

Rules of Procedure for proceedings before the Workers' Compensation Appeal Tribunal

The Workers' Compensation Appeal Tribunal (WCAT) is the final level of appeal for workers and employers dissatisfied with decisions made by Yukon Workers' Compensation Health and Safety Board (board). The Tribunal is an administrative body independent of the board. WCAT is required by law to follow the provisions set out in the *Workers' Compensation Act (Act)* and regulations made under that *Act*. The tribunal is also bound by policies of the Yukon Workers' Compensation Health and Safety Board.

These rules of procedure are made under section 63 of the *Workers' Compensation Act*, S.Y. 2008, c. 12, and are provided to assist interested parties to prepare for and to participate in the appeal process. Workers, employers and their representatives should review the rules of procedure as well as the *Act* and regulations. If necessary, the tribunal may change any provision or timeframe fixed by these rules in the interest of fairness. Copies of the *Act* are available at Yukon Government help desk (information desk) located in the Yukon Government Administration building located at 2071 Second Avenue, Whitehorse, or on the Internet at a www.wcb.yk.ca.

Questions regarding the rules should be directed to the appeals officer at (867) 667-8731.

Jurisdiction

The appeal tribunal hears appeals from decisions rendered:

- by the Yukon Workers' Compensation Health and Safety Board under section 14 (2);
- from decisions of hearing officers under section 53 (1); and,
- from decisions of the president under section 56 (4).

The authority for the appeal tribunal to hear appeals of decisions relating to compensation claims and related matters is found in section 65 of the *Act*.

Appeal Committees

Appeals are heard by appeal committees (committee) who have the power to confirm, reverse or vary the decision under appeal.

Appeal committees are established by the Chair of the tribunal and must consist of the chair or alternate chair: who shall be the presiding officer, one member representative of employers and one member representative of workers.

Starting an Appeal

If you wish to appeal, you or your representative must complete a notice of appeal form and deliver it to the appeals officer at Room #201, 419 Range Road, Whitehorse, Yukon, Y1A 3V1, where appeal forms are available. The notice must include the following information:

- (1) your name, mailing address, telephone number, fax number, and e-mail address (if any), as your point of contact;

- (2) your WCB claim number and the name of your employer (or employee) at the time of injury;
- (3) the date of the decision that you are appealing;
- (4) the issue(s) for the appeal (e.g., termination of benefits);
- (5) the changes or remedies you want;
- (6) whether you wish to be heard in person or would prefer a documentary review;
- (7) whether additional information, submissions or evidence will be provided;
- (8) whether you or your representative will be calling witnesses. Names, addresses, telephone numbers and a summary of evidence each witness will give must be provided;
- (9) name, address and telephone number of your representative (if any). An authorization of representation form must be completed and forwarded to the appeals officer.

The appeal tribunal may refuse to schedule a hearing until you or your representative provide this required information. You may provide this information in writing or orally to the appeals officer. This must be signed by the appellant. (person appealing the decision)

Representation

1. Appellants may appoint a representative by completing WCAT's Authorization for Representative form.
2. Representatives may be changed by submitting a new Authorization for Representative form.
3. If you wish to be represented by the workers' advocate, appellants must still sign an Authorization for Representative form This form is available at the worker's advocate office.
4. Faxed copies of the form will be accepted.

Notification and Scheduling

1. Upon receipt of your notice of appeal, the appeals officer will confirm receipt with you or your representative and will schedule your hearing for the next available date, unless the Tribunal decides it does not have jurisdiction.
2. The appeals officer will notify all parties to the appeal (worker, employer, and/or representative) of the hearing. The notice of hearing shall include the date, time and location of the hearing.
3. A request to the tribunal for rescheduling of the hearing must be provided in writing, stating reasons. The tribunal will give all other parties an opportunity to object to the request. The final decision to reschedule will rest with the tribunal.

Reply to Notification

1. A party to the proceedings must reply within 10 days of being notified:
 - (a) if they intend to take part in the appeal, and, if so
 - (b) provide their name, address and telephone number .
2. If a party fails to reply within 10 days, the appeal tribunal will proceed in their absence.
3. If a party fails to comply with subsection 1(a) or having replied that they intend to participate and fails to appear, the appeal committee will proceed without further notice.

Rejection of Request for an Appeal

1. The appeals officer will review the notice of appeal to ensure that proper signatures, claim numbers and dates are correct. If the notice is incomplete, the appeals officer will notify the appellant or their representative of necessary steps to correct the form (e.g. notice of appeal form must be signed by appellant in order for the board to provide file disclosure to the tribunal).
2. The tribunal will reject a notice of appeal if it does not have jurisdiction to hear the appeal.
3. When rejecting the notice of appeal, the tribunal will explain in writing, its reasons.

Interpreters

Parties requiring interpreters must notify the appeals officer no later than 20 days before the hearing.

Disclosure

Section 64(4) of the *Workers' Compensation Act* provides the tribunal with access to the entire claim file or record.

1. After the appeals officer receives a notice of appeal, he/she will request a copy of the record from the board.
2. The appeals officer will make copies of the record for appeal committee legal counsel, if applicable.
3. Appellants or their representatives are responsible for obtaining copies of their file from the board.
4. Employers who are a party to the appeal may ask the board for an opportunity to examine and copy information relevant to an issue in the appeal from a worker's file.
 - (a) When making such a request, the board must notify the worker and allow him or her to submit written objections.
 - (b) Any information objected to by the worker shall be forwarded the president of the board for a decision as to whether the information is relevant and will be provided to the employer.

5. All evidence to be presented at the hearing must be provided to the appeal committee and other parties at least 7 days prior to the hearing.
6. Section 56 (5) of the *Act* governs issues of access to a worker's file.

Pre-hearing Conferences

The appeal committee may convene pre-hearing conferences:

- (a) to clarify the issues to be dealt with at the hearing;
- (b) to identify facts not in dispute;
- (c) to determine whether appeal committee counsel is needed;
- (d) to identify evidence that will be presented at the hearing;
- (e) to identify witnesses;
- (f) to deal with any postponements or requests for an adjournment, or to set a new date; and,
- (g) for any other reason the appeal committee considers necessary.

Confidentiality

Section 117 (1) of the *Act* states:

No member of the board of directors, the appeal tribunal, the board, or any employee or agent of the board of directors, the appeal tribunal, or the board authorized to make an examination or inquiry under this Act shall divulge or allow to be divulged, except in the performance of their duties or under authority of the board of directors or the board, any information obtained in the administration of the Act.

Simply stated, this means all information received by the appeal tribunal will only be disclosed as part of the appeal process. For instance, relevant information may become part of the written decision which then is filed in the public registry at the board.

Witnesses

Section 65 (8) of the *Act* authorizes the appeal tribunal to:

- (a) order witnesses to attend the hearing;
- (b) examine witnesses under oath;
- (c) order the production and inspection of books, papers and objects relevant to the hearing;
- (d) cause depositions of witnesses to be taken before any person appointed by it in the same fashion as the Supreme Court of the Yukon Territory in civil actions.

Conduct of the Hearing

1. The hearing may provide an opportunity to present oral evidence. However, if a documentary review is chosen (a review by documents only), evidence and submissions from all parties will be accepted in writing.
2. Oral hearings may be conducted with one or several of the parties participating in person or by telephone conference call.
3. Appeals will be conducted in an informal, non-adversarial manner.
4. Parties have the right to:
 - (a) present evidence;
 - (b) call witnesses; and,
 - (c) question witnesses who give evidence at the hearing.
5. Expert witnesses must satisfy the appeal committee they are qualified to give expert evidence. The appeal committee will establish a time prior to the hearing, by which a party must submit the qualifications as well as a summary of the evidence of any medical or technical witnesses.
6. The presiding officer may exclude witnesses from the hearing until they have given testimony.
7. There will be a record of all hearings.
8. Witnesses will give their evidence under oath.

Evidence

1. The appeal committee will consider the entire record of the claim.
2. The appeal committee may receive evidence by:
 - (a) pre-filed sworn written documentation;
 - (b) affidavits;
 - (c) oral testimony in person or by telephone;
 - (d) any other manner the appeal committee considers appropriate.
3. The appeal committee may question any evidence, including the record.
4. The appeal committee may reject evidence where there is no opportunity to cross-examine the person who produced it.
5. The appeal committee may question any witness at the hearing.
6. The appeal committee has exclusive jurisdiction, as provided by 65 (1) of the *Act* to examine, inquire into, hear, and determine all matters arising in respect of an appeal. The committee is not restricted to reviewing only those issues listed on the Notice of Appeal.

Therefore, appellants and their representatives are advised to consider any possible downside risk that may exist as a consequence of proceeding with an appeal.

Adjournments and Postponements

1. The appeal committee may adjourn or postpone a hearing at any time and reschedule it to a new date, time or location.
2. Parties may request a postponement no later than seven days before the hearing, unless unable to do so because of extenuating circumstances (e.g., health, crisis or emergency).
3. In deciding whether or not to postpone, the appeal committee will consider if:
 - (a) the request is reasonable;
 - (b) granting the request would unreasonably delay the proceeding; and,
 - (c) other parties have consented to the request.
4. If the parties do not request a new hearing within 90 days, the appeal will be considered withdrawn.

Decisions

1. The members of the appeal committee who heard the appeal shall make the decision.
2. The regulations to the *Act* specify that a decision of the appeal committee must be made within 45 working days after the hearing unless the chair of the appeal committee extends the timeline. A request must be completed in writing outlining the reasons. An extension may occur when a worker, the workers' representative or employer requests a delay or when the chair considers it is necessary for extension.
3. Section 64 (7) of the *Act* states the appeal committee shall provide the written decision to all parties to the appeal. The decision is sent to the board to be contained in the public registry and to the Law Library. All appeal tribunal decisions are contained on Yukon Workers' Compensation Health and Safety Board's website at www.wcb.yk.ca or the tribunal's website at www.yukonwcat.ca.
4. A decision of the appeal committee requires two agreeing votes. The chair is not entitled to a vote.
5. Where there is no agreement, the chair of the appeal tribunal must direct a new hearing before a new committee.
6. Under section 64 (8) of the *Act*, where the board considers that the committee did not correctly apply policies or regulations it may, with reasons in writing, direct the committee to rehear the appeal.
7. The committee may rehear, examine, inquire into, or reopen any matter it has already dealt with and may withdraw or vary any decision previously made.
8. A decision of the committee is deemed to be a decision of the tribunal.
[Section 64 (6) of the *Workers' Compensation Act*]

MOTION: To amend the Rules of Procedure for Proceeding before the Workers' Compensation Appeal Tribunal.

MOVED BY: W. Cary Gryba
SECONDED BY: Carel Alexander

All in agreement. Motion carried.

Approval Date: November 21, 2008

Effective Date: November 21, 2008