

**RE: Reviews and Appeals –
General****ITEM: C13-100.00**

BACKGROUND

1. Explanatory Notes

The *Workers Compensation Amendment Act (No. 2), 2002* (“*Amendment Act (No. 2), 2002*”) has made significant changes to the workers’ compensation appeal system.

Prior to the *Amendment Act (No. 2), 2002* being brought into force, the following avenues of appeal existed with respect to compensation and rehabilitation matters:

- initial decisions were appealable to the Workers’ Compensation Review Board;
- Review Board findings were appealable to the Board’s Appeal Division; and
- initial decisions, Review Board findings and Appeal Division decisions were all appealable on medical issues to Medical Review Panels. MRP decisions on medical issues were binding upon all levels of decision-making in the system.

Provisions of the *Amendment Act (No. 2), 2002* closing access to Medical Review Panels were brought into force effective November 30, 2002. The Medical Review Panels will continue to address appeals submitted prior to that time or in accordance with the transitional provisions of the *Amendment Act (No. 2), 2002*. Once those appeals were dealt with, the Medical Review Panels ceased to exist.

Other provisions of the *Amendment Act (No. 2), 2002* were brought into force effective March 3, 2003. Except for purposes of addressing certain matters covered by the transitional provisions of the *Amendment Act (No. 2), 2002*, the Workers’ Compensation Review Board and the Board’s Appeal Division ceased to exist as of that date.

Effective March 3, 2003, the following avenues of review and appeal exist with respect to compensation and rehabilitation matters:

- initial decisions (except decisions on whether to reopen a previous matter) are reviewable by a review officer, who is an officer of the Board;
- most, but not all, review officer decisions are appealable to the independent Workers’ Compensation Appeal Tribunal (“WCAT”); and

WORKING TO MAKE A DIFFERENCE

- initial decisions on whether to reopen a previous matter are directly appealable to WCAT.

In addressing appeals, WCAT may seek independent advice or assistance from a health care professional who appears on a list developed by the WCAT Chair in accordance with the statutory requirements. However, the opinions of the health care professional are not binding upon WCAT.

The Board has established the Review Division comprised of review officers to deal with reviews. For the most part, there will be no policies in relation to the operations of the Review Division. Readers should consult the *Act*, the Review Division and the practices and procedures issued by the Review Division to determine their rights and responsibilities in relation to this review function.

WCAT is independent of the Board. Readers should consult the *Act* and contact WCAT to determine their rights and responsibilities in relation to this appeal function.

2. The Act

The provisions of the *Act* are too extensive to quote in this Chapter. Readers are referred to the following website for the *Amendment Act (No. 2), 2002* -

http://www.legis.gov.bc.ca/37th3rd/3rd_read/gov63-3.htm

POLICY

There is no POLICY for this Item.

PRACTICE

Readers should consult the Review Division or WCAT to determine whether a pre-March 3, 2003 decision by the Board or by a previous appeal body is reviewable by the Review Division or appealable to WCAT.

EFFECTIVE DATE:	June 1, 2009 – Delete references to the Medical Review Panel, Review Board and the Appeal Division.
AUTHORITY:	<i>Workers Compensation Amendment Act (No. 2), 2002</i>
CROSS REFERENCES:	Reviews and Appeals - Review Division - Practices and Procedures (C13-101.00), Reviews and Appeals - Workers' Compensation Appeal Tribunal (C13-102.00), Reviews and Appeals - Medical Review Panels (C13-103.00), Reviews and Appeals - Transitional Matters Relating to the Review Board and the Appeal Division (C13-104.00).
HISTORY:	March 3, 2003 - New Item resulting from the <i>Workers Compensation Amendment Act (No. 2), 2002</i> .
APPLICATION:	Applies on or after June 1, 2009

**RE: Reviews and Appeals –
Review Division –
Practices and Procedures**

ITEM: C13-101.00

BACKGROUND

1. Explanatory Notes

The Board may establish practices and procedures for the conduct of reviews. Those practices and procedures are established under the direction of the President of the Board or the President's delegate.

2. The Act

Section 96.4(2):

Subject to any Board practices and procedures for the conduct of a review, 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(8):

The Board may establish practices and procedures for carrying out its responsibilities under the Act, including specifying time periods within which certain steps must be taken and the consequences for failing to comply with those time periods.

POLICY

As with other practices or procedures established by the Board, the practices and procedures for the conduct of reviews by the Review Division will be established by the President or under the direction of the President or delegate.

PRACTICE

For any relevant PRACTICE information, readers should consult the Review Division's Practices and Procedures available on the WCB website.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 96(8) and 96.4(2), <i>Workers Compensation Act</i>
CROSS REFERENCES:	Reviews and Appeals - General (C13-100.00)
HISTORY:	New Item resulting from the <i>Workers Compensation Act (No. 2)</i> , 2002
APPLICATION:	

**RE: Reviews and Appeals –
Workers' Compensation Appeal Tribunal**

ITEM: C13-102.00

BACKGROUND

1. Explanatory Notes

Effective March 3, 2003, the *Workers Compensation Amendment Act (No. 2), 2002*, has established the Workers' Compensation Appeal Tribunal ("WCAT") as the final level of appeal on most matters in the workers' compensation system. WCAT is external to, and independent from, the Workers' Compensation Board. Its chair is appointed by the Lieutenant Governor in Council. Its vice-chairs and members are appointed by the chair, after consultation with the Minister.

With certain exceptions, a final decision made by a review officer in a review under sections 96.2 to 96.5 may be appealed to WCAT.

Those exceptions are:

- a decision respecting matters referred to in section 16 of the *Act*;
- a decision respecting the application under section 23(1) of the *Act* of rating schedules compiled under section 23(2) where the specified percentage of impairment has no range or has a range that does not exceed 5%;
- a decision respecting commutations under section 35;
- a decision respecting an order under Part 3, other than an order
 - relied upon to impose an administrative penalty under section 196(1);
 - imposing an administrative penalty under section 196(1); or
 - made under section 195 to cancel or suspend a certificate; and
- a decision in a class of decisions prescribed by the Lieutenant Governor in Council respecting the conduct of a review.

In the *Workers Compensation Act Appeal Regulation* (B.C. Reg. 320/2002), the Lieutenant Governor in Council prescribed the following decisions respecting the conduct of a review as not being appealable to WCAT:

- decisions applying time periods specified by the Board under section 96(8) of the *Act* (time periods specified in the Board's practices and procedures for taking certain steps);

- decisions made under the following provisions of the *Act*
 - section 96.2(4) (extensions of time to request a review);
 - section 96.2(7) (deeming an employers' adviser or an organized group of employers to be the employer);
 - section 96.4(2) (subject to any Board practices and procedures, conducting a review as the review officer considers appropriate);
 - section 96.4(3) (completing a review or determining a review has been abandoned if a party does not make a submission within the time required by the Board's practices and procedures);
 - section 96.4(4) (requiring the employer to post a notice in the workplace of reviews relating to certain occupational health and safety matters);
 - section 96.4(5) (suspending a review to allow a review officer to deal with related matters at the same time); and
 - section 96.4(7) (extending the time for a review officer to make a decision);
- an order by the chief review officer under section 96.2(5) that the request for review operates as a stay of proceedings or suspends operation of the decision under review;
- decisions about whether or not to refer a decision back to the Board under section 96.4(8)(b) of the *Act*; and
- decisions respecting the conduct of a review if the review is in respect of any matter that is not appealable to WCAT.

A decision to reopen or not to reopen a matter on an application under section 96(2) may be appealed directly to WCAT.

A determination, an order, a refusal to make an order or a cancellation of an order made by the Board under section 153 (in relation to discriminatory action) may also be appealed directly to WCAT.

2. The Act

The provisions of the *Act* are too extensive to quote in this Chapter. Readers are referred to the following website for the *Amendment Act (No. 2), 2002* -

http://www.legis.gov.bc.ca/37th3rd/3rd_read/gov63-3.htm

POLICY

There is no POLICY for this Item.

PRACTICE

For PRACTICE information about the operation of WCAT, readers should contact WCAT.

EFFECTIVE DATE:	March 3, 2003
AUTHORITY:	ss. 231 to 261, <i>Workers Compensation Act</i> , s. 4, <i>Workers Compensation Act Appeal Regulation</i> (B.C. Reg. 320/2002)
CROSS REFERENCES:	Reviews and Appeals - General (C13-100.00)
HISTORY:	New Item resulting from the <i>Workers Compensation Amendment Act (No. 2), 2002</i>
APPLICATION:	