches, poor balance, poor sleep, post-traumatic stress disorder, nightmares, and hypervigilance. He found evidence of disorganization in Mr Zarooben's conversation and said he may have had an increase in his anxiety because of his 2016 accident, but that the information was insufficient at this time to confidently determine a causal relationship. Dr Quickfall agreed, however, that these complaints were vague or difficult to characterize, Mr Zarooben was inconsistent in his reporting, and many of his symptoms would be difficult to connect to a brain injury or mental health problem. He suspected an element of secondary gain and said Mr Zarooben was highly symptom-focused and disability-focused, angry, and abusive.

[50] Dr Zia-ul Haque, psychiatrist, corresponded to Dr Barrow on September 29, 2018 and June 8, 2019. In her first letter, she said Mr Zarooben reported symptoms of diarrhea, stomachache, vertigo, anxiety, panic attacks, reduced reflexes, poor balance, headaches, inability to concentrate, blurry vision, and sleep disturbance. She concluded Mr Zarooben had suffered a traumatic brain injury when he fell from his truck in 2016, but was fully independent with activities of daily living. She said Mr Zarooben showed symptoms consistent with major depression and anxiety, post-traumatic stress disorder, and post-concussion symptoms secondary to traumatic brain injury. She recommended cognitive behavioural therapy, psychoeducation, and interpersonal therapy. In her second correspondence, she concluded that Mr Zarooben was demonstrating symptoms of post-concussion syndrome secondary to traumatic brain injury, possible post-traumatic stress disorder-like symptoms, anxiety and depression, and required supportive psychotherapy and psychoeducation.

[51] In a letter of June 24, 2019, apparently written by Mr Zarooben but signed by Dr Barrow, it was reported that Mr Zarooben had severe traumatic brain injury, severe permanent chronic

depression, severe permanent post-traumatic stress disorder, mental fatigue and stress, and he was being treated for mental health conditions, headaches, and neck, shoulder, back, and hip pain.

[52] It is clear from many of these reports that throughout the period December 20, 2017 to July 24, 2019, Mr Zarooben continued to suffer significant symptoms. Although he appears to have been exaggerating, showing poor effort, and focusing on his pain symptoms, there is no doubt that his family physician, occupational therapist, and psychiatrist advanced supporting opinions, including that he suffered from a traumatic brain injury, major depression, anxiety, post-traumatic stress disorder, and post-concussion syndrome, secondary to traumatic brain injury. There is no evidence those diagnoses changed between December 2017 and July 2019, despite the board's contract medical consultant opining that Mr Zarooben's medical records did not support a finding that his current symptoms were related to the 2016 accident.

[53] We agree with the chambers judge that there is no evidence in this documentation of Mr Zarooben's recovery from mild traumatic brain injury between December 20, 2017 and July 24, 2019 and therefore no conclusive evidence that his ongoing symptoms are unrelated to his accident of January 15, 2016. There is no line of analysis that could reasonably lead to a contrary position.

***(d) Unresolved contradictions from the same doctor***

[54] The chambers judge found that Dr Barrow's reports were inconsistent and sloppy, and required further clarification. She said the board was entitled to seek that clarification but did not do so.

[55] The inconsistencies in Dr Barrow's reporting are many. In a contact memo of February 23, 2016, Dr Stelmaschuk, a brain injury services treating physician, said he had spoken with Dr Barrow, who agreed Mr Zarooben had completely recovered from his head injury and no further treatment was required. However, on July 6, 2017, Dr Barrow reported that Mr Zarooben suffered from a severe traumatic brain injury, severe depression, and post-traumatic stress disorder, was permanently disabled, and unable to do any kind of work or training.

[56] In his report of February 6, 2018, Dr Barrow attributed all of these symptoms to the assault in Vancouver on December 30, 2000, but then said Mr Zarooben's driver's licence was suspended on numerous occasions due to his mental health, the assault and the fall of January 15, 2016.

[57] In his letter of April 17, 2018, Dr Barrow said all of the medications prescribed to Mr Zarooben were related to a brain injury sustained in 2016, but the medication list included insulin and insulin needles for diabetes, clearly not related to the fall.

[58] In his letter of June 20, 2018, Dr Barrow said there was a decline in cognitive ability between 2016 and 2017, and that Mr Zarooben was permanently disabled. As noted, his final letter of June 24, 2019, diagnosing severe traumatic brain injury, severe permanent chronic depression,

and severe permanent post-traumatic stress disorder was apparently written by Mr Zarooben, signed by Dr Barrow.

[59] Clearly, there are difficulties and inconsistencies in the material received from Dr Barrow. These difficulties and inconsistencies required investigation and rationalization. The commission had a responsibility to gather further evidence and information to reconcile these obvious concerns but did not do so.

***(e) Overreliance on findings of invalidity of psychological assessments***

[60] The chambers judge acknowledged that Mr Zarooben “was difficult to deal with, possibly deliberately” and that “at times [he] appeared threatening to various health-care workers, making him unsympathetic”.

[61] Mr Zarooben himself agreed that he “talk[s] strong ... [his] anxiety level increases, [he] start[s] rambling”, “gets very emotional” and “say[s] things that [he] might regret”. He acknowledges that he has made “a lot of mistakes” and exhibited “bad judgment” in dealing with the board.

[62] The chambers judge was concerned no one had addressed the possibility that Mr Zarooben’s offensive behaviour might be related to his brain injury. She said his thought patterns in his writing were “scattered and illogical” and the “reliance on the findings of invalidity from the psychological assessments appears to overshadow an objective analysis of the file materials”.

[63] Clearly Drs Stelmaschuk, Debert, Quickfall, Longman, Pachet, Hanson, and Grieve found that Mr Zarooben put in poor effort, exaggerated and embellished during testing, produced unreliable test results, and exhibited possible somatoform influences, elements of secondary gain, and a focus on financial compensation. However, Dr Stelmaschuk in his report of February 9, 2016 recommended a neuropsychological analysis to evaluate those inconsistencies. Dr Debert in her letter of February 24, 2017 said that the poor results had much to do with Mr Zarooben’s mental state. Dr Quickfall in his note of May 1, 2017 said those concerns did not preclude the existence of an anxiety disorder. Dr Pachet in his report of February 1, 2018 said it was possible there were underlying psychological issues. Samantha Lowe in her report of May 7, 2018 identified that Mr Zarooben suffered from poor temporal judgment.

[64] It is clear that Mr Zarooben is a difficult patient. However, that fact is not determinative of the first core question: whether the weight of medical evidence supports a causal relationship between Mr Zarooben’s compensable injuries and any mild traumatic brain injury symptoms after July 27, 2018.

**VIII. Conclusion**

[65] We agree with the chambers judge that the commission’s decision of July 24, 2019 fails to fall within the range of possible, acceptable outcomes which are defensible with respect to the facts and law. The commission’s reasons are untenable in light of the relevant facts and legal constraints that bear on it. We agree the result is not logical or reasonable. There is insufficient evidence of Mr Zarooben’s recovery between December 20, 2017 and July 24, 2019. The commission did not resolve contradictions in the medical reports, particularly those of Dr Barrow, and it appears that Mr Zarooben’s general bad behaviour seriously and negatively coloured the commission’s opinion as to the ongoing causation of his injuries.

[66] We refer the matter back to the commission for reconsideration of whether Mr Zarooben is entitled to temporary total disability benefits after July 27, 2018. The commission should continue to gather additional relevant evidence to establish the relationship of the medical information to the accident of January 15, 2016, and should request that a medical panel be established to address the medical issue of continuing causation and the difference of medical opinions in evaluation of the claim compensation.

[67] The appeal is dismissed.

Appeal heard on February 4, 2022

Memorandum filed at Edmonton, Alberta  
this 10th day of February, 2022



  
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Wakeling J.A.

  
\_\_\_\_\_  
Authorized to sign for: Schutz J.A.

  
\_\_\_\_\_  
Feehan J.A.

**Appearances:**

V.A. Quraishi, Q.C./Y.Q. Nizam  
for the Respondent David Zaroooben

J.J. Bodnar  
for the Appellant The Workers' Compensation Board

J.A. Williamson  
For the Respondent Appeals Commission for The Workers' Compensation Board