



YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD

SUBJECT: GENERAL & CORPORATE

POLICY NO.: GC-05-03

BOARD APPROVAL:

APPROVAL DATE: August 30, 2005

BOARD ORDER NO.:

EFFECTIVE DATE: August 30, 2005

REVOKED

NOV 22 2005

POLICY STATEMENT

SECTION: 8, 20, 21, 27, 32, 33, 58, 104, 114, 116
REFERENCE: *Workers' Compensation Act R.S.Y. 2002*

POLICY:

REVIEW BY HEARING OFFICER

The purpose of this policy is to provide a basic framework for the administration of the review process. The policy includes general information concerning reviews related to claims for compensation.

The attached Appendix A contains the Rules of Procedure for reviews by the Hearing Officer.

DEFINITIONS

Where a definition in this policy is inconsistent with a definition in legislation, the definition in the Act will be used. In this policy,

- (a) **"Act"** means the *Workers' Compensation Act R.S.Y. 2002* and includes regulations enacted under the Act.
- (b) **"Adjudicator"** means any person authorized to make decisions under section 12 of the Act concerning claims for compensation.
- (c) **"Appeal"** means an appeal under section 21 of the Act of a Hearing Officer decision.
- (d) **"Appeal Committee"** means an appeal committee of the Workers' Compensation Appeal Tribunal.

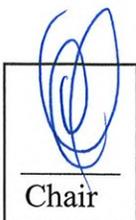
- (e) **“Appeal Tribunal”** means the members of the Workers’ Compensation Appeal Tribunal appointed under subsection 22(1) of the Act.
- (f) **“Hearing Officer”** means a person appointed by the President under clause 116(1) (d) of the Act to review a decision concerning a claim for compensation.
- (g) **“Party”** means a person who is allowed to appear and take part in a proceeding under the Act.
- (h) **“Review by Hearing Officer”** means a review under section 20 of the Act of a decision made by an adjudicator under section 12 of the Act.

GENERAL INFORMATION

1. The *Workers’ Compensation 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.
2. A Hearing Officer appointed by the President conducts the review. The parties have the right to appeal that decision to the Workers’ Compensation Appeal Tribunal, which is an appeal body independent of the Board of Directors.
3. Where compensation has been suspended or reduced for reasons outlined in subsection 8(1) of the Act, the worker may appeal the decision directly to the Appeal Tribunal.

PRINCIPLES OF THE REVIEW AND APPEAL PROCESS

- (a) The Hearing Officer is bound by the Act, the regulations and the policies of the Board of Directors.
- (b) 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.
- (c) Proceedings will be conducted according to the Rules of Procedure (Appendix A).



- (d) The Hearing Officer will endeavour to ensure that proceedings are open and accessible to all parties.
- (e) Proceedings will be conducted according to the principles of procedural fairness and natural justice.

REVIEWS AND APPEALS OF CLAIMS DECISIONS

- (a) Reviews of a decision concerning a claim for compensation under section 12 of the Act will be determined by a Hearing Officer under section 20 of the Act.
- (b) Decisions of the Hearing Officer may be appealed by a party to the Workers' Compensation Appeal Tribunal under section 21 of the Act.

NEW INFORMATION

- (a) Under the Act, a party who obtains new information concerning the issue under review in relation to their claim may submit that information to:
 - (i) the Adjudicator who made the initial decision; or
 - (ii) the Hearing Officer once a request for Review by Hearing Officer is filed.
- (b) When the Hearing Officer requests new information, he may adjourn the hearing and reconvene at a later date when the information has been obtained.

APPENDICES

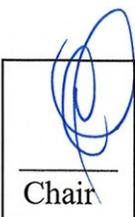
A - Rules of Procedure for Proceedings Before the Hearing Officer

FORMS

1. Request For Review by Hearing Officer
2. Authorization for Representation
3. Request for Disclosure
4. Employer Request for Disclosure
5. Request to Reschedule a Hearing
6. Application to Withdraw a Review or Appeal

REFERENCES (For Information Only)

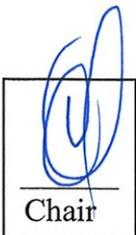
Yukon Workers' Compensation Health and Safety Board:



Policy Statement GC-05-01, Role of Appeal Panel Counsel
Policy Statement GC-04, Illiteracy
Policy Statement CL-44, Release of Claims Information to
Employers
Policy Statement CL-54, Merits and Justice of the Case
Policy Statement PL-03, Transition Policy – Amendments to the
Workers' Compensation Act

HISTORY

1. *Workers' Compensation Act*, SY 1992, c. 16, in force January 1, 1993.
2. Policy, Appeals Policy Statement, effective February 16, 1994.
3. Policy, Appeals Policy Statement, amended October 15, 1996; effective October 15, 1996.
4. An Act to Amend the *Workers' Compensation Act*, SY 1997, c. 26, in force December 11, 1997
5. Policy, Reviews and Appeals Policy Statement, amended April 29, 1999; effective June 1, 1999.
6. Policy, Reviews and Appeals Policy Statement, amended October 20, 1999; effective October 20, 1999.
7. An Act to Amend the *Workers' Compensation Act*, SY 1999, c. 23, in force January 1, 2000 and April 1, 2000.
8. Policy, Review and Appeals Policy Statement, amended July 18, 2001; effective July 18, 2001.
9. An Act to Amend the *Workers' Compensation Act* R.S.Y. 2002
10. Policy, Reviews And Appeals Policy Statement, approved August 2001, effective September 4, 2001.
11. Policy, Reviews and Appeals Policy Statement, effective September 4, 2001 revoked August 23, 2005.



APPENDIX "A"

Rules of Procedure

For proceedings before the

Hearing Officer

YUKON WORKERS' COMPENSATION HEALTH AND SAFETY BOARD

 Board Approval	
_____ Signature	_____ Date

Introduction

This document contains the Rules of Procedure for proceedings before a Hearing Officer. The Hearing Officer is bound by the Act, the regulations and the policies of the Workers' Compensation Health and Safety Board of Directors.

General Application of the Rules

- 1) The Rules will be interpreted to ensure proceedings are conducted fairly.
- 2) 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.

Definitions

- 3) In these Rules,
 - a) “**Act**” means the *Workers' Compensation Act* RSY 2002 and includes regulations enacted under the Act;
 - b) “**Administration**” means the staff of the Workers' Compensation Health and Safety Board;
 - c) “**Adjudicator**” means a person who makes decisions regarding entitlement to compensation;
 - d) “**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;
 - 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) “**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.

- g) **“Review”** means a claim review by a Hearing Officer under section 20 of the Act.

Delivery

- 4) 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 the Yukon or fourteen (14) days after the date of postmark if mailed outside of the 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.
- 5) 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

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

Request for Review by Hearing Officer

- 7) 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.

- 8) A Request For Review by Hearing Officer will be in the required form unless otherwise agreed by the Hearing Officer.

Notification and Scheduling

- 9) 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).
- 10) The Hearing Officer shall notify the parties by registered mail of the date, time and location of the hearing.
- 11) 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

- 12) The reply shall be in the required form unless otherwise agreed to by the Hearing Officer.
- 13) 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

- 14) 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.

- 15) 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 timeframe directed by the Hearing Officer.

Interpreters

- 16) 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

- 17) 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

- 18) Parties may choose one representative to act on their behalf in a proceeding by filing an Authorization for Representative form with the administration.
- 19) 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

- 20) 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.
- 21) The Administration shall deliver copies of written documents to all parties as soon as practicable.

New Information

- 22) Parties intending to present new information at a hearing shall deliver that information in writing to the Hearing Officer at least fourteen (14) days before the hearing.

- 23) Parties intending to present information by expert testimony shall deliver that information to the Board at least fourteen (14) days before the hearing, or within such other time as permitted by the Hearing Officer.
- 24) The Hearing Officer may postpone a hearing until satisfied that the parties have provided sufficient information about the issues they intend to present at the hearing.

Information Requests

- 25) 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.
- 26) 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.
- 27) The Administration shall deliver copies of the response to an information request to all other parties as soon as practicable.

Hearings

- 28) The Hearing Officer shall conduct a hearing after receiving a Request For Review by Hearing Officer.
- 29) 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.
- 30) All parties shall have an opportunity to make written and oral presentations.
- 31) 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

- 32) 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.

- 33) 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.
- 34) 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

- 35) The Hearing Officer may adjourn, postpone or relocate a hearing under the principles of procedural fairness and natural justice.
- 36) 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.
- 37) 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.
- 38) A party may make application to withdraw a claims review, and all requests must be in the required form.

Non-compliance

- 39) 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

- 40) 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 Board policies before making a claim decision.
- 41) The Hearing Officer shall, confirm, vary or reverse a claim decision made under section 12 of the Act.

- 42) 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.
- 43) A decision of the Hearing Officer may be appealed to the Workers' Compensation Appeal Tribunal.