

PRACTICE DIRECTIVE #42

APPEALS

On May 30, 2002, the provincial government introduced draft legislation, the *Workers Compensation Amendment Act (No.2), 2002* ("Bill 56"), which proposes to amend the current appeal structures. The government has not yet announced the date on which changes to the appeal system would come into effect. This will be discussed during the fall session of the Legislature when Bill 56 is expected to be reintroduced and debated.

It is anticipated that the current appeal system and processes will remain in place throughout 2002. In the interim, therefore, the policies in Chapter 13 of the *Rehabilitation Services & Claims Manual* pertaining to appeals remain in effect, as do existing practices that flow from the *Act* and those policies. Decisions that are appealable will continue to be made and communicated in accordance with training provided to all Board officers

In anticipation of the new legislation on appeals, and following an Appeals Intervention Pilot, the Board created an Internal Review process. Employers and workers can not request or directly access internal reviews. Internal Review is currently responsible for reviewing disputed decisions that are under appeal at the Workers' Compensation Review Board and is expected to reduce the backlog of disputed claims at the Review Board. It is also expected to provide feedback for continued improvement in adjudication quality.

The attached document, entitled "*Part 1 Project Processes – Internal Review, June 5, 2002*" describes the current Internal Review process.

PART 1 PROJECT PROCESSES – INTERNAL REVIEW
June 5, 2002

Included below is a description of Internal Review work process as well as the work process by which completed Internal Review work is to be re-introduced to the units.

This document is shared to ensure overall understanding by all parties involved.

INTERNAL REVIEW WORK PROCESS

1. AIRS will assign incoming files to Internal Review Officers. **The “Initial Letter” will not be sent at this point.**
2. The Internal Review Officer screens the file for new information.
3. If there is significant new information on file which was not before the Claim Owner at the time of the decision, the file will be returned to the Claim Owner.
4. The document will be linked to a log entry which gives the Claim Owner 21 days to initiate further enquiry.
5. The file will be BF'd by IRB for 21 days.
6. If NO action has been taken in that time, the file will be pulled back by the IRO who will proceed with review. The “Initial Letter” will be sent to the appellant with copies to the respondent.
7. If action HAS been taken in that time, the file will be BF'd for a further period until the Claim Owner has rendered a new decision.
8. If the Claim Owner readjudicates the original decision, a copy of the decision, and the Notice of Appeal is sent to the Review Board for further action. IRB finalises the claim.
9. If the Claim Owner upholds original decision after reviewing new information, IRB will review the claim. The “Initial Letter” will be sent to the appellant with copies to the respondent. Review is conducted per Process B(1).

(A) DECISION UNCHANGED

1. Do a complete read and review of the claim file.
2. Following your review, if you are satisfied that all evidence has been considered and that the correct policy has been applied, then no further inquiry is required.
3. Place a log entry into the claim file documenting that there is no change to the decision under appeal. Example of log entry:

An internal review has been completed on the claim file. Concerning the decision of _____, appeal # _____ no new decision has been made. The claim file is to be returned to the Review Board. Letter to be forwarded to the appellant.

4. A letter is to be sent to the appellant with a copy to the respondent. **See Sample “Uphold Letter to Appellant – Respondent” attached.**

Formatted: Bullets and Numbering

```
Deleted: ¶
(B) NEW EVIDENCE ON FILE
THAT SHOULD BE CONSIDERED
BY THE ORIGINAL DECISION
MAKER¶
¶
<#>New information has been
identified in your read and review.¶
<#> You have determined that the
new information is substantive and
relevant to the decision under appeal.¶
<#>Do a log entry to the claim owner
(see work process for Entitlement)
and put into abeyance your review for
21 days. An example of the log entry
to the claim owner could be as
follows:¶
¶
The decision letter of _____ has
been forwarded for an internal review.¶
¶
New evidence has been received on
the claim file. See linked
document(s). ¶
¶
Please review the new evidence and
advise whether it changes the
decision under review.¶
¶
The internal review will be put into
abeyance for 21 days pending the
outcome of your review. Please
contact me, if additional time is
required to perform your review.¶
¶
<#>Send letter to all parties advising
of the above. Attach a copy of the
new information to the respondent's
letter. See example of letter
attached.¶
<#>When claim is returned, if the
decision is reversed or modified by
the claim owner, return file to Review
Board with new decision letter
attached.¶
<#>If claim returned and there is no
change to the decision under appeal
carry out your review.¶
```

(B) UPHOLDING DECISION FOLLOWING FURTHER INVESTIGATION

If after your read and review and verbal inquiry you determine that there will be no change to the decision under appeal, any new information obtained **will** become part of the claim file.

ISSUES ARISING FROM PRECEEDING PROCESS

The following two scenarios are outlined to provide guidance concerning the extent to which Internal Review Officers will delve when dealing with evidence.

<p>1. There is evidence on file which has been seen by the original decision maker but which has been improperly weighed by the Claim Owner.</p>	<p>The file will not be returned to the Claim Owner. It will be retained by Internal Review and a decision rendered by Internal Review Officer.</p>
<p>2. In the course of the Internal Review inquiry, new evidence is obtained which is not significant and substantive and does not persuade you to overturn the claim owner's decision.</p>	<p>Do a log entry documenting the evidence. The documentation should be brief and factual. Do not editorialize.</p> <p>Any hard evidence (letter from worker, medical report, etc.) is scanned to efile.</p> <p>Send templated letter to worker and respondant advising that decision has been upheld.</p>

Deleted: either

Deleted: or referred back to Board Officer if new evidence obtained during investigation. Copies to all relevant parties.

Deleted: (see process B)

When the IRO has made a decision on the file, the file will be returned to AIRS who will collect the stats, ensure that all documentation is on file, and release the file to the Review Board.

(C) OVERTURNING DECISION FOLLOWING READ AND REVIEW OR OTHER ENQUIRY

1. If, following your review, you determine that the decision should be overturned, document your findings and reasonings in a letter.
2. All supportive documents such as telephone memos, memos to MA and MA reply, etc., are to be sent to scanning.
3. Your letter will be typed and will be sent to you in your To Be Reviewed folder. The letter will contain the following paragraph:

“The claim will be forwarded to the Review Board and you will be given the opportunity to withdraw or continue with your appeal.”

4. **Check the claim file to ensure that the scan documents are on file.** When the documents are on file, forward your letter to the WP in the “To Print” folder. This is to ensure that your letter does not appear on file prior to the supportive documentation.
5. The letter will be printed, imported into efile, and the originals and any copies will be brought to you for signature.
6. After signing the letter(s), do a log entry to the Claim Owner with the following message:

“INTERNAL REVIEW MEMO – (DATE OF DECISION) OVERTURNED

The internal review of the decision letter is complete.

The issue under review was . It is my decision to overturn (modify) the previous decision. See internal review decision letter dated which is linked to this memo.

The implementation of the internal review decision will result in a new decision. Please ensure a decision letter is sent with a copy forwarded to all interested parties.

7. If file is being returned to Entitlement Officer, please send to appropriate Screen Desk per “Efile Desk Listing”
8. Refer file to AIRS who will collect the stats, and check to ensure that all information is on file before it is released to the Review Board.

PART 1 INITIAL LETTER TO APPELLANT /COPY TO
RESPONDENT

Dear

Re: WCB Claim # , Review Board Appeal #
Decision letter dated

In order to improve the quality and timeliness of service to those who have filed a Notice of Appeal to the Workers' Compensation (WCB) Review Board, Internal Review Officers within the WCB Internal Review Branch (IRB) are currently reviewing these appealed decisions.

As a Internal Review Officer within the IRB, I was not involved in the original decision making process. My objective is to complete a fair and timely informal review. This process will not delay your appeal to the Review Board.

My authority to conduct these reviews is provided by Section 96(2) of the Workers' Compensation Act (*the Act*) and policy item #108.30 of the Workers' Compensation Rehabilitation Services and Claims Manual (the RSCM). In summary, this authority allows decisions to be changed when:

- New evidence indicates that a different decision is appropriate
- An error has been made; or
- The decision is not supported by the evidence

I will advise you of the outcome of my review. If my decision modifies or overturns the decision under appeal, the claim will be forwarded to a Board Officer to implement my changes. Your claim will also be forwarded to the Review Board and you will be given the opportunity to withdraw or continue with your appeal.

Your employer/your worker has the right to appeal if the decision under appeal is changed or modified. If the decision under appeal is not changed your claim will be returned to the Review Board so your claim can proceed. No reasons will be given for decisions not changed to ensure that the IRB review process does not compromise appeals.

If you have any questions please contact me at

Yours truly,

Internal Review Officer
Internal Review
Legal Services Division
WCB
cc:

UPHOLD LETTER TO APPELLANT AND RESPONDENT
No additional information

Dear

Re: WCB Claim Review Board Appeal

I have reviewed the Board Officer's decision of (date) made on this claim.

After considering the information on the claim, the original decision will not be changed. Since no new decision has been made, the claim will be returned to the Review Board so that your appeal can proceed.

As stated in earlier correspondence, please be assured that this review has not interrupted or delayed your appeal.

Yours truly,

Internal Review Officer
Internal Review
Legal Services Division
WCB

cc: Respondent (if participating)

**UPHOLD LETTER TO APPELLANT AND RESPONDANT
New Information Considered**

Dear

Re: WCB Claim Review Board Appeal

I have reviewed the Board Officer's decision of (date) made on this claim.

After considering the information on the claim, including new information received, the original decision will not be changed. Since no new decision has been made, the claim will be returned to the Review Board so that your appeal can proceed.

As stated in earlier correspondence, please be assured that this review has not interrupted or delayed your appeal.

Yours truly,

Internal Review Officer
Internal Review
Legal Services Division
WCB

Cc: Respondent (if participating)