

Title: Board and Corporate Administration - Legal
Subject: Reconsiderations
Effective Date: July 1, 2015

POLICY PURPOSE

The Workers Compensation Act provides the WCB with broad discretionary authority to reconsider any matter it has dealt with and any decision it has made. This includes the ability to reconsider any decision that affects a worker, employer or other party at the request of the affected party, and to determine the process for doing so.

This policy provides the framework for these types of internal reconsiderations, including the principles governing reconsiderations, the WCB bodies that conduct reconsiderations and the types of decisions they generally deal with, and the basic features of the reconsideration process.

A. POLICY

1. DEFINITIONS AND SCOPE

This policy applies to all decisions made by the WCB which affect workers, employers or anybody with a direct interest in a decision. Decisions of a *general* legislative, policy or administrative nature are not subject to this policy. Similarly, the policy does not cover decisions of an incidental nature that occur in the course of dealing with a specific case. Examples of this include delays in making an initial decision or in a particular method chosen to reach an initial decision. The Fair Practices Office exists to deal with these and similar situations.

In this policy, "**decision**" means decisions made on specific matters, such as claims adjudication, assessment rates and administrative penalties, made "at the primary level."

The terms "**primary-level**" and "**primary decision-maker**," refer to the initial corporate decision-making body which makes and communicates the decision (Compensation Services, Assessment Services, etc.).

2. PRINCIPLES

The WCB's reconsideration activities are guided by the following principles:

- The principles of natural justice are adhered to, so that reconsideration processes are characterized by impartiality, objectivity and fairness.
- All reconsideration decisions are based on the merits and justice of each particular case.
- Those seeking reconsideration of a decision have the right to present evidence and arguments, to be informed of new issues or new information as it arises, and to respond to information provided by other parties within reasonable timeframes.

- Sufficient information is gathered on which to make an informed decision.
- Communications regarding processes, decisions and all other matters relating to a reconsideration are characterized by clarity and transparency.

3. RECONSIDERATION BODIES

- The Review Office generally undertakes reconsideration of claim-related decisions such as whether an injured worker's claim for compensation benefits should be allowed, the amount, type and duration of benefits.
- The Assessments Committee generally undertakes reconsideration of decisions regarding employers' assessments, cost relief or cost transfer, and routine administrative penalties related to individual assessments.
- The Vice-President of Compliance and Corporate Services generally reconsiders compliance-related decisions such as those pertaining to violations of the Act or regulations, and related administrative penalties.

The President and CEO and his/her designates (Vice-Presidents) can exercise the WCB's discretionary authority under the Act to reconsider any decision made at the primary or secondary levels, or in cases involving exceptional circumstances, in order to ensure that the "merits and justice" of a particular case are met. Decisions made under this authority are not normally subject to internal reconsideration. Parties can appeal any decision that directly affects them to the Appeal Commission.

4. RECONSIDERATION PROCESS

- Parties seeking reconsideration of a decision must first contact the primary decision-maker before proceeding with a formal request for reconsideration. This promotes resolution of the issue prior to pursuing a formal reconsideration, and helps ensure that all pertinent information needed to make the decision is on file and the reasons for the decision are understood by all parties.
- A party seeking a reconsideration, or their delegated agent, must submit a written request for reconsideration.
- Reconsideration consists of a review of all the pertinent information, including new information submitted in the course of a review.
- Reconsiderations are performed by senior WCB staff with expertise in the area, separate and apart from the primary decision-maker.
- Reconsiderations do not involve oral hearings, but are conducted via formal written communication in which the parties have the opportunity to present information and to respond to information submitted.
- The sharing of information with the parties participating in a review under this policy is conducted in accordance with the Act as well as Policy 21.50.10,

Disclosure of File Information and Policy 21.50.40, *Disclosure of Information – Employer Access*. The WCB also adheres to rules set out in *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*.

- Until a decision is made on reconsideration, the original primary decision stands as the decision of record.
- If a reconsideration decision is perceived to be unclear, contains an obvious error (e.g., a grammatical or clerical error), or is missing a piece of relevant information, parties to a decision have the right to seek clarification. Nothing limits the WCB from issuing clarifications or addendums on its own in order to complete the decision, resolve disputes and promote finality of decisions.
- Parties can only ask for a second review of a formal reconsideration decision when new material evidence directly relevant to the decision arises after the decision is made.
- Parties who are dissatisfied with a reconsideration decision may pursue the next level of appeal, which is the external Appeal Commission. The reconsideration must be completed and the decision communicated in writing before the matter can proceed to the Appeal Commission. A decision cannot be under reconsideration by the WCB and before the Appeal Commission at the same time. However, the Appeal Commission can return an issue back to the WCB for reconsideration.
- A request for reconsideration may be formally withdrawn, in writing, at any time before the reconsideration is complete. In rare circumstances, the request for withdrawal can be refused if doing so would leave a decision in place that contradicts the Act, regulations or policies of the WCB.

B. REFERENCES

The Workers Compensation Act, in particular Sections 19.1, 49.3, 60(3), 60.1, 86(3) and 109.7

The Freedom of Information and Protection of Privacy Act

Policy 21.50.10, *Disclosure of File Information*

Policy 21.50.40, *Disclosure of Information – Employer Access*

History

1. New policy approved by the Board of Directors by Board Order No. 21/15 on May 26, 2015 effective July 1, 2015.

ADMINISTRATIVE GUIDELINES

A. REVIEW OFFICE

1. Goals of the Review Office

The Review Office is guided by the following goals:

- a. To provide workers and employers with a process that is accessible, timely, simple and flexible for requesting a review of decisions;
- b. To conduct an independent and impartial file review to reconsider prior decisions made at the primary level of adjudication and case management;
- c. To complete a comprehensive review of primary level adjudicative decisions in a manner that gathers and weighs all facts found relevant to the issue;
- d. To decide on issues reasonably and consistently by weighing the merits of each individual case on balance; and
- e. To communicate reconsideration decisions in a manner that is clear and concise in explaining the issues and reasons behind decisions.

2. Scope of the Review Office

The Review Office deals with decisions relating to individual claims made at the primary level.

The Review Office may include in its review of a primary decision other relevant issues that arise in the course of the review. For example, a decision may not be consistent with legislation or policy or a request for reconsideration may involve another decision somehow. The Review Office may also review a decision for which reconsideration was not explicitly sought, in which case the Review Office will notify the relevant parties and provide them an opportunity to make submission(s) regarding the issue.

A request for reconsideration will not be accepted where:

- The issue is not claim or benefit related;
- A written decision on the issue is still pending from the primary adjudicator;
- An appeal on the issue has been registered by the Appeal Commission; or
- A decision on the issue has been rendered by the Appeal Commission;

A request for reconsideration usually occurs when:

- a worker or employer disagrees with a written decision made by the primary level of adjudication regarding entitlement to a compensation benefit; or
- new evidence is presented that may affect a previous Review Office decision regarding entitlement to a compensation benefit.

3. Process

Prior to Request for Reconsideration

At the time an initial decision is reached at the primary adjudicative level, the worker or employer will receive a decision letter informing them of the decision and of their right to appeal the decision. Before they proceed, however, the party looking to appeal must first contact the primary decision-maker. Doing so ensures that:

- The reasons for the original decision are understood;
- All the information needed to make the decision has been submitted;
- They know how to file a request for reconsideration (that it must be in writing, must indicate the date of decision and the reasons for disagreeing with the decision); and
- They know their rights to relevant claim file information and how access to file information works.

Request for Reconsideration

A request for reconsideration must be made in writing to the Review Office, preferably using the prescribed form, which is attached to the decision letter from the primary decision-maker, or available from the Review Office. The Review Office conducts all reconsiderations in writing.

The primary decision stands until the Review Office reaches a decision or the primary adjudicative level changes its original decision prior to completion of the review.

Collection of Additional Relevant Information

In order to provide a meaningful reconsideration of a matter, the Review Office requires all relevant information. If a review of the file suggests that more information is required, the Review Office may either send the matter back to the primary adjudicative level or proceed with the collection of information needed for the review. When necessary, it will conduct further investigation, requesting new or additional information or expand the scope, if necessary.

Communication with Workers and Employers

When undertaking a request for reconsideration, the Review Office will:

- Provide written notification to both the appellant and the participating party (worker or employer) that a request for reconsideration has been submitted and indicate the issue or issues under reconsideration;
- Offer the opportunity for the participating party to participate in the review;
- Notify the parties when the scope of the reconsideration is to be expanded beyond what was initially requested;
- Provide opportunities, when there is new information or evidence presented or gathered by the Review Office, for the parties to respond; and
- Provide a final opportunity to the appellant to respond to the submission of the participating party.

4. Timelines

A worker or employer may file a request for reconsideration at any time following the primary decision. Once a request is filed, the Review Office may set reasonable time limits for awaiting written submissions and provide a time-limited opportunity to respond to new information or evidence that it considers substantial and material to the decision.

If a worker or employer does not respond with written submissions within a prescribed time limit, Review Office may consider a request withdrawn or proceed with a decision. If in the opinion of the Review Office an injustice may result from application of a time limit, extensions may be granted

Timeframes for Written Response

Once a written request is filed, the Review Office will communicate the time frame for:

- A participating party's written response (30 days from the date when the WCB's File Access department mails a copy of the claim file to the participating party);
- The appellant's response to the participating party's submission (15 days from the date the Review Office mails a copy of the participating party's submission to the appellant); and
- A response to new information or evidence presented by either party or gathered by the Review Office (15 days from the date the Review Office mails the new information).

Extension to Timeframes for Written Response

The appellant or participating party may ask for an extension to the time frames for a written response. In considering the request, the Review Office will take into account:

- Who is requesting the extension (appellant or participating party);
- The reason(s) for the extension; and
- The amount of time passed since the initial request for reconsideration was submitted.

If the extension is granted, the Review Office will advise all parties of the revised time frame for a written response.

Timeframe for Decision

The Review Office will make a decision once all written responses are received. However, when a party fails to submit a response within the communicated time frame and does not seek an extension, the Review Office may make a decision based upon the available information. Decisions are mailed to the appellant and the participating party.

Appeal of a Review Office Decision

At the time a Review Office decision is mailed, the appellant or participating party will be informed of their right to appeal a Review Office decision in the following ways:

- If new evidence relevant to the decision becomes available after the decision was made, the appellant or participating party can ask the Review Office to reconsider its own decision; and

- If no new evidence is available, the appellant or participating party can appeal the matter to the Appeal Commission (final level of appeal).

The Review Office will not reconsider one of its own decisions if the appellant has already submitted an appeal on the same issue to the Appeal Commission, unless,

- The appellant withdraws the appeal submitted to the Appeal Commission; or
- The matter is referred back to the Review Office by the Appeal Commission.

B. ASSESSMENT COMMITTEE

1. Goals of the Assessment Committee

The Assessment Committee is guided by the following goals:

- a. To provide employers with a process that is accessible, timely, simple and flexible for requesting a review of assessment-related decisions;
- b. To conduct an independent and impartial file review to reconsider prior decisions made at the primary level of assessment-related decision making;
- c. To complete a comprehensive review of primary level assessment-related decisions in a manner that gathers and weighs all facts found relevant to the issue;
- d. To decide on issues reasonably and consistently by weighing the merits of each individual case on balance; and
- e. To communicate reconsideration assessment-related decisions in a manner that is clear and concise in explaining the issues and reasons behind decisions.

2. Scope of the Assessment Committee

The Assessment Committee deals with decisions relating to assessments made at the primary level. This includes routine administrative penalties relating to a specific assessment generated automatically by Assessment Services during processing, such as late reporting of payroll

The Assessment Committee may expand the scope of a review if doing so is necessary to arrive at a fair and impartial review of the issue raised. The Assessment Committee may also review a decision for which reconsideration was not explicitly sought, in which case the Assessment Committee will notify the relevant parties and provide them an opportunity to make submission(s) regarding the issue.

A request for reconsideration will not be accepted where:

- The issue is not assessment related;
- The issue is related to the Unfair Burden clause of the Cost Relief Policy;
- A written decision on the issue is still pending from the primary decision-maker;
- An appeal on the issue has been registered by the Appeal Commission; or
- A decision on the issue has been rendered by the Appeal Commission.

3. Process

Prior to Request for Reconsideration

Before proceeding to reconsideration, the party looking to appeal must first contact the primary decision-maker. Doing so ensures that:

- The reasons for the original decision are understood;
- All the information needed to make the decision has been submitted;
- They know how to file a request for reconsideration (that it must be in writing, must indicate the date of decision and the reasons for disagreeing with the decision); and
- They know their rights to relevant claim file information and how access to file information works.

Request for Reconsideration

A request for reconsideration must be made in writing to the Assessment Committee. The Assessment Committee conducts all reconsiderations in writing.

The primary decision stands until the Assessment Committee reaches a decision or the primary assessments level changes its original decision prior to completion of the review.

Collection of Additional Relevant Information

In order to provide a meaningful reconsideration of a matter, the Assessment Committee requires all relevant information. If a review of the file suggests that more information is required, the Assessment Committee may either send the matter back to the primary assessments level or proceed with the collection of information needed for the review. When necessary, it will conduct further investigation, requesting new or additional information or expand the scope, if necessary.

Communication with Workers and Employers

When undertaking a request for reconsideration, the Assessment Committee will:

- Provide written notification to the affected parties that a request for reconsideration has been submitted and indicate the issue or issues under reconsideration;
- Offer the opportunity for the participating party to participate in the review;
- Notify the parties when the scope of the reconsideration is to be expanded beyond what was initially requested;
- Provide opportunities, when there is new information or evidence presented or gathered by the Assessment Committee, for the parties to respond, and;
- Provide a final opportunity to the appellant to respond to the submission of the participating party.

4. Timelines

A party may file a request for reconsideration at any time following the primary decision. Once a request is filed, the Assessment Committee may set reasonable time limits for awaiting written

submissions and provide a time-limited opportunity to respond to new information or evidence that it considers substantial and material to the decision.

If a party does not respond with written submissions within a prescribed time limit, Assessment Committee may consider a request withdrawn or proceed with a decision. If in the opinion of the Assessment Committee an injustice may result from application of a time limit, extensions may be granted

Extension to Timeframes for Written Response

The appellant or participating party may ask for an extension to the time frames for a written response. In considering the request, the Assessment Committee will take into account:

- Who is requesting the extension (appellant or participating party);
- The reason(s) for the extension; and
- The amount of time passed since the initial request for reconsideration was submitted.

If the extension is granted, the Assessment Committee will advise all parties of the revised time frame for a written response.

Timeframe for Decision

The Assessment Committee will make a decision once all written responses are received. However, when a party fails to submit a response within the communicated time frame and does not seek an extension, the Assessment Committee may make a decision based upon the available information. Decisions are mailed to the appellant and the participating party.

Appeal of an Assessment Committee Decision

At the time a decision is mailed, the appellant or participating party will be informed of their right to appeal an Assessment Committee decision in the following ways:

- If new evidence relevant to the decision becomes available after the decision was made, the appellant or participating party can ask the Assessment Committee to reconsider its own decision; and
- If no new evidence is available, the appellant or participating party can appeal the matter to the Appeal Commission (final level of appeal).

The Assessment Committee will not reconsider one of its own decisions if the appellant has already submitted an appeal on the same issue to the Appeal Commission, unless,

- The appellant withdraws the appeal submitted to the Appeal Commission; or
- The matter is referred back to the Assessment Committee by the Appeal Commission.

C. COMPLIANCE SERVICES

The Vice-President of Compliance and Corporate Services or delegate reconsiders decisions to apply an administrative penalty for instances of program abuse such as claims suppression, discriminatory action, and other violations of the Act or Regulations.

The person or entity subject to the administrative penalty may request the Vice-President of Compliance and Corporate Services or delegate to reconsider the decision to apply the administrative penalty.