

Chapter: Reconsiderations and Appeals

Legislative authority: sections 73-76, 153-156, 176-178

Prevention statement

Preventing injuries is one of the most important responsibilities in the workplace. The Workers' Safety and Compensation Act (the 'Act') establishes the responsibilities of all workplace parties to work together to ensure the physical and psychological health and safety of workers. When injuries do occur, workers and employers must continue to work together to facilitate an injured worker's early and safe return to health and work.

Purpose

This policy establishes a consistent and streamlined process for the reconsideration of board decisions that observes the principles of natural justice and procedural fairness.

Definitions

Appeal Tribunal means the appeal tribunal continued under Part 5 of the Act

board means the Workers' Safety and Compensation Board

board decision maker means an employee of the board or a person otherwise responsible for making decisions on behalf of the board

party mean a person such as a worker, employer or dependant of a deceased worker, supervisor, prime contractor, owner, supplier or proprietor who has a right under the Act to participate in the reconsideration of a board decision

reconsideration means a review by the board of a previous decision by the board

Workers' Advocate is an individual appointed under section 152 of the Act to advise or represent workers in relation to any claim for compensation

Policy statement

1. General

The board may, upon request, reconsider certain types of decisions that it has previously made. This policy applies to requests for reconsideration of:

- a. decisions or orders of the board relating to workplace health and safety under Part 3 of the Act;
- b. decisions of the board relating to claims for compensation under Part 4 of the Act;
- c. decisions of the board relating to assessments under Part 4 of the Act; and
- d. administrative penalties under Part 6 of the Act.

Certain board decisions are not subject to the reconsideration process. This policy does not apply to those types of decisions, which are as follows:

- e. decisions of the board made under section 54 of the Act relating to reprisal complaints (note: under the Act these decisions may be referred by the board to an arbitrator).
- f. decisions of the board made under section 71 of the Act relating to a variance from a regulation (note: under the Act these decisions of the board are final and are not subject to reconsideration or appeal).
- g. decisions of the board under section 154 of the Act relating to whether a cause of action is removed by Part 4 of the Act (note: under the Act these decisions may be appealed directly to the Appeal Tribunal).
- h. decisions of the board made under section 154 of the Act regarding an employer's request for access to information relating to a claim for compensation (note: under the Act these decisions may be appealed directly to the Appeal Tribunal).
- i. decisions that are administrative or incidental in nature.

All decisions of the board remain in effect, unless, by application by a party, the board decides to stay any part or all of that decision in accordance with the provisions of the Act. Stays are not available for compensation or assessment decisions. See section 3 below for information on when a stay can be requested.

Persons who are not satisfied with the reconsideration decision of the board may appeal the reconsideration decision to the Appeal Tribunal in accordance with the provisions of the Act.

Reconsideration decisions are final, unless they are reversed or varied by the Appeal Tribunal.

2. Process for reconsiderations - general

Board decisions are made using an inquiry model that is intended to be informal and non-adversarial. Under this model, board decision makers are responsible for obtaining sufficient relevant information on which to base a decision. Board decision makers may request information from workers, employers, health care providers and others.

Prior to requesting the reconsideration of a board decision, a person should consider:

- a. contacting the original board decision maker who made the decision, to discuss the reasons for the decision and any additional information that the person may wish the decision maker to consider;
- b. requesting disclosure of the information contained in the records that are in the board's possession relating to the decision. See policy 7.2 Access to Information and Protection of Privacy and policy 6.2 Employer Access to Claim Information for additional information;
- c. contacting the Workers' Advocate for advice and assistance relating to the person's claim for compensation; and
- d. referring to the board's website to obtain further information (www.wcb.yk.ca).

If the person's concerns are not resolved through discussion with the original board decision maker, they may submit a written request to the board for reconsideration of the decision, in the required form within the mandatory time limit established under the Act.

The decision will be reconsidered by a board decision maker who has expertise to decide the matter and who is not the original board decision maker.

2.1 Written requests for reconsideration

A request for reconsideration must be in writing, must be completed using the required form and must contain the following information:

- a. identification of the decision to be reconsidered, including the date;
- b. the reasons why the decision should be reconsidered;
- c. the outcome or alternate decision that is being requested; and
- d. the contact information of the person requesting the reconsideration, including their phone number, mailing address and email address (if applicable).

2.2 Preliminary issues

It may be necessary for the board decision maker to decide preliminary issues, including, but not limited to, whether the requirements of a valid request have been met, whether the decision is one that the board can reconsider, whether the individual is authorized to request a reconsideration, or be a party, and whether the request for reconsideration was received within the required time limit.

2.3 Method of reconsideration

The reconsideration process will be a documentary review of the decision, including the review of any additional information, evidence and submissions provided by any of the parties. In exceptional circumstances, and at the discretion of the board decision maker, oral submissions may be permitted.

During this process, the parties to the reconsideration of the decision have the right to:

- a. provide additional information, evidence, and submissions to the board; and
- b. be informed of and respond to new information, evidence, or submissions made by another party within reasonable timeframes.

2.4 Notice of intent to participate

Once the board decision maker determines that the decision can be reconsidered under the Act, the board will notify the parties involved in the reconsideration in writing informing them of their right to participate in the reconsideration of the decision, and time limits to respond. A party must notify the board decision maker of their intent to participate within the time limits set by the board.

If a party does not respond to the board within the required time, the person will not be considered a party and will not receive any further notice.

2.5 Timeframe for decisions

The board decision maker must make a written decision within 45 days after the board has received all of the information necessary to make the decision. This timeframe may be extended, however, in complex or exceptional cases.

2.6 Representatives

It is not necessary for an applicant or a party to have a representative, however, a person may choose a representative to act on their behalf. The applicant or party must provide the board an Authorization for Representative form signed by them, authorizing the representative to act on their behalf.

A person may change their representative at any time by filing a new Authorization for Representative form.

The Workers' Advocate may represent workers or families of deceased workers in the reconsideration of decisions relating to claims for compensation. The Authorization for Representative form must be provided. Under the Act, the Workers' Advocate has a mandate to:

- a. advise workers and dependents of deceased workers on the intent, process and procedures of the compensation system, including the administration of the regulations and policies;
- b. advise workers and dependents of deceased workers on the effects and meaning of decisions with respect to their claims for compensation; and
- c. assist or, at their request, represent a worker or a dependent of a deceased worker in respect of any claim for compensation, including communicating with the board on an initial determination or reconsideration and appearing before the Appeal Tribunal.

2.7 Decisions

Decisions must be based on the merits and justice of each particular case and must be made in accordance with the Act, regulations, and policies and codes of practice of the board.

Decisions must include the reasons for the decision.

The board may confirm, vary or reverse the board decision being reconsidered.

3. Reconsideration of decisions or orders relating to workplace health and safety

3.1 Persons who may request a reconsideration

The following persons can request the reconsideration of a decision or order of the board relating to workplace health and safety:

- a. the person alleged to have contravened Part 3 of the Act or the regulations, or the person with respect to whom a decision or order has been made (e.g., employer, prime contractor, supervisor, self-employed person, owner or supplier);
- b. the complainant, if any (including a trade union representing a worker); or
- c. any other person the board specifies.

3.2 Time limits

A request to reconsider a decision or order relating to the refusal of unsafe work must be made within 7 days after the decision date.

A request to reconsider a decision or order relating to workplace health and safety must be made within 21 days after the decision date.

3.3 Stay of decision being reconsidered

All decisions of the board remain in effect, unless, by application by a party, the board decides to stay any part or all of that decision in accordance with the provisions of the Act.

On written application to the board, the board may stay a decision or order of the board relating to workplace health and safety on any conditions that they determine, until the reconsideration decision has been made and any appeal to the Appeal Tribunal has been concluded.

The written application must include the reasons why the stay is being requested, including any additional evidence to be considered.

The board decision maker will provide a copy of the written application to the other parties to the reconsideration decision, and will permit written submissions in response.

The board decision maker will issue a written decision, with reasons, which will be provided to the parties. This decision is final and cannot be appealed to the Appeal Tribunal.

4. Reconsideration of decisions relating to claims for compensation

4.1 Persons who may request a reconsideration

Workers, dependants of deceased workers, and employers can request a reconsideration of a decision of the board relating to a claim for compensation.

4.2 Time limits

A request to reconsider a board decision relating to a claim for compensation must be made within 1 year after the date of decision.

5. Reconsideration of decisions relating to assessments

5.1 Persons who may request a reconsideration

Employers or other affected persons (such as a proprietor or partner) can request a reconsideration of a decision of the board relating to assessments.

5.2 Time limits

A request for reconsideration of a board decision relating to an assessment matter must be made within 90 days after the date of the decision.

6. Reconsideration of administrative penalties

6.1 Persons who may request a reconsideration

A person on whom an administrative penalty has been imposed can request a reconsideration of the imposition of an administrative penalty.

6.2 Time limits

A request for reconsideration of an administrative penalty must be made within 21 days after the date on which the person is served with the notice of the administrative penalty.

6.3 Stay of administrative penalty being reconsidered

On written application to the board by the person on whom an administrative penalty has been imposed, the board may stay all or any part of that penalty on any conditions that they determine, until the reconsidered decision has been made and any appeal to the Appeal Tribunal has been concluded.

The written application must include the reasons why the stay is being requested, including any additional evidence to be considered.

The board decision maker will provide a copy of the written application to the other parties to the reconsideration decision (if any), and will permit written submissions in response.

The board decision maker will issue a written decision, with reasons, which will be provided to the person on whom the administrative penalty has been imposed. This decision is final and cannot be appealed to the Appeal Tribunal.

7. Appeals to the Appeal Tribunal

A person who is dissatisfied with a reconsideration decision may appeal a reconsideration decision to the Appeal Tribunal in accordance with the Act and within the following time limits.

7.1 Decisions relating to workplace health and safety

An appeal of a reconsideration decision relating to a work refusal must be made within 7 days after the date of the reconsideration decision.

An appeal of other reconsideration decisions relating to workplace health and safety must be made within 21 days after the date of the reconsideration decision.

7.2 Decisions relating to claims for compensation

An appeal of a reconsideration decision relating to a claim for compensation must be made within one year after the date of the reconsideration decision.

7.3 Decisions relating to assessment matters

An appeal of a reconsideration decision relating to an assessment matter must be made within 90 days after the date of the reconsideration decision.

7.4 Decisions related to administrative penalties imposed by the board

An appeal of a reconsideration decision relating to an administrative penalty must be made within 21 days after the date of the reconsideration decision.

8. Withdrawal of a request for reconsideration

The person requesting the reconsideration of a board decision may withdraw the request, in writing, at any time before the reconsideration decision has been made.

9. Non-compliance and abandonment of a request for reconsideration

Where a party fails to comply with this policy or co-operate with the board, the decision maker may give any direction they consider appropriate, including but not limited to, setting a date for compliance by the party when necessary or declaring the proceeding abandoned.

History

- AP-01 Overview of Appeals, effective January 20, 2009, revoked July 1, 2022
- AP-02 Limitation Periods for Claims Reviews & Appeals, effective July 1, 2011, revoked July 1, 2022
- AP-02 Limitation Periods for Claims Reviews & Appeals, effective July 1, 2008, revoked July 1, 2011
- AP-03 New Evidence at Reviews and Appeals, effective January 1, 2014, revoked July 1, 2022
- AP-03 New Evidence at Reviews and Appeals, effective July 1, 2008, revoked January 1, 2014