



YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD

SUBJECT: GENERAL & CORPORATE

POLICY NO.: GC-05-02

BOARD APPROVAL:

APPROVAL DATE: August 30, 2005

BOARD ORDER NO.:

EFFECTIVE DATE: August 30, 2005

REVOKED

NOV 22 2005

POLICY STATEMENT

SECTION: **55, 58, 82, 108(h), 112, 113, 114, of the
*Workers' Compensation Act R.S.Y. 2002***

**15, 16, 17, 26, 27, 28, 45,
*Occupational Health and Safety Act R.S.Y. 2002***

POLICY: **APPEALS BEFORE THE BOARD OF DIRECTORS**

An Appeal Panel of the Board of Directors makes final decisions, subject to subsection 113(6) of the Act, for employer assessment and occupational health and safety matters.

The purpose of this policy is to provide a basic framework for the administration of the appeal process. The policy includes general information concerning appeals related to:

- employer assessments; and
- occupational health and safety matters.

The attached Appendix A contains the Rules of Procedure for a proceeding before an Appeal Panel of the Board of Directors.

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,

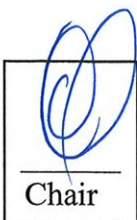
(a) **“Act”** means the *Workers' Compensation Act R.S.Y. 2002* and includes regulations enacted under the Act.

(b) **“Appeal”** means:

- (i) an appeal of an assessment decision under section 82 of the Act;
 - (ii) an appeal of an occupational health and safety matter under sections 17, 26, or 45 of the *Occupational Health and Safety Act*, RSY 2002;
 - (iii) a determination under subsection 55.5 of the Act.
- (c) **“Appeal Panel”** means an Appeal Panel of the Board of Directors established under subsection 113(1) of the Act.
- (d) **“Board of Directors”** means the members of the Workers’ Compensation Health and Safety Board’s Board of Directors appointed according to section 106 of the Act, and includes an Appeal Panel.
- (e) **“Occupational Health and Safety Act”** means the *Occupational Health and Safety Act* R.S.Y. 2002 and includes regulations enacted under that Act.
- (f) **“Party”** means a person who is allowed to appear and take part in a proceeding under the Act or the Occupational Health and Safety Act.
- (g) **“Reconsideration”** means the reconsideration of a decision made by an Appeal Panel of the Board of Directors on any matter within the jurisdiction of the Board of Directors.

GENERAL INFORMATION

1. Section 82 of the Act gives an employer the right to appeal to the Board of Directors any decision made by the board relating to assessments.
2. Section 55 of the Act permits any party to an action, on notice to all other parties to the action, to apply to the Board of Directors for a determination of whether the right of action is removed by the Act.
3. Section 112(5) of the Act gives the Board of Directors the authority and power to examine, enquire into, and hear any matter previously dealt with and gives it the power to rescind or vary any decision or order previously made.
4. Section 113(6) of the Act gives the Board of Directors the authority to stay a decision of an Appeal Panel and direct a new hearing before a new panel if it considers that the



Appeal Panel did not properly apply the Act or a policy of the board.

5. Under the *Occupational Health and Safety Act*, workers, employers or trade unions representing workers may appeal the following occupational health and safety matters to an Appeal Panel:
 - decisions;
 - orders or refusals to give orders;
 - administrative penalties.
6. Under section 28(2) of the *Occupational Health and Safety Act*, the Board of Directors may on its own motion reconsider any decision or order made by it or an Appeal Panel; and may vary or revoke the decision or order at any time within twenty one (21) days after the day on which the decision or order was made.
7. A party may apply to the Board of Directors for a reconsideration of a previous Appeal Panel decision.

The party must clearly set out the reasons for requesting the reconsideration. A reconsideration will only be granted when:

- the party has new substantive evidence sufficient to change the original Appeal Panel decision; or,
- the party can show that the Appeal Panel misinterpreted the relevant legislation or policy.

The request must be submitted on the approved form with the requested information. The request must be submitted within twenty-one (21) days of receiving the original Appeal Panel decision.

PRINCIPLES OF THE APPEAL PROCESS

- (a) The Board of Directors and Appeal Panels are bound by the Act, the regulations, the *Occupational Health and Safety Act* and the policies of the Board of Directors.
- (b) The decisions, orders, and rulings of an Appeal Panel of the Board of Directors shall always be based on the merits and justice of the case and be in accordance with the *Workers' Compensation Act* or the *Occupational Health and Safety*



Act, the regulations and the policies of the board. The standard of proof is the balance of probabilities.

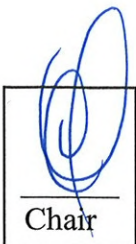
- (c) Proceedings will be conducted according to the Rules of Procedure; Appendix A.
- (d) The Board of Directors will endeavour to ensure that proceedings are open and accessible to all parties.
- (e) Proceedings will be conducted according to the principles of procedural fairness and natural justice.

APPEALS

An Appeal Panel of the Board of Directors determines appeals, including appeals of assessment decisions, determination of right of action, occupational health and safety matters and requests for reconsideration.

NEW INFORMATION

- (a) Under the Act, a party who obtains new information concerning an issue of appeal may submit that information to:
 - (i) the Assessment Officer who made the initial decision; or
 - (ii) the Appeal Panel once a Notice of Appeal is filed; or
 - (iii) the Workers' Compensation Health and Safety Board's Board of Directors if an Appeal Panel decision has been rendered.
- (b) For appeals under the *Occupational Health and Safety Act*, a party who obtains new information may submit that information to:
 - (i) the Safety Officer who wrote the original order or decision or who refused to write an order;
 - (ii) the Appeal Panel, once a Notice of Appeal is filed; or,
 - (iii) the Workers' Compensation Health and Safety Board's Board of Directors with a Request for Reconsideration once a decision has been rendered.



- (c) When an Appeal Panel requests new information, it may adjourn the hearing and reconvene at a later date when the information has been obtained.

APPENDICES

A - Rules of Procedure for the Workers' Compensation Health and Safety Board

FORMS

1. Notice of Appeal – of an Assessment decision
2. Notice of Appeal – of an Occupational Health and Safety decision
3. Authorization for Representative
4. Request for Disclosure
5. Application to Withdraw a Review or Appeal
6. Request to Reschedule a Hearing
7. Request for Reconsideration of Appeal Panel Decisions

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 CL-54 Merits and Justice of The Case
Policy Statement PL-03, Transitional Clause

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.



Chair

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 30, 2005.




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APPENDIX "A"

Rules of Procedure

For proceedings before the

Workers' Compensation Health and Safety Board of Directors

	
Board Approval	
_____ Signature	_____ Date



Introduction

This document contains the Rules of Procedure (the Rules) adopted by the members of the Workers' Compensation Health and Safety Board of Directors as allowed by the *Workers' Compensation Act*.

The Rules apply to the members of the Board of Directors concerning all proceedings before them involving determinations and appeals under the Act and appeals under the *Occupational Health and Safety Act, RSY 2002*.

In addition to these Rules, the Board of Directors is bound by the policies of the Board of Directors, the Act and the *Occupational Health and Safety Act*.

General Application of the Rules

- 1) Subject to the Act, these Rules will apply to:
 - a) an Appeal Panel, including appeals of:
 - i) assessment matters; and
 - ii) Occupational Health and Safety matters; and
 - iii) determinations of whether a right of action is removed by the Act.
 - b) members of the Board of Directors in the following matters;
 - i) reconsideration of Appeal Panel decisions concerning all other matters.
- 2) The Rules will be interpreted to ensure proceedings are conducted fairly.
- 3) The Board of Directors or the Appeal Panel may modify any provision or any time frame fixed by these Rules as long the modification does not prejudice a party or conflict with applicable law or policy.



Interpretation

- 4) In these Rules,
- a) “**Act**” means the *Workers' Compensation Act*, RSY 2002 and includes Regulations enacted under the Act;
 - b) “**Administration**” means staff of the corporation known as the Workers' Compensation Health and Safety Board;
 - 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) “**Appeal**” means matters contemplated by:
 - i) section 82 of the Act; and
 - ii) sections 17, 26 and 45 of the *Occupational Health and Safety Act*, and
 - iii) determinations contemplated by section 55 of the Act.
 - iv) reconsideration of a decision of an Appeal Panel.
 - e) “**Appeal Panel**” means an Appeal Panel of the Board of Directors;
 - f) “**Board of Directors**” means the members of the Workers' Compensation Health and Safety Board of Directors;
 - g) “**Hearing**” means a session held by an Appeal Panel to collect facts and make a determination;
 - h) “*Occupational Health and Safety Act, RSY 2002*” includes the Regulations enacted under it;
 - i) “**Party**” means a person who is allowed to appear and take part in a proceeding under the Act or the *Occupational Health and Safety Act*;



- h) **“Proceeding”** means:
- i) an appeal;
 - ii) an application for reconsideration of a matter as outlined in subsections 112 and 113 of the Act and section 28 of the *Occupational Health and Safety Act*;
 - iii) an application for a determination as outlined in section 55(5) of the Act.

Delivery

- 5) Written communication to and from an Appeal Panel 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.
- 6) Even though a document has been delivered according to Rule 5, 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

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

Notice from a Party

- 8) An Appeal Panel will not begin a proceeding until it receives written notice from a party or gives notice to a party. The notice from a party must indicate why the decision is incorrect and how it should be changed.
- 9) A notice will be in the required form unless otherwise agreed by the Appeal Panel.

Notification and Scheduling

- 10) The Appeal Panel will notify the parties by registered mail of the date, time and location of the hearing and will provide:
 - a) verification to the Appellant that the notice has been received;
 - b) to all other parties, a copy of the notice and a form for reply; and
 - c) copy of relevant information for appeal.
- 11) An Appeal Panel may reschedule a hearing at the request of a party. The request will be in the required form unless otherwise agreed by the Appeal Panel.

Reply to Notification

- 12) For hearings of matters under the *Occupational Health and Safety Act*, a party must reply within seven (7) days of being notified by the Appeal Panel. The reply will be in the required form unless otherwise agreed by the Appeal Panel.
- 13) For hearings of matters under the Act, a party must reply within ten (10) days of being notified by an Appeal Panel. The reply will be in the required form unless otherwise agreed by the .



- 14) The Appeal Panel will inform the parties of the names, addresses and fax numbers of the parties.

Rejection of a Notice of Proceeding

- 15) An Appeal Panel shall reject a notice of proceeding if the notice was filed after the time limitation expired, the person filing the notice is not legally authorized to do so, or the Appeal Panel does not have authority over the subject matter.
- 16) Before an Appeal Panel rejects a notice of proceeding, it shall explain its reasons in writing to the parties, and the parties will have the opportunity to make a written response within a timeframe directed by the Appeal Panel.

Interpreters

- 17) Interpreters will be provided as required in legislation. Interpreters may be provided for additional languages subject to availability, and requests for these interpretation services must be made at least thirty (30) days before the hearing.

Accommodation of Special Needs

- 18) 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 must be made at least thirty (30) days before the hearing.

Representatives

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



Pre-hearing Conferences

- 21) An Appeal Panel may request a pre-hearing conference for purposes including, but not limited to, simplifying and clarifying issues to be dealt with at the hearing and ensuring proper procedure is followed at the hearing.
- 22) An Appeal Panel may direct the parties to present their information in person or by telephone at a pre-hearing conference. The Appeal Panel may also require the party to follow up oral information given by telephone within such a period of time as directed.

Subpoenas

- 23) An Appeal Panel may issue a subpoena that shall be served at least seven (7) days before the hearing. An Appeal Panel may also consider an application by a party requesting the Appeal Panel to issue a subpoena, and the application must set out reasons for the request.

Supporting Written Information

- 24) Where an Appeal Panel determines it is of assistance to the proceedings, it may require parties to address any issues in writing within a time frame directed by the Appeal Panel.
- 25) Parties will deliver copies of their written information to all other parties at least fourteen (14) days before the hearing. The Appeal Panel may permit a time extension when requested by a party in writing, with reasons.

New Information

- 26) Parties intending to present new information at a hearing shall deliver that information in writing to the Appeal Panel and to other parties at least fourteen (14) days before the hearing.
- 27) Parties intending to present information by expert testimony shall deliver that information to the Appeal Panel and to other parties at least fourteen (14) days before the hearing, or within such other time as permitted by the Appeal Panel.
- 28) An Appeal Panel may postpone a hearing until it is satisfied that the parties have provided sufficient information about the issues they intend to present at the hearing.



Information Requests

- 29) An Appeal Panel may request information from a party, and shall deliver copies of the written request to all other parties.
- 30) A party may request information from another party, and shall deliver copies of the written request to the Appeal Panel and to all other parties.
- 31) All information requests shall:
 - a) enumerate consecutively each item of information requested; and
 - b) indicate an address or fax number for delivery of the information; and
 - c) be delivered no later than twenty-one (21) days before the hearing.
- 32) Within fourteen (14) days of receiving an information request or as directed by the Appeal Panel, a party shall deliver a response to the Appeal Panel and to all parties.
- 33) Within seven (7) days of receiving an information request, a party that disagrees with the information request may apply, in writing, to the Appeal Panel for a decision whether the request is valid.

Stays Pending Occupational Health and Safety Appeals

- 34) A party may seek a stay of a direction or order issued under the *Occupational Health and Safety Act*, while awaiting the outcome of an appeal. Application to the Board of Directors will be in writing, will explain why a stay should be ordered, and a copy of the application will be delivered to other parties.
- 35) The Board of Directors shall consider the request for a stay and will provide a written decision to all parties as soon as practicable, but no later than seven (7) days after hearing the application.
- 36) Other parties may respond to the application, within a timeframe directed by the Board of Directors, and explain why they believe the Board of Directors should allow or refuse a stay.



Hearings

- 37) A party may request either an oral hearing or a hearing by documentary review. When no preference is specified, the Appeal Panel shall determine the method of hearing.
- 38) All parties shall have an opportunity to make oral and written presentations.
- 39) Parties may:
 - a) present evidence and suggest how the information, law and policy should be interpreted; and
 - b) call witnesses to provide information and question any individual within the parameters of the hearing.

Supporting Information

- 40) An Appeal Panel 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.
- 41) An Appeal Panel may request or allow questioning on an affidavit. The Appeal Panel may reject an affidavit in dispute where it is not possible to question the person who produced it.
- 42) An Appeal Panel 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

- 43) An Appeal Panel may adjourn, postpone or relocate a hearing as long as this does not prejudice a party.
- 44) 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.



- 45) When no date is set for reconvening an adjourned hearing and, when three (3) months from the date of the adjournment the parties have not requested the Appeal Panel to reconvene, the Appeal Panel will reconvene the hearing.
- 46) A party may make application to withdraw an appeal, and all requests must be in the required form.

Decisions

- 47) In addition to information presented at the hearing, the Appeal Panel will consider the entire record in the Administration's possession, the Act or *Occupational Health and Safety Act*, and board policies in reaching its decision.
- 48) Where a decision cannot be reached, the Chair of the Appeal Panel shall report to the Board of Directors.
- 49) The Board of Directors will deliver a decision in writing, with reasons, according to the generally accepted benchmarks for quality decision writing, to all parties as soon as practicable.

Staying a Decision of an Appeal Panel

- 50) In relation to a claims or assessment matter, the Board of Directors may, on its own motion or on the application of a party, stay the decision of an Appeal Panel and direct a new hearing when it considers the Appeal Panel to have improperly applied the Act or policy.
- 51) In relation to any decision or order made by an Appeal Panel concerning an appeal under the *Occupational Health and Safety Act*, the Board of Directors may, on its own motion or the application of a party:
 - a) allow a stay, in whole or in part and on such conditions as are just, pending the outcome of the appeal;
 - b) confirm, vary or reverse the decision or order of the Appeal Panel at any time within twenty-one (21) days after the day on which the decision or order of the Appeal Panel was made.



Non-compliance

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

Communications with the Board of Directors

- 53) Members of the Appeal Panel and the Board of Directors shall not have contact with any party outside of a proceeding relating to any matter relevant to a proceeding.