

REVIEW DIVISION

PRACTICES AND PROCEDURES SUMMARY OF UPDATES

Effective Date: June 21, 2010

Item	Title	Update
B2.4.2.1	Special Circumstances	<p>Section 96.2(4) of the <i>Act</i> provides that the Chief Review Officer may grant an extension of the 90 day time limit to request a review if</p> <ul style="list-style-type: none"> (a) special circumstances existed which precluded the filing of a request for review within the 90-day time period, and (b) an injustice would otherwise result. <p>New paragraphs (a) to (f) set out the guidelines for common situations considered when determining whether special circumstances precluded an applicant from filing a timely request for review. These are the personal circumstances of the applicant, the acts or omissions of representatives, the failure to copy representatives with the decision, new evidence received since the decision, the failure to advise the applicant of appeal rights, and clear errors in the decision. These guidelines are mostly already published in decisions on individual cases. There is also a paragraph that addresses whether it is a special circumstance when the decision for which review is sought is based on an error.</p>
B2.4.2.2 (New section)	Precluded	<p>The amendment states the existing practice that “precluded” is interpreted as something less than “prevented”, but similar to “hindered” or “made difficult.”</p>
B2.4.2.3 (Formerly B2.4.2.2)	Injustice	<p>The existing practice states that injustice refers to the significance of the decision to the applicant and the degree of prejudice if it is not changed. This practice has been revised to include the factors previously considered when exercising what was thought to be a residual discretion. The main factor here is the overall delay in</p>

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		<p>requesting a review after the expiry of the time limit and the applicant's reasons for this. The new practice adds some detailed guidelines as to what factors are considered in relation to the delay and how to weigh the factors when more than one applies.</p> <p><i>The change in practice is an interim guideline because is based on a BC Supreme Court decision (Kerton v Workers' Compensation Appeal Tribunal, May 5, 2010) and this decision is under appeal. The court considered WCAT decisions interpreting s. 243(3) of the Act, which confers on WCAT the discretion to grant an extension of time to appeal. The judge found that WCAT's interpretation, which was that WCAT had a residual discretion to deny an extension of time when the two statutory criteria of "special circumstances" and "injustice" had been met, was incorrect. In paragraph 93, the judge commented "Perhaps the factors that WCAT has considered in determining whether to exercise this 'residual discretion' are more properly considered in determining whether the two statutory criteria are met". Since section 96.2(4) of the Act and the Review Division's practice were similar to the WCAT provisions and the Board was a party to the court proceeding, the Review Division has changed its prior practice in line with the judge's comment.</i></p> <p>There are also amendments that deal with how injustice will be considered if the Board decision was based on an error.</p>
B2.4.2.4 (Formerly B2.4.2.3)	Discretion of Chief Review Officer	Existing practice deleted pending appeals of the Kerton Decision (See update above regarding Item B2.4.2.3)
B2.4.2.5 (Formerly B2.4.2.4)	Process for requesting extension	The amendment incorporates the existing practice that no participants other than the applicant are included in the process for requesting an extension of time. This is in keeping with the need for timeliness. The parties are included in the review itself if the extension is granted.

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B2.4.2.6 (new section)	Reconsideration of decisions on extension of time application	The amendment includes the existing practice of the Chief Review Officer to, upon request, consider again and make a new decision on a previously denied request for an extension of time.