

Rules of Procedure

For proceedings before the

Hearing Officer

YUKON WORKERS' COMPENSATION HEALTH AND SAFETY BOARD

EFFECTIVE JULY 1, 2008

Board Approval	
_____	_____
Signature	Date

Introduction

This document contains the Rules of Procedure for proceedings before a Hearing Officer, effective July 1, 2008. The Hearing Officer is bound by the *Workers' Compensation Act* S.Y. 2008 (the "*Act*"), the regulations and the policies of the Yukon Workers' Compensation Health and Safety Board of Directors.

Definitions

- 1) In these Rules,
 - a) "**Act**" means the *Workers' Compensation Act* S.Y. 2008 and includes regulations enacted under the *Act*;
 - b) "**Administration**" means the staff of the Yukon Workers' Compensation Health and Safety Board (YWCHSB);
 - c) "**Affidavit**" means a written statement of facts that is sworn or affirmed according to the provisions of the *Evidence Act* and based on the personal knowledge or belief of the person submitting the affidavit;
 - d) "**Decision-maker**" means any person authorized to make decisions under Section 15 of the *Act* concerning claims for compensation;
 - e) "**Hearing**" means a session held by the Hearing Officer to collect facts and make a determination on a decision concerning a claim for compensation;
 - f) "**Hearing Officer**" means a person appointed by the President/CEO under subsection 116(1)(d) of the *Act* with powers granted under section 53 of the *Act*;
 - g) "**Party**" means the worker, the dependant of a deceased worker, an employer, or a representative who has:
 - i) filed a Request For a Review by Hearing Officer;
 - ii) replied to a notification from the Hearing Officer.
 - h) "**Review**" means a claim review by a Hearing Officer under section 53 of the *Act* of a decision made by an adjudicator under section 15 of the *Act*.

General Application of the Rules

- 2) The Rules will be interpreted to ensure proceedings are conducted fairly.
- 3) The Hearing Officer may modify any provision or any timeframe fixed by these Rules as long as the modification does not prejudice a party or conflict with applicable law or policy.

General Information

- 4) The *Act* gives the following individuals the right to request a Review by Hearing Officer, of a decision concerning a claim for compensation:
 - a worker;
 - a dependant of a deceased worker; and
 - an employer.
- 5) A Hearing Officer appointed by the President/CEO conducts the review. The parties have the right to appeal that decision to the Yukon Workers' Compensation Appeal Tribunal (Tribunal), which is an appeal body independent of the Board of Directors.

Principles of the Review and Appeal Process

- 6) The Hearing Officer is bound by the *Act*, the regulations and the policies of the Board of Directors.
- 7) The decisions, orders, and rulings of a Hearing Officer shall always be based on the merits and justice of the case and be in accordance with the *Act* and the regulations and the policies of the Board of Directors. The standard of proof is the balance of probabilities.
- 8) The Hearing Officer will endeavour to ensure that proceedings are open and accessible to all parties.
- 9) Proceedings will be conducted according to the principles of procedural fairness and natural justice.

Delivery

- 10) Written communication to and from the administration must be by personal delivery, pre-paid mail or by fax. The effective date of delivery will be considered to be:

- a) the date of personal delivery; or
 - b) seven (7) days after the date of the postmark if mailed in Yukon or fourteen (14) days after the date of postmark if mailed outside Yukon; or
 - c) the date of the recipient's signature of receipt if delivered by registered mail; or
 - d) the date of the fax transmission report.
- 11) Even though a document has been delivered according to Rule 4, a party may show on an Application to Reschedule a Hearing form that the document:
- a) did not come to the person's notice; or
 - b) did come to the person's notice at a time later than when it was delivered; or
 - c) was incomplete or illegible.

Change of Address

- 12) Delivery by the YWCHSB will be to the last known mailing address or fax number. It is the responsibility of the parties to notify the YWCHSB of any changes to their mailing address or fax number.

Request for Review by Hearing Officer

- 13) The Hearing Officer will not begin a proceeding until he or she receives a written Request For Review by Hearing Officer from a party. The Request For Review must indicate why the decision is incorrect and how it should be changed.
- 14) A Request For Review by Hearing Officer will be in the required form unless otherwise agreed by the Hearing Officer.

Notification and Scheduling

- 15) Upon receipt of a Request For Review by Hearing Officer, the Hearing Officer shall:

- a) Review the claim to determine if there is jurisdiction to hear the matter and ensure that there is no conflict of interest;
 - b) Send a letter asking if the other party wishes to participate in the review and if they require disclosure of relevant information.
 - c) If no response from the other party, they are deemed not a party to the review. A hearing will be scheduled for the next available date. If a Request for Disclosure and Notice of Intention is received from the other party then the review is scheduled for a date approximately four (4) months ahead (to allow for disclosure issues).
- 16) The Hearing Officer shall notify the parties by registered mail of the date, time and location of the hearing.
- 17) The Hearing Officer may reschedule a hearing at the request of a party. The request shall be in the required form unless otherwise agreed to by the Hearing Officer.

Reply to Notification

- 18) The reply shall be in the required form unless otherwise agreed to by the Hearing Officer.
- 19) If a party fails to reply within thirty (30) days, the Hearing Officer may proceed in their absence.

Rejection of a Request for Review by Hearing Officer

- 20) The Hearing Officer shall reject a request for review if the person filing is not legally authorized to do so or the Hearing Officer does not have authority over the subject matter.
- 21) Before the Hearing Officer rejects a request for review, he or she shall explain the reasons for that decision in writing to the party and the party shall have an opportunity to respond in writing within a time frame directed by the Hearing Officer.

Interpreters

- 22) Interpreters shall be provided as required in legislation. Interpreters may be provided for additional languages, depending upon availability, and requests

for these interpretation services must be made at least thirty (30) days before the hearing.

Accommodation of Special Needs

- 23) Accommodations of special needs include, but are not limited to, signing for the hearing impaired and services for the illiterate. Requests for accommodations of special needs shall be made at least thirty (30) days before the hearing.

Representatives

- 24) Parties may choose one representative to act on their behalf in a proceeding by filing an Authorization for Representative form with the administration.
- 25) Parties may choose a different representative by filing another authorization form for a new representative, or by notifying the administration in writing.

Supporting Written Information

- 26) Where the Hearing Officer determines that it is of assistance to the proceedings, he or she may require parties to address any issues in writing within such a period of time as directed.
- 27) The YWCHSB shall deliver copies of written documents to all parties as soon as practicable.

New Information

- 28) Under the *Act*, subsection 53(5) of the *Act*, where new or additional evidence is presented by the worker, the employer, or their representatives, the hearing officer or panel of hearing officers shall refer the new or additional evidence to the decision-maker under section 15 of the *Act*, responsible for the decision being reviewed, and request that the decision-maker reconsider the decision.

Information Requests

- 29) The Hearing Officer may request information from a party and will deliver copies of the written request to all other parties. Information requests shall be delivered at least twenty-one (21) days before the hearing.

- 30) A party shall deliver a response to the Hearing Officer in writing within fourteen (14) days of receiving an information request or as directed by the Hearing Officer.
- 31) The YWCHSB shall deliver copies of the response to an information request to all other parties as soon as practicable.

Hearings

- 32) The Hearing Officer shall conduct a hearing after receiving a Request For Review by Hearing Officer.
- 33) A party may request either an oral hearing or a documentary review. When no preference is specified, the Hearing Officer shall determine the method of hearing.
- 34) All parties shall have an opportunity to make written and oral presentations.
- 35) Parties may:
 - a) present information and suggest how the information, law and policy should be interpreted; and
 - b) call individuals to provide information and question any individual within the parameters of the hearing.

Supporting Information

- 36) The Hearing Officer may receive supporting information in various ways that include, but are not limited to, written documents including affidavits, oral testimony taken under oath or affirmation, and conference calls or video conferencing.
- 37) The Hearing Officer may request or allow questioning on an affidavit. He or she may reject an affidavit in dispute where it is not possible to question the person who produced it.
- 38) The Hearing Officer may question any individual giving testimony and may require any individual to be excluded from the hearing room until it is their turn to provide information.

Postponements, Adjournments and Withdrawals

- 39) The Hearing Officer may adjourn, postpone or relocate a hearing under the principles of procedural fairness and natural justice.
- 40) A party may make application for a postponement in the required form no later than seven (7) days before the hearing. The application shall give reasons why the postponement is requested and the length of time required.
- 41) When no date is set for reconvening an adjourned hearing and, when three (3) months from the date of an adjournment the parties have not requested the Hearing Officer to reconvene, the Hearing Officer will set a date to reconvene the hearing.
- 42) A party may make application to withdraw a claims review, and all requests must be in the required form.

Non-compliance

- 43) Where a party fails to comply with any provision in these Rules, the Hearing Officer may give any direction he or she deems appropriate, including but not limited to, setting a date for compliance by the party when necessary or declaring the proceeding abandoned.

Decisions

- 44) The Hearing Officer shall consider the entire record of the claim in the administration's possession, any further information considered necessary, and the *Act* and YWCHSB policies before making a claim decision.
- 45) The Hearing Officer shall, confirm, vary or reverse a claim decision made under section 15 of the *Act*.
- 46) As soon as practicable but within thirty (30) working days after the date the Review is concluded, the Hearing Officer shall deliver a decision in writing, with reasons, according to the generally accepted benchmarks for quality decision writing, to all parties.
- 47) A decision of the Hearing Officer may be appealed to the Tribunal.

Forms

48) The forms are attached:

Request for Review by Hearing Officer

Authorization for Representation

Request for Disclosure

Employer Request for Disclosure

Request to Reschedule a Hearing

Application to Withdraw a Review or Appeal