



WORKING TO MAKE A DIFFERENCE

REVIEW DIVISION

PRACTICES AND PROCEDURES

May 1, 2008

INTRODUCTION

The Review Division of the Workers' Compensation Board (the "Board") has authority under sections 96(6) and 96.2 to 96.5 of the *Workers Compensation Act* (the "Act") to review decisions in specific cases made by officers in the Board's Worker and Employer Services Division.

These decisions cover the following main areas:

- (a) whether a claim for compensation should be allowed, the amount and duration of compensation benefits, including vocational rehabilitation and medical assistance, and how the costs of that claim should be allocated,
- (b) the obligation of employers to pay assessments to the Board, and the amount of those assessments, and
- (c) whether employers have violated the prevention provisions of the *Act* and regulations, whether a variance should be given from a provision of a regulation, a certificate awarded to a first aid attendant or similar person should be cancelled or suspended and whether an administrative penalty should be imposed on an employer.

In conducting reviews of these decisions, the Review Division has three main objectives:

- (a) to provide a simplified and flexible process for obtaining within the Board an independent review of a specific decision made under the *Act*,
- (b) to be part of the Board's overall strategy to develop and maintain consistent, predictable and quality decision-making, including a timely information loop between the Review Division and the Board's senior management, and
- (c) to provide final resolution to disputes with Board decisions within the required statutory timeframes.

The Review Division is independent of the other Divisions of the Board that make decisions under the *Act*. The Chief Review Officer, who is in charge of the Review Division, reports directly to the President and Chief Executive Officer of the Board with respect to the quality of decisions. For administrative purposes the Chief Review Officer reports to the Vice-President, Review and Investigations. The Chief Review Officer appoints Review Officers who conduct most of the reviews carried out by the Review Division.

This Manual sets out the practices and procedures of the Review Division established pursuant to section 96(8) of the *Act*. The Manual is in three main parts.

1. **Part A** sets out the general practices and procedures that are applicable to most reviews.
2. **Part B** contains statements and information on particular topics that may arise in individual cases.¹

¹ A Glossary in Item C1 to this Manual sets out the meaning of some common terms used in this Manual and in connection with the Review Division generally.

REVIEW DIVISION - PRACTICES AND PROCEDURES

3. **Part C** contains the Appendices.

The decisions that are subject to review are made by a wide variety of processes and by persons of different areas of expertise. In particular, there are differences amongst the processes followed for compensation, assessment and prevention matters. These differences will be reflected to some extent in the processes followed by the Review Division for different matters.

The changes to the workers' compensation appeal system, including the statutory review function carried out by the Review Division, took effect on March 3, 2003. The prior appeal system, and when requests for review can be submitted for pre-March 3 decisions, are summarized in Appendix C2 of this Manual.

REVIEW DIVISION - PRACTICES AND PROCEDURES

A.	GENERAL PRACTICES AND PROCEDURES.....	A-1
A1.	PRIOR TO MAKING A REQUEST FOR REVIEW	A-1
A2.	INITIATING A REVIEW	A-2
A2.1.	What decisions may be reviewed?	A-2
A2.2.	Who may request a review?	A-2
A2.3.	Representatives.....	A-3
A2.4.	When can a request for review be made?	A-3
A2.5.	How is a request for review made?	A-3
A2.6.	Parties to the review	A-4
A2.7.	Disclosure	A-4
A2.8.	Withdrawal/Abandonment of a review	A-5
A2.9.	Determination of Preliminary Matters	A-5
A3.	CONDUCT OF REVIEW.....	A-7
A3.1.	Determining how the review will be conducted.....	A-7
A3.2.	Read and review.....	A-7
A3.3.	Read and review with additional inquiries.....	A-7
A3.4.	Read and review with an oral hearing	A-7
A3.5.	Written submissions.....	A-8
A3.6.	New matters arising.....	A-8
A3.6.1.	New evidence	A-8
A3.6.2.	New issues	A-9
A3.7.	Evidence.....	A-9
A3.8.	Alternative dispute resolution.....	A-9
A3.9.	Time limit on completing review.....	A-9
A4.	DECISION ON REVIEW.....	A-10
A4.1.	Role of Review Officers in making decisions.....	A-10
A4.2.	Application of Board policy	A-11
A4.3.	Form of decision	A-12

REVIEW DIVISION - PRACTICES AND PROCEDURES

A5.	POST DECISION MATTERS	A-13
A5.1.	Requests for clarification	A-13
A5.2.	Reconsideration of Review Division Decisions.....	A-13
A5.3.	Appeals of Review Division Decisions.....	A-13
A5.4	Publication of Review Division Decisions.....	A-14
B.	DETAILED PRACTICES AND PROCEDURES ON SPECIFIC ISSUES	B-1
B1.	PRIOR TO MAKING A REQUEST FOR REVIEW	B-1
B1.1.	Decisions not supported by written reasons	B-1
B2.	INITIATING A REVIEW	B-2
B2.1.	What decisions may be reviewed?	B-2
B2.1.1.	Administrative or Incidental decisions.....	B-2
B2.1.2.	Reconsideration decisions.....	B-3
B2.1.3.	Reopenings.....	B-3
B2.1.4.	Prior review/appeal decision.....	B-3
B2.1.5.	Decisions not communicated in a letter	B-4
B2.1.6.	Prevention Decisions	B-4
B2.1.7.	Assessments/Relief of costs.....	B-4
B2.1.8.	Refusals to make decisions	B-6
B2.2.	Who may request a review?	B-6
B2.2.1.	Compensation decisions.....	B-6
B2.2.2.	Assessment decisions	B-7
B2.2.3.	Prevention decisions.....	B-7
B2.2.4.	Federal employees	B-7
B2.3.	Representatives.....	B-8
B2.3.1.	Forms of Authorization.....	B-8
B2.3.2.	Standard of Conduct for Representatives.....	B-9
B2.4.	When can a request for review be made?	B-9
B2.4.1.	Calculating the time limit for requesting a review	B-9
B2.4.2.	Extensions of the time limit.....	B-10
B2.4.2.1.....	Special Circumstances	B-10

REVIEW DIVISION - PRACTICES AND PROCEDURES

B2.4.2.2.Injustice	B-10
B2.4.2.3.Discretion of Chief Review Officer	B-11
B2.4.2.4.Process for requesting extension	B-11
B2.5.	How is a request for review made?	B-11
B2.6.	Parties to a review	B-11
B2.6.1.	Employer out of business	B-11
	B2.6.1.1.Successor companies	B-12
	B2.6.1.2.Deemed employers	B-12
B2.6.2.	Prevention reviews	B-12
B2.7.	Disclosure	B-13
B2.8.	Withdrawal/Abandonment of a review	B-13
B2.9.	Determinations of preliminary matters	B-13
B2.9.1.	Stays or suspensions of decisions under review	B-13
B3.	CONDUCT OF REVIEW.....	B-15
B3.1.	Determining how the review will be conducted.....	B-15
B3.2.	Read and review	B-15
B3.3.	Read and review with additional inquiries.....	B-15
B3.4.	Read and review with an oral hearing	B-16
B3.4.1.	Eligibility for oral hearing.....	B-16
B3.4.2.	Process for making decision on oral hearing.....	B-16
B3.4.3.	Scheduling and postponements	B-16
B3.4.4.	Late appearances or failures to appear	B-17
B3.4.5.	Witnesses	B-18
B3.4.6.	Observers	B-19
B3.4.7.	Interpreters	B-19
B3.4.8.	Hearing objective and process	B-19
B3.4.9.	Adjournments.....	B-20
B3.4.10.	Disruptive Behaviour during the Conduct of a Hearing.....	B-20
B3.4.11.	Record of the hearing	B-20
B3.4.12.	Materials obtained during and after hearing	B-21
B3.5.	Written submissions.....	B-21
B3.6.	New matters arising	B-22

REVIEW DIVISION - PRACTICES AND PROCEDURES

B3.6.1.	New evidence	B-22
B3.6.2.	New issues	B-22
B3.7.	Evidence	B-24
Subpoenas	B-24	
B3.7.1.	Expert Evidence (<i>Evidence Act</i>)	B-24
B3.8.	Alternative dispute resolution.....	B-26
B3.9.	Time limits on reaching decisions.....	B-26
B3.9.1.	Suspensions under section 96.4(5)	B-26
B3.9.2.	Extensions under section 96.4(7)	B-28
B3.10.	Role of Board Officers in Reviews	B-28
B4.	DECISION ON REVIEW.....	B-31
B4.1.	Role of Review Officers in making decisions.....	B-31
B4.2.	Application of Board policy	B-31
B4.3.	Form of decision	B-31
B4.4.	Referrals back to the initial decision maker	B-31
B4.5.	Costs and expenses	B-31
B5.	POST DECISION MATTERS	B-34
B5.1.	Requests for clarification	B-34
B5.2.	Reconsideration of Review Division Decisions.....	B-34
B5.2a.	Reconsideration under the Common Law	B-34
B5.2b.	Reconsideration under the <i>Act</i>	B-35
B5.2.1.	Reconsideration at the Chief Review Officer's initiative.....	B-35
B5.2.2.	Reconsideration on application by a party.....	B-35
B5.2.3.	Reconsideration process	B-36
C.	APPENDICES.....	C-1
C1.	GLOSSARY OF TERMS	C-1
C2.	PRE-MARCH 3, 2003 DECISIONS	C-3
C2.1.	Prior appeal system	C-3
C2.2.	Transitional provisions	C-3
C2.2.1.	Compensation Decisions	C-3

REVIEW DIVISION - PRACTICES AND PROCEDURES

C2.2.2.	Prevention Decisions	C-4
C2.2.3.	Assessment Decisions.....	C-4

REVIEW DIVISION - PRACTICES AND PROCEDURES

A. GENERAL PRACTICES AND PROCEDURES

Part A is intended to set out the general practices and procedures applicable to most cases.

A1. PRIOR TO MAKING A REQUEST FOR REVIEW

With some exceptions discussed below, Board decisions are normally communicated in a letter or other document that includes an explanation of the reasons for the decision.

An affected person who is not satisfied with the decision may wish to obtain more information before deciding whether to request a review. The person may wish to:

- (a) contact the decision maker to obtain written clarification of the decision,
- (b) request disclosure of the Board's file prior to the submission of a request for review or appeal (in some situations, this may be subject to restrictions imposed by the *Freedom of Information and Protection of Privacy Act*),
- (c) consult with a representative (the Provincial Government has appointed Workers' Advisers and Employers' Advisers to provide free advice to workers and employers related to the Workers' Compensation system),
- (d) visit the Board's internet site at <http://www.worksafebc.com> for information on appeals.

If a person directly affected by a Board decision wishes to obtain a change in the Board's decision, he or she will normally have to request a review under the process discussed in this Manual. In a few situations, the Board's decision must be appealed directly to the Workers' Compensation Appeal Tribunal ("WCAT"). (See Item B2.1 of this Manual.)

Some Board decisions, particularly relating to prevention and assessment matters, take the form of notices or letters that do not contain written reasons. In such situations, the affected party should obtain written reasons from the Division before requesting a review. If the party does not request written reasons before requesting a review, the Review Division may request a statement of written reasons. (See Item B1 of this Manual.)

The *Act* authorizes a Board division to reconsider its decisions on its own initiative. This authority ceases as soon as a request for review is submitted or, except for prevention decisions and certain other limited situations, within 75 days of the decision being made. [Sections 96(4)-(5) and 113(2)]²

² See the reconsideration policies in the *Rehabilitation Services and Claims Manual* - Chapter 14, *Prevention Manual* - D2-113-1 and the *Assessment Manual* - AP1-96-1

REVIEW DIVISION - PRACTICES AND PROCEDURES

A2. INITIATING A REVIEW

Before the Review Division can review a Board decision,

- (a) the decision must be made in a specific case and be of a type that the Review Division is allowed to review under the *Act*,
- (b) the person concerned must be directly affected by the decision and fall within a category of persons listed in the *Act*, and
- (c) the person concerned must submit a written request for review containing sufficient information, and the written request must be received within the time limit specified in the *Act*.

These requirements are discussed below and in more detail in Item B2 of this Manual.

A2.1. What decisions may be reviewed?

Most decisions made by Board officers on individual compensation, prevention and assessment matters are reviewable. The main exceptions are decisions concerning:

- (a) applications for the reopening of claims,
- (b) discriminatory action complaints,
- (c) an employer's assessment rate except to the extent it is affected by experience rating,
- (d) an employer's Industry Group or Rate Group for assessment purposes, and
- (e) allocations of amounts to and from classes, subclasses and reserves for assessment purposes, except for relief of costs applications by individual employers under sections 39(1)(b), (d) and (e) of the *Act* and cost transfer applications under section 10(8) of the *Act*. [Section 96.2(1)-(2)]

The first two items on this list are appealable directly to WCAT. (See Item B2.1 of this Manual.) There is no formal right of review or appeal on the other items. Concerns regarding decisions on these matters should be addressed to the Board's Finance Division.

A2.2. Who may request a review?

A worker who is directly affected may request a review of a claims or a prevention decision. An employer who is directly affected may request a review of a claims, prevention or assessment decision. The *Act* also allows certain other persons to request reviews of different types of decisions (see section 96.3 and Item B2.2 of this Manual).

REVIEW DIVISION - PRACTICES AND PROCEDURES

A2.3. Representatives

It is not necessary for an applicant or party to a review to have a representative. However, a party to a review may decide to be represented by a person of their choosing. The representative must have a signed, written authorization in a form acceptable to the Review Division.

A2.4. When can a request for review be made?

A request for a review must be made within 90 days after the Board's decision or order was made. [Section 96.2(3)]

The Chief Review Officer may extend this time period in certain situations. [See section 96.2(4) and Item B2.4 of this Manual.]

A2.5. How is a request for review made?

The request for review must be in writing and normally be signed by the applicant. The Board provides a "Request for Review" form that can be obtained from its internet site at <http://www.worksafebc.com>. Proper completion, including the applicant's signature on this form will ensure that all the information required to start a review is provided to the Board. This will expedite the progress of the review.

The Review Division may accept a signed letter from the applicant in place of the form. If the letter does not contain all the required information, the Review Division will request further information from the applicant.

A review request may be rejected if the applicant does not provide sufficient information within the 90-day period allowed for requesting a review. The application must, at a minimum, allow the Review Division to identify the name and address of the person requesting the review and the decision that the applicant wishes to have reviewed. The applicant should also provide a clear statement of:

- (a) the reasons for objecting to the decision,
- (b) whether the applicant will be submitting further information and when, and
- (c) the outcome or alternate decision that the applicant is seeking.

The form or letter can be sent to the Review Division at **REVIEW DIVISION, WorkSafeBC, PO BOX 2071, STN TERMINAL, VANCOUVER, BC, V6B 3S3**. The form can also be faxed to the Review Division at 604-232-7747.

Once it receives a request for review, the Review Division will send written confirmation of receipt and provide the applicant with a reference number. If an applicant does not receive such confirmation within three weeks, they should contact the Review Division to verify that the

REVIEW DIVISION - PRACTICES AND PROCEDURES

request was received. If the request for review was submitted outside the permitted 90-day period, the Review Division may take longer to respond.

A2.6. Parties to the review

A decision under review may affect persons other than the applicant. The Review Division will forward a “Notice to Participate” to persons that it considers to be affected by the decision under review. Affected persons will have 15 days to complete and return the “Notice to Participate” form to the Review Division if they wish to be a party to the review.

A party’s failure to return the Notice to Participate within 15 days does not bar that party from future participation in the review. At the Review Division’s discretion, the party may still participate. In exercising this discretion, the Review Division considers such factors as the reason the party did not return the Notice to Participate on time, as well as the time remaining on the review. A ground for refusing to allow a party to participate could arise, for instance, where the party frequently makes late requests to participate. Once a party is added as respondent to the review, disclosure is provided.

“Notice to Participate” forms are routinely sent to the employer when a worker requests a review of a claims decision and likewise to the worker if the employer seeks a review of a claims decision that affects the worker. These forms may also be sent out in reviews of certain assessment and prevention decisions.

If a person considers that he or she should be party to a review and is not sent the form by the Review Division, he or she may obtain the form from the Board’s internet site or from any Board office and submit it to the Review Division. On receipt of the completed form or a letter with all the required information, the Review Division will determine whether the person should be recognized as a party.

The parties do not have any onus to prove that the decision in question should be either confirmed or varied, as the case may be. Rather, their role is to provide the reasons for which they believe the original decision is correct or incorrect, any additional evidence they can readily obtain, and to generally assist the Review Division in ensuring it is aware of all the evidence, law and policy material to the issues under review. In conducting the review, the Review Division is not restricted to obtaining information from the parties. It can contact any person that it considers may have relevant information.

The Board division that made the decision under review is not considered a party to the review. However, as explained in Item B3.10 of this Manual, the division may assist the Review Division by providing any clarification or additional information required or requested by the Review Officer.

A2.7. Disclosure

As soon as practicable after a request for a review is filed, the Board must provide the parties to the review with a copy of its records respecting the matter under review. [Section 96.2(6)]. If a

REVIEW DIVISION - PRACTICES AND PROCEDURES

party to the review has previously received disclosure of the Board's file, the party will be provided with copies of any documents received after the date of that previous disclosure.

As discussed in Items A3.5 and A3.6 of this Manual, submissions received from parties, or additional information obtained by the Review Officer in connection with the review, may also be disclosed in the course of the review.

Aside from the disclosure of information required by the *Act* and the rules of natural justice, the Review Division is subject to the *Freedom of Information and Protection of Privacy Act*. In addition, section 95 of the *Workers Compensation Act* limits the purposes for which persons can use information they receive from the Board in connection with a review.

A2.8. Withdrawal/Abandonment of a review

An applicant may withdraw a request for review at any time before the review has been assigned to a Review Officer. After the review has been assigned, the Review Officer will consider any request for withdrawal. The Officer will normally grant the request, but the Officer has the discretion to decline it. For example, where there is evidence of fraud or misrepresentation by the applicant, the Review Officer may refuse a withdrawal. Similarly, where the evidence indicates that there was an error of law or policy in the decision under review, the Officer may refuse a withdrawal request.

The Review Division has a discretion to reinstate withdrawn requests for review. In exercising this discretion, the Review Division considers the reasons for the withdrawal and request for reinstatement, whether there was undue delay in seeking reinstatement and any other relevant factors.

As provided in section 96.4(3)(b) of the *Act*, a review may be deemed abandoned if an applicant fails to make a submission in the time allowed. The term "submission" is understood in a broad sense to include a party's response to a request by the Review Division for information required to begin or continue a review. For instance, it may include a response to a request for representative authorization or documentation relating to the status of a worker's estate, such as a statutory declaration, Letters Probate or Letters of Administration. (See also Item A3.5 of this Manual.)

A2.9. Determination of Preliminary Matters

It may be necessary for the Chief Review Officer or a Review Officer to make a formal determination concerning preliminary matters, including whether the requirements of a valid request for review have been met.

Preliminary issues include:

- (a) Whether the decision is one that the Review Division can review. (See Item B2.1 of this Manual.)

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (b) Whether a person is authorized to request a review or be a party to a review. (See Items B2.2 and B2.6 of this Manual.)
- (c) Whether the request for review was received within the 90-day time limit or the time limit should be extended. (See Item B2.4 of this Manual.)
- (d) Whether the decision under review should be stayed or suspended during the review. (See item B2.9.1 of this Manual.)
- (e) Whether the 150-day time period for issuing a review decision should be suspended to allow the Review Officer to deal with a related matter. (See Item B3.9.1 of this Manual.)
- (f) Whether the Chief Review Officer should extend the 150-day time period for making a decision due to the complexity of the proceedings or matter. (See Item B3.9.2 of this Manual.)

Before making this decision, a short period of up to 14 days may be allowed for the parties to make written or oral submissions, but will aim to determine these issues expeditiously.

REVIEW DIVISION - PRACTICES AND PROCEDURES

A3. CONDUCT OF REVIEW

Subject to any Board practices and procedures for the conduct of a review set out in this Manual, a Review Officer may conduct a review as the Officer considers appropriate to the nature and circumstances of the decision or order being reviewed. [Section 96.4(2)]

A3.1. Determining how the review will be conducted

The Review Officer must first consider the available information and then determine the issues under review and the method by which the review will be conducted. There are three main methods:

- (a) Read and review.
- (b) Read and review with additional inquiries.
- (c) Read and review with an oral hearing.

Each of these methods is discussed further below. In all cases, the Review Officer will have the discretion to meet or talk to the parties for the purpose of developing a better understanding of the issues and determining the process to be followed.

A3.2. Read and review

A read and review involves the Review Officer reading the Board's file together with any written submissions from the parties to the review.

A3.3. Read and review with additional inquiries

In addition to the read and review, the Review Officer may request additional information from a party or other person. The request may be made either in writing or orally. The additional information may be obtained over the telephone or in a meeting.

A3.4. Read and review with an oral hearing

The Review Officer may, on his or her own initiative or at the request of a party, agree to hold an oral hearing at which the parties meet together with the Review Officer and provide oral evidence and submissions. This method will be used in exceptional cases in the circumstances discussed in Item B3.4.1 of this Manual.

REVIEW DIVISION - PRACTICES AND PROCEDURES

A3.5. Written submissions

A review will usually involve obtaining written submissions from the parties. When a request for review is received, the standard procedure for reviews of compensation decisions is for the Review Division to:

- (a) acknowledge receipt and advise the applicant that he or she has 34 days to provide any further written information and submissions,
- (b) forward a copy of the information received from the applicant to any other party to the review and allow 34 days to respond, and
- (c) allow the applicant a further 14 days to respond to any comments from the other parties.

These times have been adjusted to consider time required for typical mailing and file disclosure. Since the Review Division provides the file disclosure with its initial letter in the case of reviews of assessment and prevention decisions, the period allowed to the parties for submissions is 28 rather than 34 days.

The Review Division mails out to the applicant a submissions form. The applicant must complete and return this form within the time allowed. The form can be used to make the applicant's submission on the review or a separate written submission can be attached to it.

The Review Division will disclose the final submission received from the applicant under the above process to another party. Except where the final submission contains significant new information that needs to be disclosed under the criteria set out in Item A3.6.1 of this Manual, the respondent will be advised that further submissions are not expected and may not be accepted.

Item B3.5 of this Manual deals with situations where exceptions may arise or be requested to the standard submissions procedure.

A3.6. New matters arising

A3.6.1. New evidence

In the course of the review, the Review Officer may obtain new information other than from the written submissions of the parties that adds significantly to the existing information and is material to the issues on the review. This may occur through a formal oral hearing, a conversation with the parties or other persons or through receiving written reports. Expert evidence from doctors or other experts will normally be requested in writing.

Apart from new information obtained at a formal oral hearing, significant new information will be disclosed to any person who is participating in the review and may be adversely affected, and an opportunity will be given for response. The party will normally be provided with copies of written material received or summaries of oral information. In appropriate cases, the Review

REVIEW DIVISION - PRACTICES AND PROCEDURES

Officer may advise the party of the information in person or over the telephone and ask for an oral response.

A3.6.2. New issues

The scope of a review is generally limited to the decision that is the subject of the request for review. Review Officers should not normally review other decisions for which no valid request for review has been received. However, it may be reasonable in certain situations to include within the scope of the review issues or decisions not specifically covered by the request for review or decision under review. (For detailed guidelines on this see Item B3.6.2 of this Manual).

A3.7. **Evidence**

Board proceedings are not bound by the common law rules of evidence. [Section 99(1)]. The Review Division may receive whatever evidence it deems appropriate, whether or not it would be admissible in a court.

Evidence may be submitted in any form, such as handwritten statements by witnesses, business records, sworn affidavits, transcripts of evidence given under oath at a hearing in another context, oral evidence at a hearing, or information provided over the telephone or during a meeting. While the strict rules of evidence do not apply, the type of evidence may affect the weight given to it.

A3.8. **Alternative dispute resolution**

In circumstances it considers appropriate, the Board may recommend the use of alternate dispute resolution processes to assist in the resolution of matters under the *Act* (Section 96(9)). The Review Division has not yet developed practices and procedures for applying this provision. However, alternative dispute resolution may be suggested by a Review Officer in the particular circumstances of the case, or a party to a review, as a means of resolving one or more issues.

A3.9. **Time limit on completing review**

The Review Officer must make a decision on a review within 150 days after the Board receives the request for review. This general requirement is subject to some limited exceptions in complex cases discussed in Item B3.9 [Section 96.4(5)-(7)]

REVIEW DIVISION - PRACTICES AND PROCEDURES

A4. DECISION ON REVIEW

The *Act* states that the Review Officer may make a decision:

- (a) confirming, varying or canceling the decision or order under review, or
- (b) referring the decision or order under review back to the Board, with or without directions. [Section 96.4(8)]

A4.1. Role of Review Officers in making decisions

The objective of providing a final resolution to disputed issues means that a Review Officer should strive to reach the best decision supported by the evidence and applicable law and policy. The Review Officer has full authority to substitute his or her own conclusion for that of the initial decision maker. This means that the Review Officer may make what the Officer considers to be the correct decision even though there may be no overt error in the initial decision; the Officer may simply form a different conclusion based on the evidence.

Notwithstanding this broad substitutional authority, the Review Officer is conducting a "review" of an initial Board decision. Therefore, when making a decision, the Review Officer must recognize the authority of the initial Board decision maker to exercise his or her discretion within the parameters of the *Act* and applicable Board policies. The Review Officer must also have regard to the nature and circumstances of the initial decision, including whether:

- (a) the initial decision maker:
 - (i) conducted a full and thorough investigation or a hearing involving all the parties,
 - (ii) issued a comprehensive written decision dealing in logical fashion with the material issues,
 - (iii) had expertise relating to the subject matter of the decision,
- (b) the decision shows a mistake of evidence, such as:
 - (i) material evidence was overlooked, or
 - (ii) facts were mistakenly taken as established which were not supported by any evidence or by any reasonable inference from the evidence,
- (c) the decision shows a policy error such as:
 - (i) applying an applicable policy incorrectly, or
 - (ii) not applying an applicable policy, or

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (d) the decision shows an error of law, such as a failure to follow the express terms of the *Act*.

The Review Officer will also consider whether significant, material new information has been presented as part of the review.

Where the Review Officer cancels or varies a Board decision or order, the Officer will provide a written explanation identifying why the decision or order was changed.

A4.2. Application of Board policy

Section 99 of the *Act* states:

- (1) The Board may consider all questions of fact and law arising in a case, but the Board is not bound by legal precedent.
- (2) The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in that case.
- (3) If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

This section applies to the Review Division. Therefore, Review Officers are bound by the same statutory rules, regulations and policies as all decision makers in the system.

Of particular note for the processing of reviews are the following policies in the *Rehabilitation Services & Claims Manual*:

Policy #2.20 (Application of the *Act* and Policies),³ and

Policies #97.00 (Evidence) and #97.10 (Disputed Possibilities Evenly Balanced).

The Board issues published practice directives and guidelines for the guidance of staff as to the application of the *Act*, regulations and policy. The Review Division will consider these documents in reaching decisions on reviews.

³ Similar policies are found in the *Assessment Manual* (Policy AP1-1-0) and the *Prevention Manual* (Policy D1-107-1).

REVIEW DIVISION - PRACTICES AND PROCEDURES

A4.3. Form of decision

The decision on a review will be issued in the form of a letter. It will state the conclusion of the Review Officer on each of the issues covered by the initial request for review and provide reasons for the Officer's decision. The conclusion on each issue will be to allow, allow in part, or deny the position of the person requesting the review or return the issue to the Board for further decision. Based on the conclusions on the issues, the Review Officer will advise whether the decision under review is confirmed, cancelled, varied, or returned to the Board for a new determination. The meaning of these terms is set out more fully in the Glossary in Item C1 of this Manual.

REVIEW DIVISION - PRACTICES AND PROCEDURES

A5. POST DECISION MATTERS

A5.1. Requests for clarification

The Review Division will provide clarification of its decisions where required. (See Item B5.1 of this Manual.)

A5.2. Reconsideration of Review Division Decisions

The Review Division will only reconsider its decisions in limited circumstances and with the agreement of the Chief Review Officer. (See Item 5.2 of this Manual.)

A5.3. Appeals of Review Division Decisions

A final decision of the Review Division may be appealed to the WCAT within 30 days, including a decision declining to conduct a review.

Review Division decisions with respect to the following may not be appealed to WCAT:

- (a) Prescribed matters respecting the conduct of a review. The *Workers Compensation Act Appeal Regulation* (BC Reg. 1039/2002) prescribes these matters, which include decisions concerning:
 - (i) extensions of the 90-day period for submitting a review request,
 - (ii) deeming the employers' adviser or an organized group of employers to be the employer,
 - (iii) the conduct of a review,
 - (iv) proceeding to make a decision on a review or declaring a review abandoned after a failure to make a submission in time,
 - (v) posting a notice at a workplace during a review of a prevention decision,
 - (vi) suspending a review to enable the Review Officer to deal with a related matter,
 - (vii) extending the 150 day time limit for making a decision on a review,
 - (viii) a stay or suspension of a decision under review, and
 - (ix) referring a decision or order back to the Board,

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (b) Vocational rehabilitation,
- (c) The application of the Permanent Disability Evaluation Schedule to the assessment of a permanent disability award where the specified percentage of impairment has no range or has a range that does not exceed 5%,
- (d) Commutations of pensions,
- (e) A prevention order, other than an order
 - (i) relied upon to impose an administrative penalty,
 - (ii) imposing an administrative penalty, or
 - (iii) canceling or suspending a certificate of a first aid attendant or similar person. Orders placing conditions on certificates are not appealable to WCAT (Section 239).

A5.4 Publication of Review Division Decisions

Review Division decisions are generally published. However, in writing their decisions, Review Officers will avoid including identifying details that are unnecessary to explain the reasons for their decision.

In exceptional cases, the information provided in the decision creates a risk that the parties may be identified. In these situations, even if the names of the persons involved are omitted, the overall circumstances of the case are unique and can be readily identified. As a result, the Review Division will not publish its decisions in these circumstances.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B. DETAILED PRACTICES AND PROCEDURES ON SPECIFIC ISSUES

Part B of this Manual is intended to set out the practices and procedures for specific matters that may not generally arise in review cases.

B1. PRIOR TO MAKING A REQUEST FOR REVIEW

B1.1. Decisions not supported by written reasons

Board decisions often take the form of notices or form letters that do not provide written reasons. This is normal in the case of prevention orders to an employer that are included in a notice posted at a workplace and in the case of notices regarding assessments.

Before requesting a review of a decision or order for which the Board has not provided written reasons, the applicant may first advise the Board division or department concerned that the review is being contemplated and request it to provide a statement of reasons for the decision. Such requests are normally made to the Investigations Department in the case of prevention matters and the Assessment Policy Manager in the case of assessment matters. If the request is filed early in the 90-day period for requesting a review, it may provide an opportunity to resolve any dispute without the need to start a formal review. At the very least, it should expedite the handling of any review.

For those decisions that are not supported by complete written reasons and the Board has not subsequently provided a statement of its reasons, the Review Division may ask the Board division or department concerned to provide such a statement. If in the course of preparing the statement, the Department concludes that the decision under review should be varied or withdrawn, it will indicate this to the Review Division. The Review Division will then consider the matter after the parties have had an opportunity to comment and make submissions.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B2. INITIATING A REVIEW

B2.1. What decisions may be reviewed?

Section 96.2(1) of the *Act* states that the following Board decisions in a specific case may be reviewed:

- (a) a decision respecting a compensation or rehabilitation matter;
- (b) a decision respecting an assessment or classification matter, a monetary penalty or a payment under section 47 (2), 54 (8) or 73 (1) by an employer to the Board of compensation paid to a worker;
- (c) a Board order, a refusal to make a Board order, a variation of a Board order, or a cancellation of a Board order respecting an occupational health or safety matter.

The application of these provisions in certain situations is discussed below together with some specific exceptions created by the *Act*.

B2.1.1. Administrative or Incidental decisions

The Review Division's jurisdiction is limited to decisions in a specific case. Therefore, a review cannot be requested of decisions of a general legislative, policy, or administrative nature.

The right of review is also restricted to decisions that affect a person's entitlement to a benefit or impose an obligation or responsibility. It does not cover incidental decisions or actions of an administrative nature that might happen in dealing with a specific case, for example:

- (a) a delay in making an initial decision (the Board has a Complaints Office that deals with such matters),
- (b) a decision by a Board officer as to how the officer will investigate or reach a decision on the matter (for example, whether the officer will visit the workplace or meet with an affected person), and
- (c) a decision to take court or other proceeding to collect an assessment found to be owing or an overpayment of compensation. (A review may be requested of the decision as to the amount the employer or worker owes.)

A provisional wage rate decision issued under Policy #65.04 of the *Rehabilitation Services & Claims Manual* is not a reviewable decision. A preliminary determination under Policy #96.21, to provide temporary financial relief to a worker until the Board receives the information necessary to make a decision on the validity of the claim, is also not a reviewable decision.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B2.1.2. Reconsideration decisions

A review may be requested where the Board exercises its initiative under section 96(4) of the *Act* to reconsider a prior decision and then makes a new decision on the same matter. It is necessary to distinguish a decision under section 96(4) from a response to a request to clarify or explain the prior decision. (See #99.22 of Volume II of the Rehabilitation Services and Claims Manual) A clarification or explanation of a prior decision does not create a new reviewable decision.

Section 96(5) *Act* places certain restrictions on the Board's power to reconsider, including that the "Board may not reconsider a decision...if more than 75 days have elapsed since that decision...was made". No new decision is made for the purpose of requesting a review where a Board officer simply communicates the fact that the Board no longer has authority to reconsider under section 96(5). However, if there is a substantial issue as to whether the Board had authority to reconsider, a review may be conducted to consider that issue, and if it is determined that there was authority, the Review Officer may deal with the merits of the case or refer the matter back to the Board to make a new decision.

A communication that the Board will not be taking the initiative under section 96(4) to reconsider the previous decision and advising of the right to a review is not a reviewable decision.

B2.1.3. Reopenings

No review may be requested of a decision to reopen or not to reopen a decision regarding a claim for compensation following an application by a worker (96.2(2)(g)). These decisions are appealable directly to WCAT. A review may be requested where the reopening decision was made at the Board's own initiative and there was no application by the worker. For there to be an "application", the worker must refer specifically to section 96(2) or must use language substantially similar to that section (See Review Division Decision #2523 and WCAT Decision #2003-04322).

B2.1.4. Prior review/appeal decision

No review may be requested of a prior decision of the Review Division. A request for reconsideration may be submitted to the Chief Review Officer in certain circumstances. (See Item B5.2 of this Manual.) Nor can a review be requested of a decision of another appeal body such as:

- (a) WCAT (a request for reconsideration may be submitted to WCAT in certain circumstances - See section 256 of the *Act*),
- (b) the Workers' Compensation Review Board that existed prior to March 3, 2003 (a request for an extension of time to appeal can be submitted to WCAT),
- (c) the Appeal Division that existed prior to March 3, 2003 (WCAT can reconsider Appeal Division decisions under section 256 of the *Act*),

REVIEW DIVISION - PRACTICES AND PROCEDURES

(d) the Medical Review Panel that existed prior to November 30, 2002, or

(e) the Commissioners of the Board who existed prior to June 3, 1991.

If, in an appeal, WCAT considers that a matter should have been determined by the Board, it may refer that matter back to the Board for determination and suspend the appeal proceedings. In such a case, WCAT will consider the Board's determination in the context of the appeal and no review of that determination by the Review Division may be requested. [Section 246(3)-(4)]

Where a decision is made to implement a decision of the Review Division or another appeal body, a review may be requested if the applicant is concerned whether the review or appeal decision was properly implemented.

B2.1.5. Decisions not communicated in a letter

A decision is reviewable whether communicated in writing or orally. However, if a review of an oral decision is requested, the Review Division must satisfy itself that a decision was in fact made. If so satisfied, the Review Division may request written reasons from the Division that made the decision.

B2.1.6. Prevention Decisions

As set out in Item B2.1 of this Manual, a Board order, a refusal to make a Board order, a variation of a Board order or a cancellation of a Board order respecting an occupational health or safety matter in a specific case can be reviewed. Two exceptions where there is no right of review are:

- (a) *An order relating to a complaint of discriminatory action made on or after March 3, 2003.* These are appealable direct from the Board's Investigations Department to WCAT. [Sections 96.2(1)(c), 96.2(2)(b) and 240(1)]
- (b) *The collection of an administrative penalty once it has been imposed.* The decision imposing the penalty can be reviewed, including a decision to charge an employer with the costs of a claim under section 73 of the *Act* for an injury, death or disablement due to gross negligence of the employer. [Sections 96.2(1)(b)-(c) and 96.2(2)(a)]

B2.1.7. Assessments/Relief of costs

As set out in Item B2.1 of this Manual, there is a right to request a review of a decision respecting an assessment or classification matter, a monetary penalty or a payment under section 47(2) by an employer to the Board of compensation paid to a worker where the employer was not registered with the Board or otherwise had defaulted in assessment payments at time of injury.

No review can be requested of the following:

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (a) *An assignment of an employer or a subclass to a class or a subclass, except the assignment of an employer to a class or a subclass that:*

- (i) *has employers as members, and*
- (ii) *does not have subclasses as members (96.2(2)(c)).*

This means that a review can be requested of a decision assigning an employer to a Classification Unit ("CU"), but not a decision assigning the CU to an Industry or Rate Group.

- (b) *A withdrawal of an employer or a subclass from a class or a subclass, except a withdrawal of an employer from a class or a subclass that:*

- (i) *has employers as members, and*
- (ii) *does not have subclasses as members (96.2(2)(d)).*

This means that a review can be requested of a decision withdrawing an employer from a CU, but not a decision withdrawing the CU from an Industry or Rate Group.

- (c) *The allocation of income, compensation payments, outlays, expenses, assets, liabilities, surpluses or deficits to or from the account of a class or subclass, or to or from a reserve of the accident fund, except an allocation as it relates to a specific employer or an independent operator respecting:*

- (i) *the account of a class or subclass described in section 10 (8), or*
- (ii) *the reserve described in section 39(1)(b), (d) or (e). (96.2(2)(e))*

This provision means a review cannot be requested of general decisions concerning the management of the Board's finances even though these decisions may indirectly affect individual employers. A review can be requested of certain specific decisions in this category that directly affect individual employers. In particular, Section 10(8) allows an employer in some circumstances to seek a transfer of claim costs to the CU, Industry Group or Rate Group of another employer. Section 39(1) allows an employer to request relief from the costs of a claim attributed to it in certain circumstances.

- (d) *The determination of an assessment rate for a class or subclass, except the modification to the assessment rate determined for an employer on the basis of the employer's own experience (96.2(2)(f)).* This means an employer cannot request a review of the general assessment rate charged to its CU, Industry or Rate Group, but can request a review concerning the modification of that rate by the experience rating system.
- (e) *Collection of assessments.* No review lies of decisions made to initiate court or other proceedings to collect assessments determined to be owed, including the collection of

REVIEW DIVISION - PRACTICES AND PROCEDURES

a prevention penalty. (See Item B2.1.1 of this Manual and Sections 96.2(2)(a)) and 223(1)(a).)

B2.1.8. Refusals to make decisions

Since section 96.2(1)(c) grants a specific right to request a review of a refusal to issue a prevention order, by necessary implication there is no right to request a review of a refusal to issue a decision regarding a compensation, rehabilitation or assessment matter.

B2.2. Who may request a review?

B2.2.1. Compensation decisions

Any of the following persons who is directly affected by a decision relating to compensation or rehabilitation may request a review of that decision:

- (a) a worker;
- (b) a deceased worker's dependant (defined in section 1);
- (c) an employer (Section 96.3(1)).

"Worker" and "employer" are defined in section 1 of the *Act*, but see also policies AP1-1-1 to AP1-2-2 in the *Assessment Manual*.

The estate of a deceased worker has the right both to initiate a review, and to continue a review on behalf of the deceased, concerning a claim for arrears of compensation up to the date of the worker's death. Documentation is required to establish the identity of the estate's representative. This may include the Letters of Administration or Letters Probate, or a copy of the will if the estate is small and probate is not required, or a statutory declaration or other form of evidence where there is no will and the estate is small or substantially held in joint tenancy.

As a result of section 10 of the *Fishing Industry Regulations* made pursuant to section 4 of the *Act*, the employer, for the purpose of a review, is the fishing vessel owner or charterer where the vessel is owned or chartered by a commercial buyer or other commercial recipient of fish. If the vessel is not chartered or owned by such a person, the employer is:

- (a) the vessel master,
- (b) the vessel owner,
- (c) any commercial buyer or other commercial recipient of fish,
- (d) any other persons required to pay assessments, or

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (e) such other persons or association of employers, as may be designated by the Board for these purposes.

The spouse and children of a worker do not have standing to request a review of a decision on the question whether compensation should be diverted under section 98(4) of the *Act*. However, if the worker requests a review of such a decision, the Review Division may allow the spouse and/or children to be a party to the review.

B2.2.2. Assessment decisions

An employer or an independent operator who is directly affected by an assessment or classification decision may request a review of that decision. (Section 96.3(2))

"Worker" and "employer" are defined in section 1 of the *Act*, but see also policies AP1-1-1 to AP1-2-2 in the *Assessment Manual*. Section 10 of the *Fishing Industry Regulations* may also apply to assessment reviews. (See Item B2.2.1 of this Manual.)

B2.2.3. Prevention decisions

In addition to an employer and a worker, any of the following directly affected by a decision or order may request a review:

- an owner of a workplace (section 96.3(3)(c) and definition of "owner" in section 106);
- a supplier (section 96.3(3)(d) and definition of "supplier" in section 106);
- a union (section 96.3(3)(e) and definition of "union" in section 106);
- a member of a deceased worker's family (section 96.3(3)(f) and definition of "member of family" in section 1).

In the prevention context, "employer" includes persons referred to in section 106 of the *Act*. In particular, "employer" includes the owner and master of a fishing vessel that has a crew. In the Prevention context, this definition overrides the provisions of section 10 of the *Fishing Industry Regulations* discussed in Item B2.2.1 of this Manual.

With respect to decisions charging the employer with the cost of a claim under section 73(1), only the employer as defined for the purpose of assessment reviews can request a review. (See Item B2.2.2 of this Manual.)

B2.2.4. Federal employees

Section 4(2) of the federal *Government Employees Compensation Act* provides that workers of federal government entities are entitled to receive compensation under the same provisions as are provided by provincial law. Accordingly, these workers and their employers have the same

REVIEW DIVISION - PRACTICES AND PROCEDURES

review and appeal rights as other workers and employers. (See Policies 8.10 and 24.00 (Federal Government Employees) of the *Rehabilitation Services and Claims Manual*)

B2.3. Representatives

A representative may be a lay person or a "professional", such as a union representative, lawyer, or Workers' or Employers' Adviser. (See section 94.1)

In order for a representative to file a request for review on behalf of an applicant, current written authorization from the applicant is required. Sufficient authorization is provided if the Request for Review form is:

- (a) personally signed by the actual applicant (not by the representative); and
- (b) identifies the representative of the applicant's choice.

The Review Division will also accept a request for review directly from a representative on behalf of the applicant, if a valid authorization is attached to the request for review.

If a properly authorized representative is identified in the request for review, and if the applicant so directs, the Board will forward disclosure to the representative.

B2.3.1. Forms of Authorization

The Board provides forms of authorization for the use of both workers and employers.

The Review Division may accept authorizations other than in the Board's own recommended formats if they:

- (a) identify the party granting the authority to the representative;
- (b) are directed at the Board (e.g. specifically contemplate the workers' compensation system of British Columbia, including reviews before the Review Division);
- (c) specify the records or information to be disclosed;
- (d) specify the person to whom the information may be disclosed (e.g. the representative);
- (e) specify the purpose(s) for which the disclosed information may be used (e.g. for the purpose of a review);
- (f) are signed by the person on whose behalf the representative purports to act (e.g. an employer or worker); and
- (g) have a clear termination date, not exceeding 2 years from the date of the authorizing signature.

REVIEW DIVISION - PRACTICES AND PROCEDURES

These requirements are primarily intended to protect the confidentiality of claims information pursuant to section 95 of the *Act*. They should also allow the Review Division to be confident that communications made by representatives are in accordance with the wishes of the applicant or other party to a review.

Whether the Board recommended forms of authorization or an alternative meeting (a) to (g) above is used, the authorization will be valid for the purposes of a review for two years from the date of the authorizing party's signature. If the two years expires during the course of a review, the representative will be considered authorized until the end of the review unless the party advises to the contrary. If the Request for Review form is used to authorize the representative, the authorization only applies in relation to that review.

B2.3.2. Standard of Conduct for Representatives

The Review Division follows the Board's "Standards of Conduct for Practice and Procedure before the WCB" found on the Board's Internet site at http://www.worksafebc.com/publications/how_to_work_with_the_wcb/standards_of_conduct/default.asp. Although these standards indicate that they apply to "lay advocates", the Review Division considers that they also apply to professional advocates.

B2.4. When can a request for review be made?

A request for a review must be filed within 90 days after the Board's decision or order was made. [Section 96.2(3)]

B2.4.1. Calculating the time limit for requesting a review

In calculating the time limit for requesting a review, section 221 of the *Act* must be considered. In particular, this section provides that, if a document is sent by mail, the document is deemed to have been received on the 8th day after it was mailed. [Section 221(2)]. Therefore, the Review Division generally adds 8 days to the date of mailed decisions for which the review is being requested. The 90-day time limit starts at the end of the 8-day mailing period.

Section 39(6) of the *Act* states:

the board must notify each employer of the amount of each assessment due in respect of the employer's industry and the time when it is payable. The notice may be sent by post to the employer, and is deemed to be given to the employer on the day the notice is mailed.

This means that the 8-day period for mailing does not need to be applied when a request is made to review a decision concerning an assessment notice. In these cases, the 90-day time limit begins the day the notice is mailed.

Most prevention orders contained in inspection reports are not mailed. Most inspection reports are hand-delivered at the workplace by a Prevention Officer. Board practice is that orders must

REVIEW DIVISION - PRACTICES AND PROCEDURES

generally be delivered the same day as an inspection or the next working day. Therefore, in the absence of a specific indication that an order in an inspection report was mailed, the general rule of adding 8 days for mailing will not be followed. Rather the 90-day time for requesting a review will normally be counted from the day following the day after the date of an inspection report. If the evidence in a specific case indicates that an inspection report was not delivered until a later date, the Review Division may decide to use that date.

B2.4.2. Extensions of the time limit

On application, and where the Chief Review Officer is satisfied that:

- (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,

the Chief Review Officer may extend the time to file a request for review even if the time to file has expired. [Section 96.2(4)]

Under section 96(6), the Chief Review Officer may delegate this authority to other Review Officers.

B2.4.2.1. *Special Circumstances*

It is not possible to list all the situations that might be recognized as “special circumstances”. The Chief Review Officer will consider the particular facts of each late request and determine whether special circumstances apply. The Chief Review Officer will only consider the applicant’s reasons for not filing a request for review on time. No consideration will be given to the merits of the request for review. If the person’s reasons do not amount to special circumstances, the request for review will be barred from consideration on the merits.

B2.4.2.2. *Injustice*

Where special circumstances are found to exist, the Chief Review Officer must then consider whether an injustice would result if the time limit was not extended. "Injustice" in a specific case will be assessed based on:

- (a) the significance of the matter that is the subject of the Request for Review (i.e., is there a serious or significant issue to be reviewed); and
- (b) the degree of prejudice to the applicant that would arise from the denial of the extension request.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B2.4.2.3. Discretion of Chief Review Officer

Even if the requirements for special circumstances and injustice are met, the Chief Review Officer has discretion whether or not to grant an extension of time. Normally this discretion will be exercised in favour of granting an extension. However, an important factor in exercising this discretion is the overall length of time since the decision sought to be reviewed and the applicant's reasons for delay.

B2.4.2.4. Process for requesting extension

There is no formal process within the Review Division for extension of time applications. A person who requires an extension of time should attach a written submission to his or her request for review. The submission must outline what special circumstances prevented the request from being filed within the 90 days after the Board's order or decision was made, why an injustice would result if the request were rejected and the explanation for any additional delay beyond the initial 90 days.

B2.5. How is a request for review made?

See Item A2.5 of this Manual.

B2.6. Parties to a review

A worker is not a party on a request for review by the employer where the decision under review is concerned only with relieving the employer from claim costs and the decision cannot affect the worker.

An employer is not a party where the only issue on a request for review by a worker is a commutation of his or her permanent disability award.

B2.6.1. Employer out of business

The "employer" who can request or participate in a review request is normally the employer of record at the time of the injury or other circumstances that led to the decision under review. However, an employer's status with the Board may change for a number of reasons: it may sell its business operations, merge with another company, become bankrupt or inactive, or otherwise cease to operate. The employer's assessment account with the Board may be cancelled or transferred to another entity.

If a review involves an employer that is no longer in business, the Board will attempt to identify a successor employer. If no successor is identified, then the Chief Review Officer may deem an employers' adviser or an organized group of employers to be the "employer".

REVIEW DIVISION - PRACTICES AND PROCEDURES

B2.6.1.1. *Successor companies*

A “successor employer” is an employer that is carrying on essentially the same business as the out-of-business employer and, pursuant to Policy AP1-42-3 of the *Assessment Manual*, has assumed the experience rating position of the former employer. A successor employer has standing to request and participate in a review.

B2.6.1.2. *Deemed employers*

The Chief Review Officer may, for the purposes of a specific review, deem an employers’ adviser or an organized group of employers to be the employer. [Section 96.2(7)] Under section 96.6, the Chief Review Officer may delegate this authority to other Review Officers.

"Employers’ adviser" refers to the advisers appointed under Section 94 by the Minister of Skills Development and Labour.

The Chief Review Officer may recognize an organized group of employers for these purposes only if the organized group includes among its members employers in the subclass of industry to which the employer who has ceased to be an employer belonged. [Section 96.2(8)]

The situations when the Chief Review Officer may exercise this authority include:

- (a) an employers’ adviser or an organized group of employers seeks to review a decision or participate in a review;
- (b) issues which could be best resolved with the assistance of submissions presenting the employer point of view;
- (c) evidence which is best tested with the participation of an employer representative;
- (d) an employer representative could provide helpful factual information about circumstances affecting the issue in a review;
- (e) the review involves a significant issue concerning the interpretation of law or policy; or
- (f) the review may involve an issue having a significant financial value.

A deemed employer may request a review or be a party to a review, obtain disclosure, submit evidence and make submissions.

B2.6.2. Prevention reviews

An employer requesting a review may be requested to provide the names and addresses of the co-chairs of the joint committee at the workplace or the worker health and safety representative, as applicable, and of the union (if any) representing the workers at the workplace. These persons may then be sent a “Notice to Participate”. (See Item A2.6 of this Manual.)

REVIEW DIVISION - PRACTICES AND PROCEDURES

A Review Officer may require an employer who is a party to a review respecting a prevention matter to post a notice in a specified form and manner to bring the review to the attention of the employees of the employer. [Section 96.4(4)]. This does not apply where the decision was on a variance request by a worker or the issue arose at a workplace that no longer exists.

B2.7. Disclosure

See Item A2.7 of this Manual.

B2.8. Withdrawal/Abandonment of a review

See Item A2.8 of this Manual.

B2.9. Determinations of preliminary matters

B2.9.1. Stays or suspensions of decisions under review

Unless, on application, the Chief Review Officer orders otherwise, the filing of a request for a review does not operate as a stay or suspend the operation of the decision or order under review. [Section 96.2(5)] Under section 96.6, the Chief Review Officer may delegate this authority to other Review Officers.

There is no formal process or standard Board form to apply for a stay. Upon requesting a review, an applicant may also apply for a stay by making a written submission explaining why the stay is required. Requests for stays may not be separately considered if a decision on the review is about to be made.

The Board will provide any other parties to the review with a copy of the application for a stay and the opportunity to file submissions in response within 14 days. After all submissions have been filed, the Chief Review Officer will render a written decision respecting the application as soon as practicable.

The Chief Review Officer will only grant stays in exceptional cases. The factors considered for this purpose include:

- (a) an assessment of the merits of the review on the face of the record (i.e. is there a serious issue to be reviewed?);
- (b) whether the applicant faces serious irreparable harm or prejudice if the stay was not granted (for example, the loss of a business);
- (c) an evaluation of which party, the applicant or the respondent, would suffer greater prejudice or harm from granting or denying the stay; and

REVIEW DIVISION - PRACTICES AND PROCEDURES

(d) whether granting the stay would endanger safety in the workplace.

The Chief Review Officer may consider any other relevant factors specific to a particular stay application.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B3. CONDUCT OF REVIEW

B3.1. Determining how the review will be conducted

See Item A3.1 of this Manual.

B3.2. Read and review

See Item A3.2 of this Manual.

B3.3. Read and review with additional inquiries

The Review Officer may conduct an informal inquiry when more information is required to decide the review than can be obtained by reading the material on the Board's files and the written submissions received during the review. The inquiry could range from a simple telephone call to a meeting that may fall little short of the full oral hearing process described in Item B3.4 of this Manual. Some of the general principles outlined in connection with oral hearings may also be appropriately applied to other meetings where the circumstances require this.

If a review concerns an administrative penalty imposed for a prevention violation under section 196 of the *Act*, an employer's request for an oral hearing will normally result in a personal or telephone meeting, or an oral hearing if the criteria for an oral hearing are met.

All methods of normal communication may be used for informal inquiries, including:

- (a) telephone/teleconferencing,
- (b) letter/fax,
- (c) informal meetings,
- (d) investigations conducted by Board staff, or
- (e) assessments, tests and opinions obtained from internal and external experts.

If the party is represented, all communications will include the representative, or be done with the representative's approval.

Before engaging in further inquiries, the Review Officer will consider the nature and extent of the overall inquiry that is needed. It is expected that Review Officers will take action to supplement information that is missing following the investigation carried out before the decision under review was made. It is not expected that Review Officers will themselves conduct major inquiries that should have been conducted by the initial decision maker. The initial decision

REVIEW DIVISION - PRACTICES AND PROCEDURES

makers are generally in a better position to make such inquiries and have more available resources for this purpose. Where the initial decision maker has failed to carry out a reasonable investigation, the Review Officer should consider referring the matter back under section 96.4(8)(b) of the *Act*. (See Item B4.4 of this Manual.)

The need to disclose to the parties significant new information obtained during informal inquiries is discussed in Item A3.6.1 of this Manual.

B3.4. Read and review with an oral hearing

A Review Officer may elect to conduct a review by oral hearing at his or her own discretion in a specific case, or upon request by a party to the review.

B3.4.1. Eligibility for oral hearing

Reviews will generally be conducted by way of “read and review” alone or a read and review with additional inquiries. In particular, reviews where the issue is purely medical, legal or policy and the facts are not at issue, will normally be handled in this manner. In other situations where, it is necessary or convenient to obtain information orally, this will, where possible, be done through additional inquiries under Item B3.3 of this Manual rather than through an oral hearing. However, there may be compelling reasons for holding an oral hearing in a specific case, notably where the credibility of a party or a witness is an important issue.

Where a party to a review objects to a hearing on valid grounds (for example, they are in poor health and traveling to a hearing location would be an undue hardship), the Review Officer will weigh the objection against the factors which support an oral hearing and the need to meet statutory timeframes. Upon consideration of the objection, the Officer will render a written decision respecting the method of review as soon as practicable.

B3.4.2. Process for making decision on oral hearing

If an oral hearing is agreed to at the outset of a review, the normal process for requesting written submissions under Item 3.5 of this Manual is not followed. If the request is not agreed to at the outset, and written submissions are obtained, the Review Officer making the decision on the review is not bound by the initial decision. He or she may still hold an oral hearing or carry out another form of additional inquiries under Item B3.3.

A decision to hold or not hold an oral hearing cannot be appealed to WCAT (Section 96.4(2) and Subsection 239(2)(a)).

B3.4.3. Scheduling and postponements

Oral hearings are held at the Board’s head office in Richmond and in various locations, as required, throughout the province.

REVIEW DIVISION - PRACTICES AND PROCEDURES

A hearing is usually scheduled for 1-2 hours. The parties to a review will be provided reasonable notice of the hearing date. The initial scheduling of the oral hearing will be done without consultation with the parties, but each party will be advised that they have 14 days to request a change of date.

In determining whether to agree to an alternative date suggested by a party, the sole consideration is not the length of time before a hearing can be held. The Review Officer will also consider any potential prejudice to the parties as a result of the suggested date, and any other relevant factors in the particular circumstances of the case. If necessary, the Review Officer may request an extension of time to complete a review to accommodate a hearing date. However, if the Review Officer determines that a suggested date is not reasonable and an alternative date cannot be agreed upon, the Review Officer may choose not to proceed with the hearing and to continue the review by an alternative method.

If the oral hearing is rescheduled at the request of the parties, a further postponement of the date will not be granted unless exceptional reasons are provided as to why this is necessary. The factors considered include:

- (a) Was the postponement request made sufficiently far in advance? Can the hearing be re-scheduled with a minimum of cost and disruption of schedules? Can the hearing date be made available for another review?
- (b) The effect of the postponement on the statutory time period for completing the review;
- (c) Balancing the respective prejudice to the parties if the postponement is not granted;
- (d) Emergencies (for example, serious medical problems or hospitalization, family crisis, bereavement, and motor vehicle accidents);
- (e) The unforeseeable unavailability of an essential witness.

A Review Officer may consider any other factors relevant in a specific review. Factors considered in the first round of rescheduling will not be sufficient grounds for further postponement.

If a Review Officer denies a request for postponement, the requesting party will be advised of alternative options for the conduct of the review:

- (a) read and review; or
- (b) the submission of additional documentary evidence after a partial hearing.

B3.4.4. Late appearances or failures to appear

If the applicant does not appear at the hearing on time, the Review Officer will wait 15 minutes after the scheduled start of the hearing. If the applicant appears during this time, the hearing will proceed. If the applicant appears after 15 minutes, the Review

REVIEW DIVISION - PRACTICES AND PROCEDURES

Officer has the discretion whether or not to proceed. Relevant factors include whether other hearings will be delayed and whether a respondent has left.

An oral hearing will generally not proceed if the applicant fails to appear – unless there was prior agreement on this point. The Review Officer does, however, have the discretion to proceed. If the applicant's representative appears, with instructions from the applicant to proceed in his or her absence, the Review Officer has the discretion whether or not to proceed.

The Review Officer will invite the applicant, within 8 days after the scheduled date of the hearing, to provide written reasons for the failure to attend. The Review Officer will then decide whether to:

- (a) reschedule the hearing;
- (b) continue the review based upon the written evidence alone; or
- (c) determine that the review is deemed to have been abandoned under section 96.4(3) of the *Act*.

A failure to appear at a hearing without prior notice will only be justified by a personal emergency, and re-scheduling of a hearing may be considered in those limited circumstances.

Where a respondent is not present at the scheduled time, the Review Officer will wait 5 minutes before proceeding. A respondent may participate if he or she arrives late. If the respondent's representative appears at the hearing, with instructions from the respondent to proceed in his or her absence, the Review Officer has the discretion whether or not to proceed. If the respondent has been unavoidably delayed or prevented from attending the hearing, the Review Officer may allow participation by means of disclosure of the voice recording of the hearing (if there is one), and time for written submission and new evidence.

B3.4.5. Witnesses

The Review Officer will require that witnesses be excluded from the hearing room until they are required to give testimony. This does not apply to the parties or their designated representatives, who are allowed to remain in the hearing room throughout the proceedings. Upon request, the Review Officer may consider permitting a witness to stay in the room prior to his or her testimony if

- (a) it is evident the witness is required as moral support for an unrepresented party (such as in the case of family members), or

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (b) there is little chance the witness' evidence will be compromised by preceding evidence, for example if the witness' intended testimony is separate and distinct from the preceding witness' testimony.

Witnesses may remain as observers after they testify provided that neither party objects and there is no possibility of them having to provide further testimony.

The Review Officer will swear in or affirm each person giving evidence and will normally ask questions of any witnesses. The parties do not have a right to formally cross-examine witnesses. However, the Review Officer may permit a party, or another Board Officer, to question a witness where this will result in a more efficient elaboration of the issues. In these cases, the Review Officer will supervise the questioning process to ensure that questions are relevant and reasonable.

B3.4.6. Observers

Review Division hearings are not open to the public. However, the Review Division may, upon request, permit observers to attend where both parties consent. Unless there are compelling reasons for excluding observers (for example, sensitive factual issues, matters of space, potential security problems), observers will be allowed to sit in. The Review Officer will make it clear to an observer that they are not entitled to participate in the hearing.

At the Review Officer's invitation, Board security may attend an oral hearing without the parties' permission. Where practicable, the parties will be notified in advance that security officers will be present at the hearing. The Review Officer will seek the parties' permission if other Board staff are attending the hearing as observers only. However, the parties' consent is not required where a Board staff member is attending to provide relevant information.

B3.4.7. Interpreters

The Review Division will provide independent certified legal interpreters where required. The Review Division should be notified of the need for an interpreter when the oral hearing is requested. Friends or relatives are generally not permitted to act as interpreters, although the Review Division has discretion to make an exception in appropriate cases, such as where the party needs assistance with only a few words. Where it is apparent to the Review Officer that an interpreter is needed and none is present, the hearing may be rescheduled. Interpreters are normally affirmed or sworn in at the start of the hearing.

B3.4.8. Hearing objective and process

In keeping with the inquiry nature of Review Division proceedings, the purpose of an oral hearing is to gather information to supplement that already on file in a thorough, fair and courteous manner. Although a hearing is more formal than a meeting, it is conducted in a non-adversarial atmosphere to avoid the more litigious characteristics of a court proceeding.

REVIEW DIVISION - PRACTICES AND PROCEDURES

Formal procedures related to the admission of evidence in court do not apply to an oral hearing. In addition, the scope of the hearing is limited to relevant evidence, as determined by the Review Officer.

The Review Officer will normally receive the presentations of the parties in the following order:

- (a) Each party (or his/her representative) will be given an opportunity to make a brief opening statement. The applicant will go first followed by the respondent.
- (b) The applicant will then provide his or her evidence as well as introducing any witnesses he or she has brought.
- (c) The respondent will then have an opportunity to present information through his or her witnesses.
- (d) After all testimony has been received, the Review Officer will invite closing arguments from each party with the applicant going first followed by the respondent. Each party may then respond to the other party's closing arguments.

See Item B3.10 for guidelines on the role of Board officers attending oral hearings.

B3.4.9. Adjournments

Where a hearing is not completed within the allotted time, and it is not possible to continue on the same scheduled day, a Review Officer may adjourn the matter and resume it at a later date or consider an alternative method for completing the review.

B3.4.10. Disruptive Behaviour during the Conduct of a Hearing

Where disruptive behaviour prevents the reasonable conduct of a hearing, the Review Officer will put the individual(s) on notice that their behaviour is unacceptable and advise them of the Review Officer's authority to exclude them from the hearing room if the behaviour continues.

Where an exclusion order is made against a party's representative, and to avoid prejudice to the affected party, the Review Officer has the authority to adjourn the hearing to a later date. (See Item B2.3.2 for the Standard of Conduct for Representatives)

B3.4.11. Record of the hearing

Review hearings will be recorded by the Review Division where practicable. The audio taped recording is the official record of the hearing. Where an oral hearing is adjourned for a lengthy period, the Review Division will, upon request, provide a copy of the recording of the proceedings to date to the parties.

Written transcripts are not generally made. A possible exception may be where the Review Officer determines that a transcript of specific evidence is necessary, or would be helpful, to assist both the parties and the Officer. An example may be where lengthy or complex expert evidence is given which may be used on more than one review.

REVIEW DIVISION - PRACTICES AND PROCEDURES

After the decision has been rendered, the audiotape is stored as part of the Board's file.

B3.4.12. Materials obtained during and after hearing

Item B3.7.2 of this Manual states that any written evidence should be provided prior to the hearing and sets out what action the Review Officer may take if this is not done. The same applies also to written submissions by a party.

New evidence and submissions received after the hearing date may be permitted or sought by the Review Officer. These will be disclosed to the other parties in accordance with Item A3.6.1 of this Manual.

B3.5. Written submissions

Item A3.5 of this Manual sets out the standard procedure for providing and obtaining submissions. (Item A2.8 interprets the term "submission" in a broad sense to include a party's response to a request by the Review Division for information required to begin or continue a review.)

This items deals with situations where exceptions may arise or be requested.

The circumstances of a review may require the Review Officer to vary standard procedure. Depending upon the circumstances of the case, the Review Officer can adopt a different process for obtaining and disclosing submissions, extend the times for submissions and responses, or set different time limits. In some straightforward cases, a decision may be made on the review without obtaining written submissions (See, for example, Item B4.4 of this Manual). In all cases, the Review Officer must ensure that the rules of natural justice are complied with, and must consider the requirement in the *Act* that decisions be made within 150 days.

A party who requests additional time for making written submissions must provide the Review Division with reasons for the request. These reasons might include:

- (a) the complexity of the issues under review;
- (b) the party is seeking additional medical or other evidence;
- (c) the party needs to interview witnesses and provides adequate reasons for requiring more time to do so;
- (d) the party needs to seek representation;
- (e) personal or family health problems, bereavement, or other emergencies;
- (f) a pre-arranged vacation; or

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (g) a current labour relations dispute which severely limits opportunity of a person to participate.

Such reasons may involve the party, the representative or a key witness.

Having regard to the 150 days for making decisions, the normal expectation is that all written submissions will be received by the Review Officer within 90 days of the request for review.

If a party to the review does not make a submission within the time required by any Board practices and procedures for the conduct of a review, the Review Officer may:

- (a) complete the review and make a decision on the basis of the information before him or her, or
- (b) determine that the request for review is abandoned. [Section 96.4(3)]

The Review Officer has discretion to accept a late submission or reject it and return it to the sender. In so doing, the Officer will have regard to the extent of and reason for delay, the impact on the time limit for making decisions and other relevant circumstances of the case. If a Review Officer accepts a late submission, consideration must be given to disclosing the submission to any other party under the criteria in Item 3.6.1 of this Manual. For this purpose, it may be necessary to request the Chief Review Officer to extend the 150 day period allowed for making decisions. (See item B3.9.2 of this Manual)

No written submissions are normally requested when it is decided at the outset of the review to grant a request for an oral hearing. (See item B3.4 of this Manual)

B3.6. New matters arising

B3.6.1. New evidence

See Item A3.6.1 of this Manual.

B3.6.2. New issues

As noted in Item A3.6.2 of this Manual, it may be reasonable in certain situations to include within the scope of the review issues or decisions not specifically covered by the request for review or decision under review. These situations include the following:

- (a) The submissions made on a request for review of one decision may expressly or impliedly request that the scope of the review be extended to cover another decision. A new review of another decision may be commenced if the submission containing the request was received within 90 days of the other decision. It may be sufficient that the original request for review was received within 90 days of the other decision if the other decision relates to the same issue as the decision already under review or it is otherwise reasonable to interpret the original request for review as covering the other decision.

REVIEW DIVISION - PRACTICES AND PROCEDURES

The Review Division will, if necessary, advise the parties of the new review, along with its reference number, before the decision is made on that review. However, this step may not be necessary where it is apparent that the parties were already aware of the additional issue and had the opportunity to make submissions.

- (b) One decision will frequently address several issues, all of which may be the subject of a single request for review. Not all of these issues may be specifically placed in dispute by the person who requested the review. Review Officers will normally only address those issues that have been put into dispute by the parties. If, for example, a Board decision addresses both the determination of the worker's initial wage rate and the worker's period of temporary disability, and the worker is only seeking a review of the period of temporary disability, the Review Officer will not normally address the determination of the initial wage rate. However, if the employer is participating and addresses the initial wage rate, the Review Officer will also deal with that issue. It does not matter that the employer's first submission raising the additional issue is received outside the 90 days permitted for requesting a review. The decision is already under review.

In certain cases, a Review Officer may determine that it is necessary to deal with an issue in the decision letter under review that has not been raised by the parties. For instance, the Review Officer may notice that the Board decision on the issue contains an error. The fact that none of the parties has raised the issue does not preclude the Review Officer from addressing it. However, the Review Officer will give the participating parties notice that the issue will be addressed unless:

- the parties are already aware that the issue will be considered; or
- the issue will be decided in the party's favour, in cases involving a single party.

- (c) It may not be possible, or may be difficult, to make a decision without addressing an issue not dealt with in the decision under review. An example would be where a claim is disallowed on the basis that no work injury occurred without considering the possibility that the claim may be barred under section 55 of the *Act* through the failure of the worker to submit a timely application for compensation.

It is not possible to predict all the potential situations where Review Officers may need to deal with issues or decisions not covered by the decision referred to in the initial request for review. In deciding whether to deal with such issues or decisions, Review Officers should consider

- (a) whether the new issue is covered by a prior decision for which the time for requesting a review has expired and an extension of time to request a review would be needed from the Chief Review Officer under section 96.2(4) of the *Act*,
- (b) how important or necessary it is to deal with the new issue,
- (c) whether there are alternative ways of dealing with the issue,
- (d) the difficulty or complexity of the new issue,

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (e) the views of the parties, if known, and
- (f) whether all the necessary information is available or easily obtainable.

If it is considered necessary to address decisions or issues not put into dispute by the initial request for review, Review Officers will determine whether they should give notice to the parties affected and an opportunity to provide submissions. This may not be necessary in some cases, for example if an employer submission on a worker request for review raises an issue (from the decision under review) that has not been raised by the worker, but the worker has already received a copy of the employer's submission.

B3.7. Evidence

Subpoenas

The Board has the like powers as the Supreme Court to compel the attendance of witnesses and examine them under oath, and to compel the production and inspection of books, papers, documents and things. [Section 87(1)]

The Board may cause depositions of witnesses residing in or out of the province to be taken before a person appointed by the Board in a similar manner to that prescribed by the Rules of the Supreme Court for the taking of like depositions in that court before a commissioner. [Section 87(2)]

B3.7.1. Expert Evidence (*Evidence Act*)

The statutory rules for admitting expert evidence in court proceedings, quasi-judicial or administrative hearings do not apply where a board or tribunal establishes its own rules. (Section 10 of the *Evidence Act*.)

The Review Division has adopted its own rules for the introduction of expert evidence and the testimony of experts. These rules are intended to prevent:

- (a) a party to a review from being “ambushed” or surprised by expert evidence at a hearing; and
- (b) the review process becoming too formal.

The rules set out below apply to the provision of opinion evidence by a person the Board deems to be an expert, based on the person's training or qualifications (for example, a doctor, vocational rehabilitation consultant, occupational therapist, engineer, accountant, physiotherapist, or occupational hygienist). They do not apply to the provision of evidence by non-expert witnesses, persons who simply report what they saw or heard.

REVIEW DIVISION - PRACTICES AND PROCEDURES

While these rules govern the introduction of expert evidence at an oral hearing, the principles upon which they are based are also generally applicable. In particular, Rules (a) to (d) also apply to a matter being conducted by way of “read and review”.

- (a) Opinion evidence will generally only be accepted from a person the Review Division recognizes as being qualified by education, training or experience as an expert.
- (b) The qualifications of the expert should be stated in or with their report. The assertion of qualifications in that manner will generally be considered as sufficient evidence of such qualifications. A job title will generally be accepted as evidence of the person’s qualifications to hold the position.
- (c) Objections to a person’s qualifications as an expert will not generally cause his or her evidence to be excluded. Such objections will be considered by the Review Officer relative to the weight to be given to the evidence received.
- (d) The evidence of an expert is admissible in the form of a written report by the expert, without the necessity of the expert attending an oral hearing. The correspondence requesting the written report of the expert should also be submitted. However, an expert’s oral evidence will be admissible in a hearing, even if the expert has not provided a written report. It is expected that advance notice will be given to the Review Division of any expert who will be attending the oral hearing.
- (e) Where an oral hearing is granted, the parties should provide written reports in their possession to the Review Division promptly after receipt by the party so that they may be disclosed to all participants to the review. If an expert who is to give evidence at a hearing has provided a written report, the report must be provided to the Review Division a minimum of 21 days prior to the hearing.
- (f) A Review Officer may receive a previously undisclosed expert’s report at an oral hearing. In such a case, the Officer will determine what steps are necessary to ensure the other party is given an adequate opportunity to respond. In determining whether to receive the report, the Officer will consider:
 - (i) the reasons for the failure to submit the report to the Board earlier, and
 - (ii) the impact of late evidence on the time limit for issuing the decision.

Where the other party would be prejudiced by not having sufficient opportunity to respond to significant new expert evidence, the Review Officer may:

- (ii) allow an extension of time after the oral hearing for submissions,

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (iii) postpone the oral hearing; or
 - (iv) take other appropriate action.
- (g) The Review Division will not require an expert to attend an oral hearing unless it believes the attendance is necessary to a fair hearing of the issues or a failure to do so would prejudice a party to the proceeding.
- (h) The application of these rules may, in a specific case, be varied at the discretion of a Review Officer.

B3.8. Alternative dispute resolution

See Item A3.8 of this Manual.

B3.9. Time limits on reaching decisions

In some situations, the 150 day time period allowed for making a decision on a review may have expired or be substantially used up before the Review Division receives the request, notably if

- (a) if a request for review is received by the Board but not immediately referred to the Review Division, or
- (b) WCAT overturns a decision of the Review Division declining to conduct a review and refers the matter back to the Review Division.

The Review Division Registrar may treat the review as commencing on the date it is received from the Board or WCAT for the purpose of computing the 150 days allowed for making a decision on the review.

Where an extension of the 90 day time limit on requesting a review is granted, the 150 day period commences from the date when the extension is granted. (See Item B2.4.2.)

The 150-day time limit on reaching a decision on a review may be suspended by the Chief Review Officer under section 96.4(5) or extended under section 96.4(7). Under section 96.6, the Chief Review Officer may delegate this authority to another Review Officer.

B3.9.1. Suspensions under section 96.4(5)

On application, or on the Chief Review Officer's own initiative, the Chief Review Officer may suspend a review in a specific case in order to allow a Review Officer to deal with related matters at the same time. [Section 96.4(5)].

REVIEW DIVISION - PRACTICES AND PROCEDURES

Applications from an external party must be submitted to the Review Division in writing, outlining the circumstances that support a suspension in the specific case.

There are 3 main situations where suspensions may be considered:

- (a) *Suspensions to coordinate the decision dates on existing related reviews.* Examples are:
- (i) Several reviews are commenced on different decisions dealing with related matters on one claim or matters on the claim occurring at about the same time.
 - (ii) The same incident gives rise to several decisions by the Board with regard to different persons, for example, multiple claims arising from the same incident or prevention orders issued to different persons as a result of one accident.
 - (iii) The same issue of general policy or practice arises on several claims.

Where a suspension is requested to await a decision on a review for which an extension of the 90 day period to request a review has been submitted, the normal procedure will be to avoid the need for a suspension by expediting the decision on the extension of time to request a review.

- (b) *Suspensions to wait for potential reviews on related decisions.* The Division that made the original decision under review may be about to make a related decision on which a review may be requested. For example,
- (i) The decision under review concerns a permanent disability and the Worker and Employer Services Division is conducting a reassessment to determine whether there has been deterioration.
 - (ii) The decision under review concerns a prevention order and the Worker and Employer Services Division and/or Investigations Department is considering an administrative penalty or is conducting a formal investigation into the incident giving rise to the orders that may result in further orders.
- (c) *Suspensions to wait for WCAT decisions on related issues.* The mere fact that WCAT is considering an appeal on a related issue that could affect the issue before the Review Division is not a ground for granting a suspension. Suspensions will not normally be given where the issue before the Review Division is a decision implementing a prior Review Division that is now before WCAT. A suspension for a WCAT decision will be appropriate in some exceptional situations, for example
- (i) The employer is challenging the worker's basic entitlement before WCAT and proceeding with the Review Division decision could result in the payment of additional benefits to which WCAT may later find the worker was not entitled.
 - (ii) Essentially the same issue is before WCAT.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B3.9.2. Extensions under section 96.4(7)

The Chief Review Officer may extend the 150 days for making a decision if the complexity of the proceedings in a review or the matter under review makes the time period impractical. [Section 96.4(7)]

There are two main criteria for granting extensions.

(a) *Complexity of the proceeding.* Examples are

- (i) Problems with the disclosure process.
- (ii) Where submission extensions are granted to the parties and the 150 day time frame is no longer practical.
- (iii) Extensive delay in resolving preliminary matters.
- (iv) Reviews with more than two parties, for example, where the issue is whether to reopen more than one claim.

2. *Complexity of the matter.* Examples are

- (i) Cases involving a question of jurisdiction, the constitution or other complex legal issues.
- (ii) Complex or extensive medical issues.
- (iii) Considerable additional inquiry conducted by the Review Officer.
- (iv) Substantial new evidence presented on review.

Where an extension is being granted on a particular review, and there are related reviews that need to be dealt with at the same time, extensions will also be granted on those reviews.

B3.10. Role of Board Officers in Reviews

The guidelines set out below apply to prevention, assessment and compensation reviews but the differing circumstances mean that the application will be different for each. The overriding principle is that the Review Division obtain all the information it needs to make the best decision, while at the same time having an efficient and fair process that complies with the rules of natural justice.

1. A Review Officer conducts the review and determines what information should be obtained, and how, when and from whom it should be obtained.
2. Another Board division, department or officer is not a party to a review and does not have a right to make submissions or present information to a Review Officer in relation to a review.
3. A Review Officer may request information from another Board officer, member of Board staff or from a person external to the Board.

REVIEW DIVISION - PRACTICES AND PROCEDURES

4. Information should not normally be requested from the person who made the decision under review. However, contact with that person may be desirable or unavoidable in exceptional situations. For example:
 - (a) A decision may be so unclear that the review cannot be completed without additional explanation, and obtaining clarification may be preferable to making a formal referral back. Requests for clarification will be made in writing through another person in the Review Division or in the other division in question who is designated for that purpose.
 - (b) The person who made the decision may be the person who, apart from having made the decision, would ordinarily be contacted to obtain the information needed, for example, a prevention officer who issued an order under review in his capacity as a witness to the events.
5. Subject to paragraph 4, a Review Officer may request another Board officer to:
 - (a) Provide an opinion on a matter in which the officer has expertise, most commonly a medical opinion. This is routine in compensation cases.
 - (b) Conduct further investigation into the facts. Where significant investigation is required, it will normally be preferable to make a formal referral back for a new decision to be made.
 - (c) Provide information on the provisions of a statute, regulation, policy or practice that may or may not be applicable.
 - (d) In response to a party's written submission, provide additional relevant information that may be needed as a result of new facts or arguments presented. This will commonly occur in prevention and assessment reviews but will be unusual in compensation reviews.
 - (e) Provide other types of information that the Review Officer considers relevant and necessary to make a decision.
6. In asking for information from another Board Officer, the Review Officer will as much as possible ask specific questions as opposed to asking for general comments. However, in prevention and assessment matters, it is important that other Board officers be asked if there are any other relevant matters that may not have been thought of by the Review Officer or raised by a party to the review.
7. New information from other Board officers will be obtained in writing.
8. In responding to requests for information from a Review Officer, the role of the Board officer is to provide the Review Officer with relevant facts, issues and applicable statutory provisions, regulations, policy or practice, including matters that do not support the decision under review. The Board officer should not attempt to defend the correctness of the decision under review by, for example, presenting arguments that a review should be decided in a particular way.

REVIEW DIVISION - PRACTICES AND PROCEDURES

9. Another Board division or department may appoint Case Officers, Quality Managers, Practice Advisers or similar officers as channels for routine communication where a Review Officer requests additional information. These officers are subject to these guidelines, and are therefore not a party to a review and do not have a right to make submissions or present information to a Review Officer in relation to a review. A Review Officer may also request information direct from another specific officer or member of staff. Where an officer is coordinating the obtaining of information for the Review Division, he or she should make clear the source of any information, particularly new information.
10. A Board officer or other member of Board staff may be asked to attend an oral hearing if the officer or staff member may be able to contribute relevant information or respond to new items of information that may arise. This will be at the discretion of the Review Officer, but will be normal practice in the case of prevention reviews and exceptional in the case of compensation reviews.
11. The conduct of an oral hearing is controlled by the Review Officer, including how and when in the process any Board officer contributes. This is subject to the following guidelines:
 - (a) The Board officer should not present a case or submissions in support of the decision under review.
 - (b) At a time or times determined by the Review Officer, the Board officer may be permitted to present relevant information or raise questions in respect of information or submissions presented at the hearing by a party to the review.
 - (c) The Review Officer or a party to the review will normally put the questions to any witnesses present.
12. Significant new information obtained from other Board officers or members of Board staff in the course of a review must be disclosed to the parties and opportunity given for response. However, this may not be required in some cases, for example, where the information is provided at an oral hearing or the Review Officer proposes to make the decision in favour of the only party.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B4. DECISION ON REVIEW

B4.1. Role of Review Officers in making decisions

See Item A4.1 of this Manual.

B4.2. Application of Board policy

See Item A4.2 of this Manual.

B4.3. Form of decision

See Item A4.3 of this Manual.

B4.4. Referrals back to the initial decision maker

One of the aims of the changes to the *Act* that created the review system is to promote greater finality of decision making. Therefore, a Review Officer who considers that a decision should be changed will in most cases make the new decision. In some cases, it will not be possible or desirable to do this, notably when significant further investigation or assessment is required that would be beyond the scope of the review function. In such cases, an issue may be referred back to the Board division that made the initial decision.

A referral back may also be made at the outset of a review in cases where the original decision maker wishes to change the original decision but is prevented from doing so by the limitations on reconsiderations in section 96(5) of the *Act*.

The referral back will be with directions if the Review Officer requires that the new decision be based on findings made as part of the review.

Where a decision is referred back to a division, the division will make a new decision that may be reviewable or appealable according to the general statutory rules.

B4.5. Costs and expenses

The Review Division may reimburse a party or a witness for reasonable expenses incurred during the course of a review. These expenses may typically be associated with attending an oral hearing or medical examination. In particular, the Review Division may reimburse the cost of providing evidence in two situations:

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (a) evidence of a kind which the Review Division would have sought had the party not produced it, and
- (b) evidence such as a medical report where it is considered reasonable for the party to have assumed that such a report would be required. The Review Division may reimburse the party even if the evidence did not specifically serve the review.

Parties are not obligated to incur costs for the collection of evidence. Parties should advise the Review Division of possible sources of information and permit Review Officers to conduct the necessary inquiries. In this way, parties avoid incurring expenses which may or may not be reimbursed by the Board. Alternatively, if a party intends to obtain evidence or arrange the attendance of a witness that has not been specifically requested by the Review Division, then the party should contact the presiding Review Officer before the expense is incurred.

Parties or witnesses may be reimbursed for the out-of-pocket expenses of attending an oral hearing or medical examination. Such expenses usually include the costs incidental to a person's physical presence at the hearing or examination (i.e. loss of wages for the time missed from work and travel expenses). The following criteria will be considered in deciding whether to reimburse these expenses:

- (a) Whether expenses were incurred by or on behalf of a successful party, although this is not itself determinative.
- (b) Whether attendance of non-party witnesses assisted in deciding the review.
- (c) Whether attendance of non-party witnesses was reasonable, based on the issues under review and evidence already available.
- (d) Whether the witness attended the hearing at the request of the Review Division.
- (e) Whether a party or witness incurred expenses to attend an oral hearing that did not proceed due to an administrative error. For example, where a party had not been informed of a postponement, and incurs travel expenses to attend the hearing, costs will generally be awarded regardless of the outcome of the review.

It is not necessary for a party to be represented during a review. If a party chooses to retain a representative for the purposes of review, they do so at their own expense. The Review Division is bound by the Board's policy respecting fees and expenses of lawyers and other advocates. As stated in Policy #100.40 of the *Rehabilitation Services & Claims Manual*, "No expenses are payable to or for any advocate. Nor does the Board pay fees for legal advice or advocacy in connection with a claim for compensation".

When a Review Officer has determined that a person is eligible for reimbursement of expenses, the Review Officer may decide the amount payable. Alternatively, in the case of claims files, the officer may refer the matter back to the Compensation Services Division to determine all or some of the amounts payable. The amounts payable are generally calculated according Policies #82.20 (Amount of Reimbursement), #83.13 (Income Loss) and #83.20 (Rates of

REVIEW DIVISION - PRACTICES AND PROCEDURES

Subsistence) of the *Rehabilitation Services & Claims Manual*. With regard to medical reports, the Review Division will normally limit reimbursement to the rate allowed by the Board's tariff or general practice.

A request for reimbursement of expenses should be made in the party's submissions during the review. The Review Division has the authority to reimburse expenses in a specific case even where no request has been made.

An award of costs is an alternative to the reimbursement of incidental expenses. An award of costs involves a Review Officer directing that one party pay the expenses of another under Section 100 of the Act. The principles governing this section are found in Policy 100.70 (The Awarding of Costs) of the *Rehabilitation Services and Claims Manual*.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B5. POST DECISION MATTERS

B5.1. Requests for clarification

A Review Division decision may be perceived to be unclear, incomplete or to have an obvious error (for example, a mathematical miscalculation) by a Board officer in another Division or a person outside the Board. Clarifications of decisions may be provided in order to further the object of the Review Division of resolving disputes and avoiding further disputes and appeals.

The limits on the reconsideration of decisions do not prevent a Review Officer from issuing an addendum to clarify a decision or complete an incomplete decision. This may be done where the text of the decision did not correctly reflect the Officer's intent or include a decision on all the issues required to be decided.

The clarification process must not be used as a disguised challenge of the decision or as a means of having the Review Officer decide an issue that was not part of the original review.

B5.2. Reconsideration of Review Division Decisions

The *Act* envisages that parties who are dissatisfied with decisions will expeditiously move through its dispute resolution structure. If a person objects to a particular decision, he or she should use the next level of appeal that the *Act* recognizes. It makes no difference whether the objection relates to the substance of the decision or to the process under which the decision is made.

While finality of decision-making is one of the primary objectives of the changes to the *Act* that took effect on March 3, 2003, the Review Division does have authority to reconsider decisions in certain situations. This authority stems from two sources, the common law and the *Act*, and is exercised only in exceptional cases where there are clear grounds.

B5.2a. Reconsideration under the Common Law

Under common law principles, the Review Division may reconsider one of its decisions where there has been fraud or an error of law "going to jurisdiction", including a breach of the rules of natural justice/procedural fairness. The Review Division's authority to reconsider a decision on common law grounds is discretionary and, to promote finality of decision-making, is exercised only in exceptional situations. Generally, if the applicant has a right to appeal under the *Act*, the Review Division will not grant requests on common law grounds to void decisions. Rather, persons making these requests will be advised of their right to appeal to WCAT. In all cases, the Review Division will not reconsider a decision if an appeal to WCAT has been initiated.

REVIEW DIVISION - PRACTICES AND PROCEDURES

B5.2b. Reconsideration under the Act

Section 96.5 of the *Act* sets out two situations where the Review Division may reconsider a decision:

- (a) on the Chief Review Officer's own initiative; or
- (b) on application from a party where certain criteria are met.

These two situations are described in greater detail in items B5.2.1 and B5.2.2 below.

Section 96.6 allows the Chief Review Officer to delegate the authority to direct a reconsideration to another Review Officer.

The Review Division's limited reconsideration authority under section 96.5 of the *Act* applies only to final decisions on a valid review made under section 96.4(8). Therefore, the Review Division may reconsider a preliminary decision, such as a decision declining to conduct a review, without meeting the requirements of section 96.5.

B5.2.1. Reconsideration at the Chief Review Officer's initiative

On the Chief Review Officer's own initiative, reconsideration must take place within 23 days after the review decision was made. [Section 96.5(1)(a) and (3)(a)]. The Chief Review Officer's exercise of this discretion will be limited to exceptional cases, in particular where:

- (a) it is apparent that a review decision in a specific case contains a clear error of law or policy, or
- (b) to implement the decision would result in an immediate danger that would likely result in serious injury, illness or death.

On the Chief Review Officer's own initiative simply means that the authority to act is without a formal application. It neither implies nor requires that the Chief Review Officer is acting purely on his or her own initiative. Although the Chief Review Officer has the discretion in relation to whether or not to act, in most cases, that consideration will have been triggered by some communication from someone bringing the information to the Chief Review Officer's attention. This may come from a party, an interested person or from Board staff.

In situations where the decision may be appealed to WCAT, the Chief Review Officer may direct a reconsideration of the decision provided no actual appeal has been filed.

B5.2.2. Reconsideration on application by a party

On application from a party to a completed review of a decision, the requirements are that:

- (a) the decision is one that may not be appealed to WCAT, and

REVIEW DIVISION - PRACTICES AND PROCEDURES

- (b) the Chief Review Officer is satisfied that new evidence has become available or been discovered that
 - (i) is substantial and material to the decision, and
 - (ii) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered, and
- (c) the same party has not submitted a previous application for reconsideration of the same decision (Section 96.5(1)(b) and (2)).

The requirement that the new evidence is “substantial” and “material” means it is not sufficient that the evidence is merely new and/or relevant. The new evidence must be significant, must be relevant to the review, and must have sufficient substance or weight to support a particular conclusion.

The “reasonable diligence” requirement means that if the new evidence existed prior to the Review Division decision, the applicant must adequately explain why he or she was unable to produce it or advise the Review Division that it existed. The applicant must show that he or she exercised the degree of care which a prudent or reasonable party would have exercised in ensuring that the Review Officer had all relevant information necessary to the proper consideration of the matter under review.

Even if the statutory requirements for reconsideration are met in a particular case, the Chief Review Officer still has the discretion whether to direct a reconsideration. The Chief Review Officer will have regard to other relevant factors, such as the length of time that has elapsed since the decision was made, the explanation for the delay in applying, and the potential impact of the reconsideration on other parties.

B5.2.3. Reconsideration process

There is no formal process within the Review Division for reconsideration applications. An application must be made in writing and must be filed with the Review Division as soon as possible after the decision has been rendered.

If the Chief Review Officer decides not to reconsider, the party making the application will be notified in writing with some reasons.

Where the Chief Review Officer determines that a decision should be reconsidered, the reconsideration will normally be assigned to the Review Officer who made the original decision unless that Officer is unavailable or there are grounds for referring the matter to another Officer.

The legislative mandate to complete a reconsideration at the Chief Review Officer’s initiative in 23 days creates an administrative difficulty in giving a party adversely affected by

REVIEW DIVISION - PRACTICES AND PROCEDURES

reconsideration an opportunity to make a submission. Where a party may be substantially adversely impacted, expedited submissions may be appropriate.

REVIEW DIVISION - PRACTICES AND PROCEDURES

C. APPENDICES

C1. GLOSSARY OF TERMS

This glossary provides the meaning of certain common terms or phrases used in this Manual or in connection with the administration of reviews that are not defined in the *Act* and are not discussed otherwise in this Manual.

Term or phrase	Meaning
<i>Act</i>	<i>Workers Compensation Act</i> , unless the context otherwise indicates.
<i>Allow</i>	The Review Officer disagrees with the determination made on an issue covered by a decision or order under review.
<i>Allow in part</i>	The Review Officer disagrees in part with the determination made on an issue covered by a decision or order under review.
<i>Cancel</i>	The Review Officer disagrees with the determinations made on every issue covered by a decision or order under review and determines that the decision should be withdrawn without a new decision being substituted. Cancellations will normally only be ordered with respect to prevention decisions.
<i>Confirm</i>	The Review Officer agrees with the determinations made on every issue covered by a decision or order under review, though not necessarily with the reasons for those determinations.
<i>Decision</i>	A letter or other communication to the person affected that records the determination of a Board officer as to a person's entitlement to a benefit or benefits or a person's liability to perform an obligation or obligations under any section of the <i>Act</i> .
<i>Deny</i>	The Review Officer agrees with the determination made on an issue covered by a decision or order under review.
<i>Issue</i>	Each benefit or obligation, or each aspect of a benefit or obligation, dealt with in a decision or order under review where the decision or order includes determinations regarding <ul style="list-style-type: none"> • different aspects of a benefit or obligation, • more than one type of benefit or obligation, or • determinations regarding the same benefit or obligation at different

REVIEW DIVISION - PRACTICES AND PROCEDURES

places or times.

<i>Order</i>	A decision made under any section of the <i>Act</i> that authorizes the Board to issue orders. Orders are usually issued under the prevention provisions of Part 3 of the <i>Act</i> but can be issued under other sections, for example, the recognition of an occupational disease by order under the definition of "occupational disease" in section 1.
<i>Return to Board</i>	A referral of a decision or order back to the Worker and Employer Services Division of the Board so that the Division may make a further determination on one or more issues.
<i>Review</i>	Process established by sections 96.2 to 96.4 of the <i>Act</i> by which a Review Officer determines whether a reviewable decision or order should be cancelled, varied or confirmed or referred back to the Board for further consideration.
<i>Section</i>	Section of the <i>Act</i> , unless context otherwise indicates.
<i>Vary</i>	Any decision by a Review Officer other than one that confirms or cancels a decision or order. This covers situations where the Review Officer <ul style="list-style-type: none">(a) agrees with the determination made on one or more, but not all, the issues covered by a decision or order under review, or(b) disagrees with the determinations on all issues, and decides to substitute a new decision or order.
<i>WCAT</i>	Workers' Compensation Appeal Tribunal

REVIEW DIVISION - PRACTICES AND PROCEDURES

C2. PRE-MARCH 3, 2003 DECISIONS

The Review Division came into existence on March 3, 2003. This part of the Manual summarizes the pre-March 3, 2003, appeal system and the sections of the *Act* providing for transition from the old to the new systems for pre-March 3 decisions.

C2.1. Prior appeal system

Prior to March 3, 2003, the situation can be summarized as follows:

- (a) There were 3 levels of appeal for claims decisions affecting workers: the Workers' Compensation Review Board ("Review Board"), the Appeal Division, and the Medical Review Panel. Decisions on claims made by the Board were appealable to the Review Board. Decisions of the Review Board were appealable to the Appeal Division. Medical decisions of the Board, Review Board and Appeal Division could be appealed to the Medical Review Panel.
- (b) For Board decisions on assessments and prevention penalties, there was a right of appeal direct to the Appeal Division.
- (c) For other prevention divisions, there was a right to a review conducted by the Prevention Division. In a few cases, the decision on this review could be appealed to the Appeal Division.

C2.2. Transitional provisions

The situations when a review can be requested by the Review Division in respect of pre-March 3, 2003, decisions are discussed below. For the convenience of persons wishing to request a review as of March 3 in respect of such decisions, the Review Division accepted requests for review prior to March 3. However, prior to March 3, no determination as to the validity of a request was made and the commencement date for a valid review request is considered to be March 3.

C2.2.1. Compensation Decisions

For the purpose of determining appeal rights for pre-March 3, 2003 compensation and rehabilitation decisions, it is necessary to distinguish decisions on entitlement to benefits that affect workers from decisions as to relief of costs that only affect employers as follows:

- (a) *Decisions affecting workers' entitlement to compensation.* If prior to March 3 an appeal was filed with the Review Board, that appeal will be continued either by the Review Board or WCAT. If no appeal was made to the Review Board prior to March 3, then a request for review may be submitted to the Review Division within 90 days from the day the decision was communicated. The 90-day period commences at the end of a 10-day

REVIEW DIVISION - PRACTICES AND PROCEDURES

period that is added to the date on the decision letter to allow for mailing. This means that no request for a review may be submitted for a decision dated prior to November 21, 2002, unless an extension of time is requested from the Chief Review Officer (Sections 38 and 40 of the *Workers Compensation Amendment Act (No. 2), 2002* and Section 2(1) of the *Transition Review and Appeal Regulation - BC. Reg. 1040/2002*).

- (b) *Relief of costs.* The Review Division only has jurisdiction over relief of costs decisions made on or after March 3, 2003. Relief of costs decisions made prior to March 3, 2003 cannot be reviewed. If there was an existing appeal at the Appeal Division it will be continued either by the Appeal Division or WCAT. If no appeal was filed by March 3, an appeal could still be filed with WCAT within 30 days of the decision (Sections 39 and 41 of the *Workers Compensation Amendment Act (No. 2), 2002*).

C2.2.2. Prevention Decisions

For the purpose of determining appeal rights for pre March 3, 2003, prevention decisions it is necessary to distinguish decisions on administrative penalties from other decisions as follows:

- (a) *Administrative penalties.* The Review Division only has jurisdiction over administrative penalty decisions made on or after March 3, 2003. Penalty decisions made prior to March 3, 2003 cannot be reviewed. If there was an existing appeal at the Appeal Division it will be continued either by the Appeal Division or WCAT. If no appeal was filed by March 3, an appeal could still be filed with WCAT within 30 days of the decision (Sections 39 and 41 of the *Workers Compensation Amendment Act (No. 2), 2002*).
- (b) *Other decisions.* If prior to March 3 a request for review was filed with the Prevention Division under Division 13 of Part 3 of the *Act* as it then existed, the Prevention Division will complete the review. A person who is dissatisfied with the Prevention Division decision on a complaint of discriminatory action or cancellation or suspension of a certificate may appeal to the WCAT within 30 days. If no review request was made to the Prevention Division prior to March 3, then a request for review could be submitted to the Review Division within 60 days after the date of the decision. There is no power to extend these time limits on requesting a review or appeal (Section 37 of the *Workers Compensation Amendment Act (No. 2), 2002*).

C2.2.3. Assessment Decisions

The Review Division only has jurisdiction over assessment and classification decisions made on or after March 3, 2003. Decisions made prior to March 3, 2003 cannot be reviewed. If the employer submitted an appeal to the Appeal Division before March 3, the appeal will be continued by the Appeal Division or WCAT. If the employer did not submit an appeal before March 3, the employer could still submit an appeal to WCAT within 30 days of the decision.