

Decision of the Appeal Division

Number: Decision No. 19
Date: October 31, 1996
Panel: Maureen S. Nicholls, Chief Appeal Commissioner
Subject: Appeals Practice and Procedure for Historic 39(1)(e) Project

To ensure the personal privacy of workers is protected, the Information and Privacy Commissioner recommended that employers not be given access to worker's files unless there is a valid appeal. In a resolution dated June 11, 1996, the Panel of Administrators determined that effective July 1, 1996, employers cannot review the file before initiating an appeal.

Pursuant to Section 85.1 of the *Workers Compensation Act*, the chief appeal commissioner may determine the practice and procedure of the Appeal Division, subject to any policies of the governors and bylaws.

This decision is concerned with the practice and procedure to be followed by the Appeal Division respecting appeals related to the Historic Section 39(1)(e) Project. The Historic 39(1)(e) Project involves reviewing files for relief of cost considerations where wage loss exceeded 13 weeks, and ended between March 15, 1978 and December 31, 1993.

1. Section 96(6) of the *Workers Compensation Act* provides an employer may appeal to the Appeal Division within 30 days from a decision on relief of costs. This right of appeal will include decisions from the Historic 39(1)(e) Project.
2. The governors' published policy in Decision 75 requires written reasons for appeal. Consistent with procedures for other appeals, if written reasons have not already been provided, the appeal officer will write to the representative, requesting them. The letter will indicate that failure to respond within 21 days will result in the appeal being considered abandoned, and any further consideration will require an extension of time to appeal (see Appeal Division Decision #4, *Workers' Compensation Reporter*, Vol. 7: p.79, at p. 80).

3. Consistent with procedures for other appeals, the representative must request disclosure in writing if disclosure has not already been provided (such as on a prior appeal), but updated disclosure will be provided automatically. The appeal must remain active while disclosure is provided. The worker will be advised when the employer is granted disclosure of the file.
4. Prior to the Panel of Administrators' resolution, some employer representatives obtained disclosure by viewing the actual claim file. For those representatives, and any others who request it, the Appeal Division will advise the representative when the file is sent to the viewing area, and that they have 30 days to make a written submission. Further time to make a submission will be considered as for other cases (see Appeal Division Decision 1, *Workers' Compensation Reporter*, Vol. 7: p. 33).
6. After reviewing the file, it is open to the employer to withdraw the appeal, and seek reconsideration by submission to an Employer Cost Relief Officer (ECRO).
7. While awaiting reconsideration by the ECRO, the employer must withdraw the appeal before the Appeal Division, or the appeal will proceed to an appeal panel for a decision within 90 days. There is no provision for "suspending" an appeal before the Appeal Division. As in other cases where an appeal is withdrawn pending a request for reconsideration, the appellant can re-establish that appeal within 30 days of any reconsideration. A delay beyond 30 days of the reconsideration decision will require an application for an extension of time.
8. The initial appeal should be re-established within 30 days of the ECRO's reconsideration decision. If the reconsideration addresses the merits, an appeal of that reconsideration would also allow the Appeal Division to address the merits.