WCAT Workers' Compensation Appeal Tribunal

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Telephone: (604) 664-7800
Toll Free: 1-800-663-2782
Fax: (604) 664-7898
Website: www.wcat.bc.ca

WCAT Decision Numbers: **WCAT-2012-01855 / WCAT-2012-01856**
WCAT Decision Date: **July 13, 2012**

Panel: Andrew Waldichuk, Vice Chair

WCAT Reference Numbers: **110734-A and 110735-A**

Section 257 Determinations
In the Supreme Court of British Columbia
Vancouver Registry No. M-091644
Maureen Eleanor Ciarniello v. Geoff Jopson
Vancouver Registry No. S-092426
Maureen Eleanor Ciarniello v. Insurance Corporation of British Columbia

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In the tort action:

Applicant: Geoff Jopson
(the "defendant")

Respondent: Maureen Eleanor Ciarniello
(the "plaintiff")

Interested Person: West Vancouver School District No. 45

Representatives:

For Applicant: Rebecca K. Buchanan
RACE & COMPANY LLP

For Respondent: Geoffrey Trotter
GUDMUNDSETH MICKELSON LLP

For Interested Person: Ken Emmons

WCAT **Workers' Compensation Appeal Tribunal**

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In the Part VII action:

Applicant:	Insurance Corporation of British Columbia (the "defendant")
Respondent:	Maureen Eleanor Ciarniello (the "plaintiff")

Representatives:

For Applicant:	Rebecca K. Buchanan RACE & COMPANY LLP
For Respondent:	Geoffrey Trotter GUDMUNDSETH MICKELSON LLP
For Interested Person:	Ken Emmons

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Introduction

[1] On March 30, 2007, the plaintiff, Maureen Eleanor Ciarniello, was a passenger in a vehicle driven by the defendant, Geoff Jopson, he was eastbound on Highway 7 in Agassiz when he attempted to make a u-turn, resulting in a collision with another vehicle. Ms. Ciarniello, a director of instruction, and Mr. Jopson, a school superintendent, both worked for the Board of School Trustees of School District No. 45 (School District No. 45) and, at the time of the motor vehicle accident, were returning from an event held by the British Columbia School Superintendents Association (Association).

[2] Pursuant to section 257 of the *Workers Compensation Act* (Act), the Workers' Compensation Appeal Tribunal (WCAT) may be asked by a party or the court to make determinations where an action is commenced based on a disability caused by occupational disease, a personal injury or death and to certify those determinations to the court.

[3] Ms. Buchanan, counsel for the defendant, initiated this application by completing the appropriate WCAT form on April 1, 2011. The defendant seeks a determination regarding his status and that of the plaintiff at the time of the March 30, 2007 accident. A separate certificate regarding the related Part VII action is also requested.

[4] The parties' putative employer, School District No. 45, is participating in this application as an interested party.

[5] WCAT invited and received submissions from Ms. Buchanan, as well as from Mr. Trotter, counsel for the plaintiff, and School District No. 45. Examinations for

discovery have not taken place to date. The trial of the legal action is scheduled to commence in November 2013.

[6] I find that this application involves questions of law and policy which can be properly considered on the basis of the available evidence and written submissions, without the need for an oral hearing.

Issue(s)

[7] A determination is requested with respect to the status of the plaintiff and the defendant at the time of the March 30, 2007 accident.

Jurisdiction

[8] Part 4 of the Act applies to proceedings under section 257, except that no time frame applies to the making of the WCAT decision (section 257(3)). Pursuant to section 250(1) of the Act, WCAT is not bound by legal precedent. WCAT must make its decision based on the merits and justice of the case, but in so doing, must apply a policy of the board of directors of the Workers' Compensation Board, operating as WorkSafeBC (Board), that is applicable (section 250(2)). Section 254 of the Act gives WCAT exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under Part 4 of the Act, including all matters that WCAT is requested to determine under section 257. The WCAT decision is final and conclusive and is not open to question or review in any court (section 255(1)). The court determines the effect of the certificate on the legal action: *Clapp v. Macro Industries Inc.*, 2007 BCSC 840.

Status of the Plaintiff, Maureen Eleanor Ciarniello

[9] The plaintiff said in her May 30, 2008 statement to the Insurance Corporation of British Columbia (ICBC) that the accident happened on a Friday afternoon. She and Mr. Jopson were returning from the Association's retreat which was held on the Thursday and Friday. The trip was work-related, according to the plaintiff's statement.

[10] The plaintiff responded to interrogatories of the defendant in a February 3, 2011 affidavit. I consider the following answers to be relevant:

- She was considered senior staff, and received an annual salary at the time of the accident. She did not have a fixed work schedule. She worked as necessary and averaged approximately ten hours a day.

- Her typical work days began at approximately 7:30 a.m. and ended at approximately 6:00 p.m.

- The school board office was her regular, fixed place of employment. Depending on the nature of the work she was doing, her employment would take her to schools or school district facilities throughout the school district on an as needed basis.

- The majority of her work was performed in her office. At the time of the accident, having to attend meetings at places other than her office, "principally within the school district," was one of her job requirements. Occasionally she would be required to represent her employer at "specific meetings" that could take place at locations outside of the school district. These meetings were a requirement of her job. They were "entirely different" from the event that she attended immediately before the accident.

- At the time of the accident, she attended meetings that related to "specific job functions" approximately 12 to 18 times in an average month.

- Her employer has never supplied her with a vehicle for her use, but the vehicle she was travelling in at the time of the accident was owned by School District No. 45.

- The Association is a "voluntary organization of non-union senior educational administrators from school districts across the province." She maintains a membership with the Association for her "own personal professional development." Her membership is not a condition of her employment and she is not required to attend a minimum number of Association conferences each year as part of her employment. The purpose of her attendance at the event from Thursday, March 29, 2007 to Friday, March 30, 2007 was to "participate in a voluntary professional development retreat." It was part of her "own personal development and career enhancement."

- She had no recollection of telling her employer that she was attending the event – she doubted that she did. Her employer did not instruct or expect her to attend the event. Moreover, she had no direct knowledge of her employer knowing that she was attending the event.

- Her employer did not instruct or expect her to travel in the vehicle that Mr. Jopson was driving at the time of the accident. It would have had no interest in what method of transportation she would have taken to and from the event.

- On the first day, she attended a dinner and listened to a keynote speaker in the evening, followed by a social event. The next day, she took part in numerous discussion groups dealing with education.

- She believed that she departed from the event on March 30, 2007 at approximately 3:00 p.m. There were no stops of any nature after she and Mr. Jopson left the event. The plaintiff was going home at the time of the accident.

[11] In a February 23, 2012 email, Mr. Jopson confirmed certain information that Ms. Buchanan outlined in an email of the same date, after their telephone conference that day and a meeting on January 16, 2012. Mr. Jopson indicated that the following information was true and correct to the best of his knowledge:

- At the time of the accident, he was the superintendent of schools of School District No. 45, a position that he held since 2002.

- His job and that of the plaintiff involved work-related travel throughout the district, in other school districts, and in Victoria and elsewhere, including outside the province, because of meetings with other superintendents and senior staff members, as well as Ministry of Education and other government staff.

- He advised the employer about him and other senior staff attending the Association's event. He was confident that the employer was supportive of their attendance because it was of value to School District No. 45. In keeping with the employer's vision that the school district should be the finest in the country, it was expected that senior staff, as education leaders in the community, should "seek every opportunity to enhance their professional growth and to learn from their colleagues."

- The employer paid for the Association memberships of senior staff in School District No. 45.

- He and the plaintiff, along with the two other members of the education senior staff, attended the event on March 29 and 30, 2007. The employer paid for their attendance at the event, including travel and accommodation expenses.

- His attendance at the event had several purposes related to his employment. It also benefitted the employer in different ways regarding aspects of education.

- The event may have provided the plaintiff with "the opportunity to discuss the value of membership in the Provincial Education Resource Acquisition Consortium ("ERAC"), thus reducing costs for the Employer's purchase of learning resources."

[12] The plaintiff provided a March 10, 2012 statement, which appended a copy of her employment agreement with School District No. 45 regarding her position as director of instruction, dated November 1, 2006.

[13] Under the heading "Salary and Benefits," clause 4.5 states:

> The Board shall pay the cost of the Director's annual membership in the following organizations:
>
> a) College of Teachers
> b) B.C. School Superintendents' Association
> c) Association for Supervision and Curriculum Development

[14] Clause 4.6 of the agreement states:

> The Board shall provide the Director with an automobile allowance of four hundred dollars ($400.00) per month for use of an automobile in the performance of her duties.

[15] Under the heading "Professional Development," clause 8.1 states:

> The Board agrees to grant the Director leaves of absences to attend conferences for the purpose of professional development both within and outside the Province. Upon prior authorization by the Superintendent, the Director shall be provided with leave and expense monies for her professional development.

[16] The thrust of the plaintiff's lengthy statement is that she attended the Association's event, or retreat, as part of her personal professional development. She attended the event to socialize and network with her colleagues within the Association. Following the event, she submitted her hotel invoice for reimbursement and cited her professional development account on her expense reimbursement form. She was reimbursed without question. There was no requirement under her employment agreement to maintain a membership with the Association or to attend any of its events. Furthermore, according to the plaintiff, Mr. Jopson's reasons for attending the event were different than hers, since he was the president of the Association. The plaintiff

also stated that she was not representing her employer at the event, unlike the out-of-district meetings that she was required to attend approximately once a month.

[17] Section 1 of the Act provides the following definition:

> **"worker"** includes
>
> (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;

[18] The plaintiff's submission does not specifically address whether or not she was a worker, as defined by section 1 of the Act, at the time of the accident. However, she maintains that the main issue in this determination is whether or not her injuries arose out of and in the course of her employment. On the other hand, the defendant and School District No. 45 submit that the plaintiff was a worker at the time of the accident.

[19] Based on the plaintiff's employment agreement, I find that she was a worker within the meaning of Part 1 of the Act when the accident happened on March 30, 2007. The contentious issue is whether or not her injuries arose out of and in the course of her employment.

[20] At the time of the accident, policy item #14.00 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II)[1], provided the following:

> **#14.00 ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT**
>
> Before a worker becomes entitled to compensation for injury under the *Act*, the injury must arise out of and in the course of employment.
>
> Confusion often occurs between the term "work" and the term "employment". Whereas the statutory requirement is that the injury arise out of and in the course of employment, it is often urged that a claim should be disallowed because the injury is not work related or did not occur in the course of productive activity. There are, however, activities within the employment relationship which would not normally be considered as work or in any way productive. For example, there is the worker's drawing of pay. An injury in the course of such activity is

[1] The board of directors of the Board has approved a revised Chapter 3 to the RSCM II, but those new policies only apply to injuries or accidents occurring on or after July 1, 2010. This decision applies the policies in effect at the time of the accident.

compensable in the same way as an injury in the course of productive work.

Lack of control of a situation by the employer is not a reason for barring a claim otherwise acceptable. Control by an employer is an indicator that a situation is covered under the *Act* at a particular time, but if that control does not exist there may be other factors which demonstrate an employment connection.

No single criterion can be regarded as conclusive for deciding whether an injury should be classified as one arising out of and in the course of employment. Various indicators can be and are commonly used for guidance. These include:

(a) whether the injury occurred on the premises of the employer;

(b) whether it occurred in the process of doing something for the benefit of the employer;

(c) whether it occurred in the course of action taken in response to instructions from the employer;

(d) whether it occurred in the course of using equipment or materials supplied by the employer;

(e) whether it occurred in the course of receiving payment or other consideration from the employer;

(f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;

(g) whether the injury occurred during a time period for which the employee was being paid;

(h) whether the injury was caused by some activity of the employer or of a fellow employee;

(i) whether the injury occurred while the worker was performing activities that were part of the regular job duties; and

(j) whether the injury occurred while the worker was being supervised by the employer.

This list is by no means exhaustive. All of these factors can be considered in making a judgement, but no one of them can be used as an exclusive test.

[21] At the time of the accident, Chapter 3 of the RSCM II contained other applicable policy, as shown by the following excerpts:

#18.00 Travelling To and From Work

The general position is that accidents occurring in the course of travel from the worker's home to the normal place of employment are not compensable. But where a worker is employed to travel, accidents occurring in the course of travel are covered. This is so whether the travel is a normal part of the job or is exceptional.

#18.22 Payment of Travel Time and/or Expenses by Employer

The payment of wages or travelling allowances etc. may in some circumstances be a factor to be considered, but it usually will not be a significant factor, nor is it ever the sole criteria [*sic*] in determining the acceptability of a claim.

#18.40 Travelling Employees

Employees whose job involves travelling on a particular occasion or generally are covered while travelling. Where they do not travel to their employer's premises before beginning the travelling required by their work, they are covered from the moment they leave their residence. However, they will not be covered if they first travel to their employer's premises even though their vehicle has been provided by their employer and/or they need that vehicle to do the travelling required by their work.

#18.41 Personal Activities During Business Trips

The basic principle followed by the Board is set out in Larson's *Workmen's Compensation Law* as follows:

> "Employees whose work entails travel away from the employer's premises are held . . . to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown."

This principle covers the activities of travelling, eating in restaurants, and staying in hotels overnight where these are required by a person's employment.

#20.00 EXTRA-EMPLOYMENT ACTIVITES

Generally speaking, activities which people undertake outside of their employment are for their own benefit and injuries occurring in the course of them are not compensable. There are, however, some activities which because of their relevance to the worker's employment may be accepted as being part of that employment.

#20.30 Educational or Training Courses

A distinction must be drawn between things workers must do to become and continue to be qualified to perform a particular job and the things they must do as part of the job. Generally speaking, only the latter activities are covered. A person may, for example, need to spend some time in an educational or training institute to obtain or maintain the qualifications necessary for a particular job, but that person is not normally covered while attending that institution.

Compensation coverage does not extend to injuries occurring in the course of first aid courses being taken off the employer's premises and outside work hours.

This is so, even though the worker receives additional pay for a first aid ticket and is reimbursed the course fees by the employer.

[22] The defendant submits that the plaintiff was a travelling worker at the time of the accident and, therefore, her injuries arose out of and in the course of her employment. As well, the defendant maintains that the evidence supports sufficient factors under policy item #14.00 of the RSCM II to say that the plaintiff would have had Board coverage when the accident occurred. Among the various factors, he points to the fact that the plaintiff was travelling in an employer-provided vehicle that was being driven by her direct supervisor and mentor. Furthermore, the defendant takes the position that

School District No. 45 benefitted from the plaintiff's attendance at the event for a number or reasons, including the positive promotion of the school district to ministry officials.

[23] By contrast, the plaintiff submits that her injuries did not arise out of and in the course of her employment because she was either in the midst of a commute home at the time of the accident or, in the alternative, returning from an event that solely related to her personal professional development. Dealing with the latter argument first, the plaintiff maintains that the evidence does not satisfy the requirements of policy item #14.00. For instance, she argues that any direct benefit to her employer was "tangential" to her primary purpose for attending the event, which was for personal professional development. The plaintiff also takes the position that she was not instructed to attend the event; it was not one of her employment duties and, as she mentioned in her March 10, 2012 statement, she had missed the event in the past, without her supervisor or employer expressing any concern. As for her position that she was simply commuting home at the time of the accident, the plaintiff relies on aspects of her argument under policy item #14.00 to say that she was not a travelling worker or on a business trip when the accident occurred.

[24] School District No. 45 submits that the plaintiff's injuries arose out of and in the course of her employment. It maintains that senior staff were expected to attend the Association's event, which was of value to the employer and something it benefitted from.

[25] I have also considered the plaintiff's and the defendant's rebuttal submissions, the latter of which contains a June 1, 2012 statement from Mr. Jopson. In that statement, Mr. Jopson repeated some of the information that he reportedly provided to Ms. Buchanan during their meeting on January 16, 2010 and in a telephone conference on February 23, 2012, but he altered the tenor of his evidence by indicating, for instance, that he established the practice of senior staff becoming actively engaged in the activities of the Association and its metro chapter. He also commented that he always urged the senior staff to attend the Association's event because it provided an opportunity to engage in discussions on certain issues regarding education. Furthermore, it was his belief that School District No. 45 benefitted by having senior staff attend the event, as reflected by the following.

> It benefitted from the combined value of the information brought back from the Conference and integrated into district operations, from important early notice of forthcoming Ministry initiatives affecting the district, emerging best practice in childhood education introduced at the Conference, strategy development related to maximizing value in

management of childhood education in Metro Vancouver and coordinating education initiatives across Metro Vancouver.

[26] Since Mr. Jopson's June 1, 2012 statement introduced new evidence in relation to the plaintiff's attendance at the Association's event, I exercised my discretion to consider the plaintiff's sur-reply to the defendant's submission of June 1, 2012, after considering the parties' positions on the appropriateness of the plaintiff's unsolicited submission.

[27] Several prior WCAT decisions have been cited in this application. Though WCAT is not bound by precedent, the reasoning in prior decisions may provide helpful guidance. One such decision is *WCAT-2008-02005*[2], issued on July 4, 2008, where the panel found that two registered nurses returning to Kelowna from a two-day educational course in Vancouver that related to their employment were not in the course of their employment at the time of their single vehicle accident. I find guidance in the following excerpt from the panel's reasoning:

> Where a worker is a member of a professional body or other occupational association which maintains certain requirements for training and accreditation, the maintenance of such qualifications may more readily be identified as being personal to the worker. The worker may need to maintain such qualifications even during periods of unemployment, and is able to seek out other employment on the basis of holding such qualifications. I consider that the effect of the policy at RSCM II item #20.30 is to identify training which occurs away from the employer's premises, which is directed to maintaining such professional or occupational qualifications, as normally being outside the scope of a worker's employment for their particular employer.

[28] The panel in *WCAT-2008-02005* also canvassed prior WCAT decisions and decisions from the former Appeal Division, including *Appeal Division Decision #92-1875*, "Irregular Starting Points (No. 1)," issued on November 25, 1992[3], which considered two employees of a lumber supply company who were involved in a motor vehicle accident while driving to attend an optional training seminar at a different store. The employer had recommended the seminar and both of the employees were being paid for the day to attend it. The panel reasoned that the seminar was part of the employees' employment, as shown below:

> This seminar was connected to their work and of benefit to both them and

[2] Available at www.wcat.bc.ca
[3] Reported at 9 W.C.R. 647, as found on the Board's website at www.worksafebc.com

> their employer. It had been recommended by their employer and was being offered at another branch of Beaver Lumber. Both the Plaintiff and Defendant were being paid for the day to attend the seminar. It is not necessary for workers to be engaged in their normal productive work in order to be covered for workers' compensation. This seminar was sufficiently related to their employment to be part of their employment.

[29] Also mentioned in *WCAT-2008-02005* is *Appeal Division Decision #98-1726*, issued on October 27, 1998, which dealt with a school learning assistant who was involved in an accident to attend a workshop of the Local Specialist Association of Learning Assistance Teachers ("the LAT association"). The following passage discusses the significance of the LAT association in terms of the plaintiff's professional development:

> While there are several factors which tend to support work-connectedness, on balance, I find that this case comes within the terms of the policy at #20.30 which generally excludes training or professional development activities from the employment. I am satisfied that the nature of the LAT association meetings involved voluntary activities directed towards professional development outside the employer's supervision and control, and which were not requested or directed by the employer. The LAT association functioned solely as a volunteer organization to promote the employees' professional development, rather than accomplishing any work tasks for the employer. The employer had no role in assigning responsibility for tasks, scheduling, or observing the activities of the association. The workshop was part of the plaintiff's professional development, which related to but was not part of her employment as a learning assistance teacher. The employer's authorization of an early departure from the school was negotiated by the president of the LAT association, and may be viewed as analogous to an early departure for the purpose of attending a medical appointment. While sanctioned by the employer, it was not at their instigation nor under their supervision. While the use of the employer's premises is suggestive of an employment relationship, this may be viewed as being on the same footing as the use of these facilities for union meetings. In both cases, use is made of the facilities for a purpose related to the employment but which does not arise out of and in the course of the employment.

[30] The plaintiff, in this application, cites *WCAT-2003-01989*, issued on August 12, 2003, which concerned two home economics teacher who had left their place of employment to attend a meeting at another secondary school. The meeting was that of an

association of home economics teachers. Membership in the association and attendance at its meetings was voluntary. The panel concluded:

> After weighing the relevant factors for and against a conclusion supporting a work connection between the THESA [Teachers of Home Economics Specialists Association] meeting on September 22, 1999 and the two teachers in question, I find the balance of the evidence does not indicate Ms. Leswal and Ms. Mallory were workers in the course of their employment when the MVA [motor vehicle accident] occurred. While the THESA meeting advanced the teachers' professional development, and this indirectly benefited the employer, this development was outside of the employer's supervision and control. Added to this, the THESA meeting in question did not involve expenses, which could be submitted to the employer for reimbursement and both the travelling to and the meeting itself took place after work hours on time unpaid by the employer. I recognize, however, that that meeting took place at one of the employer's premises. In the end, a review of all the relevant factors supports a conclusion that Ms. Leswal and Ms. Mallory were not in the course of their employment when the MVA on September 22, 1999 occurred.

[31] Among the various decisions to which the defendant refers, I consider the panel's reasoning in *WCAT-2008-00716*, issued on March 4, 2008, to be of assistance. In that appeal, the panel considered the status of a rental car agency's employee who was killed in a motor vehicle accident while returning from a training seminar. The employee's attendance at the seminar was not compulsory, but his employer had recommended that he attend. In addition, the evidence suggested that the employee did not receive any additional pay, beyond his regular pay, for his attendance. The panel, in finding the employee to be in the course of his employment at the time of the accident, reasoned as follows:

> I consider, in any event, that the provision of a training seminar at a distant location, with the employer paying the related costs involving wages for the day of training, transportation in a vehicle provided by the employer, and provision of meals and hotel accommodation, all point to a very substantial employment connection. With reference to the policy at RSCM I item #20.30, I consider that this evidence supports a conclusion that the training was being provided as part of the job, rather than being training which the workers must do to become and continue to be qualified to perform a particular job. Accordingly, I do not consider that the attendance by WPS at the seminar was outside the scope of his

employment based on that policy. I find that WPS's attendance at the seminar arose out of and in the course of his employment.

[32] The defendant also cites prior WCAT decisions on travelling employees, one of which is *WCAT-2006-02659*, which is a compensation decision (issued on June 27, 2006) designated by WCAT to be noteworthy. The panel in *WCAT-2006-02659* dealt with a community health care worker who provided health care to clients in their homes, and reasoned that there seemed to be a sound rationale for extending the policy on travelling workers to those situations where travel is "an integral or essential aspect" of a worker's employment.

[33] In keeping with the decisions mentioned above, I am of the view that a determination regarding the plaintiff's status at the time of the March 30, 2007 accident is best approached by applying policy items #20.00 and #20.30 of the RSCM II. The mere fact the Association's event was considered to be a retreat or conference suggests that it was an extra-employment activity.

[34] There is seemingly no dispute that the plaintiff attended the Association's conference on March 29 and 30, 2007 to broaden her knowledge on certain education topics and for social purposes, allowing her to interact with colleagues and ministry officials within her professional field. The dinner and keynote speaker, along with the social event, during the first evening, meant that her attendance at the conference exceeded her normal working hours of approximately 7:30 a.m. to approximately 6:00 p.m.

[35] There is compelling evidence that the plaintiff's participation in the event had a work connection. I accept that the employer sanctioned the plaintiff's attendance at the Association's event and indirectly benefitted from it, since the event no doubt provided the plaintiff with further insight on certain education topics that she could share among other senior staff within the school district. Based on Mr. Jopson's statement of June 1, 2012, I further accept that the plaintiff, in her position as director of instruction, was encouraged but not obligated to attend the event. I do not know if the plaintiff felt influenced to attend the conference on account of Mr. Jopson being the president of the Association.

[36] The fact that the plaintiff's employer paid for her annual Association membership and likely knew that she was attending the event in March 2007, as supported by Mr. Jopson's evidence, also weighs in favour of a work connection. Furthermore, I am mindful that the plaintiff travelled to and from the conference in a vehicle that her employer reportedly owned. Had she travelled in her own automobile, I assume that her monthly automobile allowance, as stipulated in her employment agreement, would

have applied. It is also significant that the employer paid for the plaintiff's expenses associated with the conference.

[37] Having said that, policy item #20.30 draws a distinction between things a worker must do to become and continue to be qualified to perform a particular job and the things he or she must do as part of the job. It is the plaintiff's evidence that she attended the Association's conference as part of her personal professional development. I give considerable weight to her evidence because her employment agreement with School District No. 45 specifies that she is entitled to leaves of absence to attend conferences for professional development.

[38] The panel in *WCAT-2008-02005* highlighted how policy item #20.30 seems to suggest that if training occurs away from an employer's premises it is a significant factor. In this case, however, both the plaintiff and Mr. Jopson have provided evidence about travelling within and beyond the school district to deal with work-related matters. As such, in my view, the location of the Association's conference is a neutral factor.

[39] Consistent with the panel's reasoning in *WCAT-2008-02005*, I find that the plaintiff's participation in the Association's two-day conference in March 2007 was directed towards her ongoing need to be qualified within her occupation. In giving weight to the plaintiff's February 3, 2011 affidavit, I find that the plaintiff likely participated in the conference as part of her professional development so she could "carry out her duties to the best of her knowledge, skill and ability," as stipulated in her employment agreement.

[40] In addition, I distinguish the plaintiff's circumstances from those of the employee in *WCAT-2008-00716* on the basis that her attendance at the Association's event likely broadened her knowledge in certain areas of education, while allowing her to interact with colleagues in professional and social settings, rather than providing her with training to assist her in the performance of her job. The plaintiff's circumstances were akin to those of the school learning assistant who attended the LAT association meetings, as considered in *Appeal Division Decision #98-1726.* Though Mr. Jopson's evidence suggests that some aspects of the event had a work-connection, I am not convinced that the plaintiff's participation in the event was part of her job as the director of instruction.

[41] Having considered the evidence and the parties' submissions, I find that the plaintiff's attendance at the Association's two-day conference in March 2007 fell outside the scope of her employment, as contemplated by policy items #20.00 and #20.30 of the RSCM II. Accordingly, I find that the injuries she sustained in the accident on March 30,

2007 while travelling home from the conference did not arise out of and in the course of her employment.

[42] Owing to my conclusion on this issue, it appears unnecessary to address the status of the defendant. I have therefore restricted my certification to the status of the plaintiff. In the event that further certification regarding the status of the defendant remains necessary to the legal action, counsel may notify WCAT and the request will be addressed on an expedited basis.

Conclusion

[43] I find that at the time of the motor vehicle accident on March 30, 2007:

(a) The plaintiff, Maureen Eleanor Ciarniello, was a worker within the meaning of Part 1 of the Act; and

(b) The injuries suffered by the plaintiff, Maureen Eleanor Ciarniello, did not arise out of and in the course of her employment within the scope of Part 1 of the Act.

Andrew Waldichuk
Vice Chair

AW:ml

NO. M-091644
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

MAUREEN ELEANOR CIARNIELLO

PLAINTIFF

AND:

GEOFF JOPSON

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the Defendant, GEOFF JOPSON, in this action for a determination pursuant to Section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of action arose, March 30, 2007:

1. The Plaintiff, MAUREEN ELEANOR CIARNIELLO, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, MAUREEN ELEANOR CIARNIELLO, did not arise out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this day of July, 2012.

_____

Andrew Waldichuk
Vice Chair

NO. M-091644
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

MAUREEN ELEANOR CIARNIELLO

PLAINTIFF

AND:

GEOFF JOPSON

DEFENDANT

SECTION 257 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
150-4600 Jacombs Road
Richmond, BC V6V 3B1
FAX 604-664-7898
TELEPHONE 604-664-7800

110734-A

NO. S-092426
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

MAUREEN ELEANOR CIARNIELLO

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

C E R T I F I C A T E

UPON APPLICATION of the Defendant, INSURANCE CORPORATION OF BRITISH COLUMBIA, in this action for a determination pursuant to Section 257 of the *Workers Compensation Act*;

AND UPON NOTICE having been given to the parties to this action and other interested persons of the matters relevant to this action and within the jurisdiction of the Workers' Compensation Appeal Tribunal;

AND AFTER an opportunity having been provided to all parties and other interested persons to submit evidence and argument;

AND UPON READING the pleadings in this action, and the submissions and material filed by the parties;

AND HAVING CONSIDERED the evidence and submissions;

THE WORKERS' COMPENSATION APPEAL TRIBUNAL DETERMINES THAT at the time the cause of action arose, March 30, 2007:

1. The Plaintiff, MAUREEN ELEANOR CIARNIELLO, was a worker within the meaning of Part 1 of the *Workers Compensation Act*.

2. The injuries suffered by the Plaintiff, MAUREEN ELEANOR CIARNIELLO, did not arise out of and in the course of her employment within the scope of Part 1 of the *Workers Compensation Act*.

CERTIFIED this day of July, 2012.

_____

Andrew Waldichuk
Vice Chair

NO. S-092426
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE WORKERS COMPENSATION ACT
REVISED STATUTES OF BRITISH COLUMBIA 1996, CHAPTER 492, AS AMENDED

BETWEEN:

MAUREEN ELEANOR CIARNIELLO

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

SECTION 257 CERTIFICATE

WORKERS' COMPENSATION APPEAL TRIBUNAL
150-4600 Jacombs Road
Richmond, BC V6V 3B1
FAX 604-664-7898
TELEPHONE 604-664-7800

110735-A

WCAT **Workers' Compensation Appeal Tribunal**

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Telephone: (604) 664-7800
Toll Free: 1-800-663-2782
Fax: (604) 664-7898
Website: www.wcat.bc.ca