

In the Court of Appeal of Alberta

Citation: Hayden v Alberta (Workers' Compensation Board), 2026 ABCA 278

Date: 20260826

Docket: 2603-0104AC

Registry: Edmonton

Between:

Nestor G. Hayden

Applicant

- and -

Workers' Compensation Board

Respondent

**Reasons for Decision of
The Honourable Justice April Grosse**

Application for Permission to Restore Appeal

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The Honourable Justice April Grosse**

[1] This is an application to restore a fast track appeal that was struck for failure to file the transcript of the first instance proceedings by the applicable deadline. For the following reasons, the application is dismissed.

[2] The Court has a discretion to restore an appeal if it is in the interests of justice to permit the appeal to proceed. The Court generally considers whether to exercise its discretion by reference to the following factors:

- (a) Whether the appeal has arguable merit;
- (b) The explanation for the defect or delay that caused the appeal to be struck;
- (c) The applicant's reasonable promptness in acting to cure the defect;
- (d) The applicant's timely intention to proceed with the appeal; and
- (e) Whether there would be prejudice to the respondent, including the length of delay.

None of these factors are determinative: *Prairie West Homes Inc v Baraka Homes Ltd*, 2023 ABCA 256 at para 10; *Prochazka v Alberta (Maintenance Enforcement Program)*, 2014 ABCA 448 at para 4. The applicant bears the onus to show that restoring his appeal is in the interests of justice: *Mylonas v Kadman*, 2019 ABCA 39 at para 10.

[3] I accept that the applicant has a reasonable explanation for missing the deadline for filing the transcripts. The decision under appeal was issued April 28, 2026. The applicant filed a notice of appeal and ordered the transcript from Transcript Management Services on May 5. However, he did not receive the transcript until June 3. By that time, there were only a few days remaining before the June 5 deadline for filing the transcript in this Court for the appeal: *Alberta Rules of Court*, Alta Reg 124/2010, r 14.16(3). The applicant tried to file the transcript on June 4 and 5 through CAMS but the transcript was rejected for non-compliance with formatting requirements. The applicant attempted to address the situation by writing to the Case Management Officer to request an electronic filing exemption and asking Transcript Management Services to modify the transcript to comply with this Court's requirements. However, the June 5 deadline nonetheless expired without a filed transcript and the appeal was struck by operation of rules 14.16(3) and 14.64(a).

[4] The applicant promptly applied on June 10, 2026 to restore the appeal and he successfully filed the transcript later in June. In other words, he acted in a timely manner to correct the problem.

The delay caused by the applicant's initial error was negligible and the respondent suffered no prejudice. At all material times, the applicant has demonstrated an intention to proceed with the appeal.

[5] The foregoing factors all weigh in favour of restoring the appeal. I also recognize that had the appeal not been struck, the *Rules of Court* would not impose any obligation on the applicant to demonstrate the merits of his appeal on a preliminary basis before being permitted to proceed. However, a preliminary merits review now occurs and there is an insurmountable problem with the merits of the applicant's appeal.

[6] In 2025, the applicant commenced a civil claim for damages against the Workers' Compensation Board (WCB) and others. While that action was extant, on April 2, 2026, the applicant filed an originating application seeking, among other relief, an "Emergency Interim Injunction" to restrain the respondent from cancelling a cervical surgery and from terminating subsistence benefits. The April 2 application was heard on April 20, 2026. The presiding justice dismissed the application for the injunction relating to surgery and adjourned the application for an injunction relating to terminating benefits to May 20.

[7] In the meantime, on April 27, 2026, the applicant filed another originating application, which is the application giving rise to the appeal at issue in this application to restore. In the April 27 application, the applicant requested, among other relief, an "Interim Order" for immediate reinstatement of subsistence benefits, a mandatory injunction directing the respondent to comply with a prior decision of the Appeals Commission for Alberta Workers' Compensation regarding the proper benefit rate, and an order directing the respondent to approve the cervical surgery and fund certain support that was medically necessary before the applicant could have the surgery. The application filed April 27 was heard on April 28, 2026. The presiding justice dismissed the application. He noted the April 20 order, the adjourned hearing scheduled for May 20 with respect to benefits, and that the WCB had made the April benefits payment on a "goodwill" basis in the meantime.

[8] The originating application filed April 27, 2026 raised substantially the same issues and sought substantially the same relief as the originating application filed April 2, 2026. Some different words were used, and the April 2 application was filed in anticipation of benefits being terminated, whereas the April 27 application was filed after they were terminated. However, in substance, the April 27 application was duplicative. The April 20 order had already dealt with the injunctive relief relating to the surgery, so the April 27 application was an impermissible attempt to relitigate the April 20 decision. The application for injunctive relief relating to benefits had been adjourned from April 20 to May 20 such that the April 27 application was duplicative in that

regard. Accordingly, the April 27 application was properly dismissed. The appeal from the April 28 order on the merits is hopeless.

[9] The applicant also alleges that the chambers judge did not give him an adequate opportunity to be heard on April 28, 2026. In particular, the applicant contends he was not provided an opportunity to address what he characterizes as a failure of the respondent's counsel to be candid with the court, resulting in a breach of natural justice. The alleged lack of candour occurred at the outset of the decision of the chambers judge, when counsel for the respondent confirmed the chambers judge's characterization of the WCB's April benefit payment as a "goodwill gesture". The applicant takes issue with the "goodwill" description, because he says the payment was only made as a response to the April 27 application. However, he acknowledges that he received the April payment. I am not satisfied there is any arguable merit to the applicant's allegation that the respondent's counsel was not candid with the court. Further, there is no indication that the motivation behind the payment had any bearing on the decision of the chambers judge. Rather, the chambers judge was focused on the fact the applicant had received his payment pending the May 20 hearing scheduled for the injunction application relating to benefits. I also note the chambers judge heard the applicant's submissions in favour of his application, without interruption, until such point as the chambers judge advised that the applicant was repeating himself and the chambers judge was going to hear from counsel in response. The circumstances do not give rise to an arguable appeal based on a lack of procedural fairness.

[10] Finally, the applicant takes issue with the \$1,300.00 costs award made against him and the procedure that led to the costs award. There is no appeal as of right on costs alone: *Rules of Court*, r 14.5(1)(e). Further, the standard of review is deferential on costs and the award is not unreasonable in circumstances where the applicant brought a duplicative application on an emergency basis with the May 20 hearing still pending: *Neufeld v Neufeld*, 2019 ABCA 33 at paras 2, 13.

[11] I have compassion for the applicant, who has lost his opportunity to appeal despite taking reasonable steps to address the transcript formatting issue immediately. However, restoring an appeal that has no merit will only cost both parties further time and expense. It is not in the interests of justice to allow the applicant's appeal to proceed. The application to restore the appeal is dismissed.

[12] Pursuant to rule 14.88, the default position in this Court is that the successful party is entitled to costs on the same scale applied in the order under appeal. The default is not appropriate in this case because the circumstances that justified an enhanced costs award in favour of the respondent at first instance do not exist with respect to the application to restore. In the particular circumstances of this case, including the early stage of the appeal and the efforts made by the

applicant to correct the filing error, I direct that each party bear its own costs of the application to restore the appeal.

[13] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting order.

Application heard on August 12, 2026

Reasons filed at Edmonton, Alberta
this 26th day of August, 2026

Grosse J.A.

Appearances:

Applicant N. Hayden

C. Taylor
for the Respondent