

DISCUSSION PAPER

1. TITLE

Reconsideration of Classification Decisions

2. ISSUE

Currently, two assessment policies provide that decisions to change an employer's classification are exempt from the 75-day time limit imposed on reconsidering decisions under the *Workers Compensation Act* ("Act").

On April 2, 2007, a Workers' Compensation Appeal Tribunal ("WCAT") panel referred the two assessment policies to the WCAT Chair for consideration of whether the *Act* supports these policies. Specifically, the Vice Chair stated that the 75-day time limit on reconsideration should apply where WorkSafeBC ("WCB") identifies that a classification has been assigned to an employer in error and the employer's operations have not changed since the original decision.

In the two cases under appeal, the Vice Chair found that the Assessment Department's May 2005 decisions to change the employers' classification were made outside of the 75-day time limit.

At issue is a review of the two assessment policies to consider whether changes are required to address the issues raised by the WCAT Vice Chair.

3. BACKGROUND

3.1 Law and Policy

(a) *Classification System*

The WCB's classification system is established under the *Act*.¹ The classification system is based on industrial undertaking. In addition, the *Act* authorizes the WCB to assess firms in each class for the purpose of creating and maintaining the accident fund.²

The classification system is rooted in the classification unit. A firm is assigned to a classification unit on the basis of the industry in which the firm is operating. As a result, each classification unit is made up of a relatively homogeneous group of firms who are considered by the WCB to be peers and competitors in an industry.³

¹ Section 37 of the *Act*.

² Section 39 of the *Act*.

³ The remaining elements of the classification system, in order of greater aggregation are 24 subsectors and seven sectors. Subsectors and sectors are referred to in the *Act* as subclasses and classes.

A decision on an employer's assignment to a classification unit impacts the employer's assessment rate as the assessment system is also based on the classification unit. Assessment rates are set for each individual classification unit.

The WCB's authority to change an employer's classification is also set out under the *Act*. Under this authority, the WCB can create, divide, consolidate or rearrange classes or subclasses, and to assign or withdraw an employer, independent operator or industry from a class or subclass.⁴ The WCB's ability to change classification ensures equity and fairness between employers.

Policy sets out the reasons for changing a firm's classification, the effective date of the change and the impact of the change in classification on an employer's experience rating.⁵ The two main reasons for change in classification include:

- (i) The firm's operations have changed and the firm is misclassified.
- (ii) The firm's operations have not changed, but it is misclassified. This could be due to misclassification due to Board error or firm non-compliance.

(b) *Reconsideration of Previous Decisions*

Prior to the Bill 63 legislative amendments in March 2003, the *Act* granted the WCB complete discretion in deciding whether to reopen, rehear and redetermine a matter. Bill 63 was enacted to address issues regarding the lack of finality and certainty in the system as well as issues relating to the quality of decision-making and the appeal structure.

The following are the key legislative amendments relevant to the WCAT referral:

- The *Act* defines "reconsider" as meaning to make a new decision in a matter previously decided where the new decision confirms, varies or cancels the previous decision or order.
- Section 96(4) states that the WCB may, on its own initiative, reconsider a decision or order that the WCB or an officer or employee of the WCB has made under Part 1 of the *Act*.
- Section 96(5) provides that despite section 96(4), the WCB may not reconsider a decision or order if more than 75 days have elapsed since that decision or order was made or a review or appeal have been filed.

Policy contains the following statements regarding reconsideration of classification change decisions:

A decision to change a firm's classification does not constitute a reconsideration of a decision under section 96(4) of the *Act*. Rather, the change constitutes the

⁴ Section 37(2) of the *Act*.

⁵ Item AP1-37-3 of the *Assessment Manual*.

exercise of the Board's normal classification authority under section 37(2). The restrictions, including the 75-day time limit, placed upon the Board's reconsideration authority under section 96(5) does not apply.

A similar statement is contained in the *Assessment Manual* policy which deals with reconsiderations, reviews and appeals of assessment matters.⁶

(c) Purpose of the Reconsideration Provision

As set out in policy, the purpose of the reconsideration provisions is to promote finality and certainty within the workers' compensation system. The WCB's reconsideration authority is intended to provide a quality assurance mechanism. The WCB has been given a time-limited opportunity to vary or cancel, on its own initiative, any incorrect decisions it may have made.

Assessment policy distinguishes between decisions on individual matters and matters of general application. Decisions on individual matters are subject to the time limits on reconsideration. Examples of these types of decisions include the application of a penalty for failure to remit or report as required under the *Act*, or the charging of claims costs to an employer.

Decisions with respect to matters of general application are not intended to be covered by the reconsideration provisions given their applicability to all employers in the system. Examples of matters of general application include the allocation of premium and investment income, distribution of claims costs, and other funds from an account of a class or subclass and the determination of an assessment rate for a class or subclass.

4. DISCUSSION

4.1 WCAT Vice Chair Referral

In her decision, the WCAT Vice Chair found the following:

- Classification changes due to changed circumstances of a firm's operations would not fall within the scope of the *Act's* definition of "reconsider" or the policy definition of reconsideration. In these cases the WCB would be considering new matters not previously adjudicated by the WCB. Thus the WCB would be making a new decision based on different circumstances not previously adjudicated.
- In regards to the two decisions under appeal, the Vice Chair commented that the WCB changed its earlier classification decisions to correct what it perceived to be "incorrect" decisions it made with respect to the employers. She noted that this situation falls precisely within the explanation of the purpose of section 96(4) and 96(5) of the *Act*, provided in policy.

⁶ Item AP1-96-1 of the *Assessment Manual*.

- The Vice Chair did not agree that the legislative provisions must be given liberal interpretation and that the specific classification provision of the *Act* must overrule the general reconsideration provision. She commented that these interpretations cannot be rationally supported because when taken to the extent as suggested by the Department, it would apply to almost every WCB decision under the *Act*, essentially negating sections 96(4) and 96(5).

The WCAT Vice Chair concluded that where the WCB has reclassified an employer based solely on the reason of Board error, the 75-day time limit on reconsidering a prior decision applies to the decision. As a consequence of this conclusion, she found that the portion of both the classification change policy and the reconsideration policy that provides that the reconsideration rules do not apply to classification change decisions to be patently unreasonable and unable of being supported by the *Act*.

4.2 Classification Changes due to Board Error

The Assessment Department makes a classification decision every time it establishes a new registration or re-opens a closed registration for an employer or independent operator. This results in approximately 33,000 classification decisions per year. In the vast majority of cases, the employer or independent operator is assigned to a classification unit which reflects their industrial undertaking.

A Board error in classification generally occurs when a Board officer assigns an employer to a classification unit that does not reflect the information provided by the employer regarding his or her industrial undertaking. In these situations, the employer's operations have not changed. Errors in classification are often identified when the Assessment Department undertakes an audit or a file review. They may also come to light when an employer questions their classification, specifically when an employer determines that they are being charged an assessment rate higher than their competitors.

In addition, during a review of an entire industry for classification consistencies the Assessment Department may identify situations where an employer or several employers are misclassified. These types of errors are also considered Board errors.

The Assessment Department does not track the number of classification changes completed based on reason for the change therefore obtaining exact numbers is difficult. The Assessment Department has estimated that it adjudicates between 50 and 75 classification changes per year for misclassification due to Board error. The vast majority of these errors are identified after the 75-day time limit on reconsiderations.

Imposing the 75-day time limit on changes in classification due to Board error would result in both financial and administrative challenges for the WCB and employers. As the majority of Board errors are identified after 75 days, there would be between 50 and 75 firms that will be wrongly classified, and therefore paying the wrong assessment rate. Some employers would be charged assessment rates higher than their competitors, while other employers would be charged a lower rate than their competitors. This result may also impact the assessment rate payable by others in the classification unit.

Those employers receiving a higher rate than their competitors would have to request an extension of time to appeal from the Review Division in order to have the error addressed. Otherwise, these firms would be subsidizing others in their classification.

There would be no financial incentive for those employers receiving a lower rate than their competitors to have the error addressed through an appeal. As a result, some employers would be at a competitive advantage because of the WCB's inability to correct Board errors after 75 days. As well, other firms in their classification units would be subsidizing their costs.

For these employers, the Assessment Department may be able to impose a special assessment rate as authorized under section 42 of the *Act* if the grounds set out in the *Act* are met - the hazard or cost of compensation of an industry or plant differs from the average of the class or subclass to which the employer is assigned.

4.3 Policy Changes to the Classification System

Every year the WCB publishes the *Classification and Rate Making List*, which is approved by the BOD and which forms part of WCB policy. This publication lists every classification unit and the assessment rate assigned to it for the year.

As part of this review, changes may occur to specific classification units such as the creation of a new classification unit, deletion of a classification unit, or the moving of an employer or groups of employers from one classification unit to another.

Ongoing reviews of the classification system are required to ensure equity and fairness between employers and to ensure that the system reflects the evolving nature of industry and business in British Columbia. Changes in classification units which result as part of a review of the classification system are important to ensuring the long-term financial stability of the assessment system. In this regard, decisions to change classification units reflect matters of general application rather than a decision on an individual matter.

The policy on classification changes does not specifically address situations where a change in classification occurs as part of a review of the classification system. Inclusion of this reason in the policy may be appropriate to ensure that the policy reflects the main reasons for classification changes.

5. OTHER JURISDICTIONS

No other Canadian jurisdiction has a legislated time limit on the ability to reconsider a decision.

Many jurisdictions have policy on changing an employer's classification which includes the reasons for changes. Only Alberta, New Brunswick, Yukon and the Northwest Territories and Nunavut have policy which specifically speaks to changing an employer's classification due to an error in classification.

New Brunswick and the Northwest Territories and Nunavut policies also speak to changes in classification due to changes in their classification policy or classification system.

6. OPTIONS AND IMPLICATIONS

Option 1: Status quo

Implications

- The classification change and reconsideration policies would remain unchanged. The WCB would continue to make classification change decisions due to Board error after the 75-day time limit has elapsed.
- The WCAT Chair would respond to the outstanding section 251 referral. If the policy is found to be patently unreasonable, a policy review under section 251 would be required.
- Policy would not address situations where a classification change has occurred as part of the review of the *Classification and Rate Making List*.

Option 2: Revise the classification change and reconsideration policies

Under this option, the following changes would be made to the classification change and reconsideration policies:

- Both policies would be revised to reference the 75-day time limit with respect to decisions on classification changes due to Board error.
- The classification change policy would set out an additional reason for classification change – policy changes that result in changes to classification units.

Draft policy setting out this option is contained in Appendix A.

Implications

- This approach would address the issues raised by the WCAT Vice-Chair in her referral regarding Board error and the 75-day time limit.
- Policy would clarify that classification changes may occur as a result of policy changes to classification units.
- Policy changes that state that the 75-day time limit on reconsiderations applies to Board errors would have both a financial and an administrative impact. As the majority of Board errors are identified after 75 days, there would be between 50 and 75 firms per year that would be wrongly classified, and therefore paying the wrong assessment rate. Some firms would end up paying higher assessments than their

competitors while some firms would pay lower assessments than their competitors. This result may also impact the assessment rate payable by others in the classification unit.

- It is anticipated that those employers who are charged a higher assessment rate than their competitors due to a Board error in classification, and who identify the error after the 75-day time limit, would not be satisfied that their concerns are not immediately addressed. These employers would have to request an extension of time to appeal the decision to the Review Division in order to have their concerns addressed.
- Those employers who are charged assessment rates lower than their competitors would be at a competitive advantage and would most likely not appeal the classification decision. For these employers, the Assessment Department may be able to impose a special assessment rate as authorized under section 42 of the *Act* if the grounds set out in the *Act* are met - the hazard or cost of compensation of an industry or plant differs from the average of the class or subclass to which the employer is assigned.

7. CONSULTATION

Stakeholders are invited to provide feedback on the discussion paper, options, draft policy, and any additional comments that may be relevant to the issue.

Stakeholder comments will be accepted until **September 14, 2007**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

By mail: Susan Hynes
Director, Worker and Employer Policy
Policy and Research Division
WorkSafeBC
P.O. Box 5350, Stn. Terminal
Vancouver, B.C. V6B 5L5

By fax: 604 279-7599

By e-mail: policy@worksafebc.com

WorkSafeBC's governing body, the Board of Directors, will consider the options expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

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RE: **Classification – Changes**

ITEM: **AP1-37-3**

BACKGROUND

1. Explanatory Notes

This policy sets out the reasons for changing a firm's classification, the effective date of a change, and the impact of a change in classification on experience rating.

The Board may do one or more of the following with respect to all or part of the firm's operation:

- (a) Change an existing classification unit;
- (b) Add a classification unit; or,
- (c) Delete a classification unit.

2. The Act

See Items AP1-37-1, AP1-37-2 and AP1-42-1.

POLICY

1. Firm's Responsibility

It is the responsibility of each firm to provide timely, complete and accurate information to the Board regarding changes in the firm's operations, and to act promptly on information requests and information provided by the Board.

2. Change in Classification

The Board may change a firm's classification. The reasons for a change in classification fall into ~~three~~**four** main categories:

- (a) The firm's operations have changed and the firm is now misclassified;
- (b) The firm's operations have not changed, but it is misclassified; ~~or,~~

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(c) Policy changes which result in changes to classification units; or,

~~(e)~~**(d)** The firm was misclassified based on the firm's non-compliance with reporting requirements, which includes, but is not limited to fraud, misrepresentation, failure or delay in providing timely, complete and accurate information to the Board, or failure to act on information.

The effective date of a change in a firm's classification depends on the reason for the change.

3. Effective Date of Change in Classification

(a) *Change in Operation*

Unless there has been firm non-compliance, if the operations have changed, and the firm is now misclassified, the change will be effective on the date of the change in operation, or January 1st of the year in which the decision to change the firm's classification occurred, whichever is later.

If the date of the change in operation cannot be determined, the effective date will be January 1st of the year in which the decision to change the classification occurred.

(b) *No Change in Operation*

i. No Board Error

Unless the firm was misclassified because of firm non-compliance or Board error, if the operations have not changed, but the firm is misclassified, the effective date of a change in classification will depend on whether the change will lead to an increase or decrease in the base rate.

- If the change will lead to a decrease in the base rate it will be effective January 1st of the year in which the decision to change the firm's classification occurs.
- If the change will lead to an increase in the base rate it will be effective January 1st of the year following the date of the decision to change the firm's classification.

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ii. Board Error

A Board error occurs if the firm has provided timely, complete and accurate information to the Board, but a clear error is made by the Board in classifying the firm. It includes a misclassification that continues after a Board officer has audited a firm and a classification review has taken place. It does not include borderline classification questions requiring a judgment decision or situations where the information supplied by the firm is not timely, complete and accurate, regardless of whether this was deliberate or inadvertent.

If the need to change the firm's classification is the result of a Board error, the effective date of the change will depend on whether the change will lead to an increase or decrease in the base rate.

- If the change will lead to a decrease in the base rate, the change may be effective on the date that the firm was misclassified because of the Board error, but in no circumstances will the effective date be earlier than January 1st of the year three (3) years before the date the error came to the Board's attention.
- If the change will lead to an increase in the base rate, the change will be effective on January 1st of the year following the date the error came to the Board's attention.

(c) Policy Changes which result in Changes to Classification Units

The Board may make policy changes to classification units or the composition of classification units which may result in changes to an employer's classification.

Changes to an employer's classification which occurs as a result of a policy change will be effective January 1st of the following year, unless otherwise specified by the Board.

~~(e)~~**(d) Firm Non-Compliance**

A classification change may be necessary due to a firm's non-compliance. Firm non-compliance includes, but is not limited to:

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- fraud;
- misrepresentation;
- failure to provide timely, complete or accurate information to the Board;
- failure to act promptly on information requests; or,
- failure to act on information provided by the Board.

If the need to change the classification is the result of firm non-compliance, the effective date of the change will depend on whether the change will lead to an increase or decrease in the base rate:

- i. If the change will lead to a decrease in base rate, the change will be effective January 1st of the year in which the decision to change the firm's classification occurred.
- ii. If the change will lead to an increase in base rate, the change may be effective up to three (3) years before the date of the decision to the change the firm's classification.

4. Impact on Experience Rating

A change in classification may result in a transfer of experience rating. The following principles apply:

- (a) The classification has changed because of a change in the firm's operations.
 - i. If there has been a distinct change in the operations, the experience rating will not transfer.
 - ii. If the change in operations has occurred incrementally or the firm's operations have evolved over time, the experience rating may transfer.
- (b) If the classification has changed, but not as a result of a change in the firm's operations, the experience rating may transfer. This includes a change in classification because of Board error.

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- (c) If the classification has changed because of firm non-compliance, the general rule is that experience rating will not transfer. However, the Board may decide to transfer experience rating if the non-compliant firm could benefit from a failure to transfer.

The firm will be advised of any change in its classification.

A decision to change a firm's classification **due to a change in the firm's operations, policy changes which result in changes to classification units or firm non-compliance** does not constitute a reconsideration of a decision under section 96(4) of the *Act*. Rather, the change constitutes the exercise of the Board's normal classification authority under section 37(2). The restrictions, including the 75-day time limit, placed upon the Board's reconsideration authority under section 96(5) does not apply.

PRACTICE

If a classification is being added to a firm's existing classification, the criteria of the multiple classification policy must be met before the classification change policy is applied.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the ~~WCB~~**WorkSafeBC** website.

EFFECTIVE DATE:	January 1, 2004
AUTHORITY:	ss. 37(2) and (3) and 42, <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also The Classification System (AP1-37-1), Classification – Multiple (AP1-37-2) and Transfer of Experience Rating (AP1-42-1) in the <i>Assessment Manual</i> .
HISTORY:	This Item resulted from an editorial consolidation of the former <i>Assessment Policy Manual</i> , which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred. Policy No. 30:20:40 in the former <i>Assessment Policy Manual</i> was replaced by this Item. Consequential changes to this Item made as a result of the <i>Workers Compensation Amendment Act (No. 2), 2002</i> were effective on March 3, 2003.
APPLICATION:	The amended policy applies to all new decisions on or after January 1, 2004.

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**RE: Reconsiderations, Reviews and Appeals
Reconsiderations of Decisions**

ITEM: AP1-96-1

BACKGROUND

1. Explanatory Notes

The *Act* provides the Board with a limited time period to reconsider previous decisions or orders. Subject to certain restrictions, the Board may only reconsider a decision or order under Part 1 of the *Act* during the period of 75 days subsequent to the decision or order being made.

2. The Act

Section 1, in part:

“reconsider” means to make a new decision in a matter previously decided where the new decision confirms, varies or cancels the previous decision or order

Section 39(6):

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.

Section 96, in part:

- (4) Despite subsection (1), the Board may, on its own initiative, reconsider a decision or order that the Board or an officer or employee of the Board has made under this Part.
- (5) Despite subsection (4), the Board may not reconsider a decision or order if
 - (a) more than 75 days have elapsed since that decision or order was made,
 - (b) a review has been requested in respect of that decision or order under section 96.2, or

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- (c) an appeal has been filed in respect of that decision or order under section 240.

Section 221:

- (1) A document that must be served on or sent to a person under this *Act* may be
 - (a) personally served on the person,
 - (b) sent by mail to the person's last known address, or
 - (c) transmitted electronically, by facsimile transmission or otherwise, to the address or number requested by the person.
- (2) If a document is sent by mail, the document is deemed to have been received on the 8th day after it was mailed.
- (3) If a document is transmitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission.

POLICY

(a) Definition of reconsideration

A reconsideration occurs when the Board considers the matters addressed in a previous decision anew to determine whether the conclusions reached were valid. Where the reconsideration results in the previous decision being varied or cancelled, it constitutes a redetermination of those matters.

Decisions that are reconsidered under section 96(4), and are therefore subject to the time limitations in section 96(5), are decisions on individual matters. Examples of such decisions include:

- the modification of an employer's assessment rate through experience rating;
- determinations regarding whether an individual is a worker, employer, independent operator or labour contractor;

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- the application of a penalty for failure to remit or report as required under the *Act*, and
- the charging of claims costs when an employer is in default and an injury or occupational disease occurs to one of its workers during the period of default.

Matters of general application, on the other hand, are not intended to be covered by section 96(4) and (5). Examples of such matters include:

- the allocation of income, compensation payments, outlays, expenses, assets, liabilities, surpluses or deficits to or from an account of a class or subclass, or to or from a reserve of the accident fund, with the exception of section 10(8) and section 39(1)(b), (d) and (e) decisions as they relate to a specific employer or independent operator; and
- the determination of an assessment rate for a class or subclass.

Section 37 of the *Act* establishes the Board's authority to make any changes to classes and subclasses that are considered necessary and appropriate as part of the management of the classification system. The exercise of this authority, including withdrawing an employer or independent operator from a subclass and transferring the employer or independent operator to another class or subclass, **due to a change in the firm's operations, policy changes which result in changes to classification units or firm non-compliance**, does not constitute a reconsideration of a Board decision.

On a review or an appeal, the Review Division and the WCAT may make a decision that confirms, varies or cancels the decision under review or appeal. The Review Division and WCAT decisions are final and must be complied with by the Board.

Varying or canceling a decision may make invalid other decisions that are dependent upon or result from the decision under review or appeal. The reconsideration requirements under sections 96(4) and 96(5) do not limit changes to previous decisions that are required in order to fully implement decisions of the Review Division or the WCAT.

(b) The purpose of sections 96(4) and (5)

The Board's authority to reconsider previous decisions and orders is found in section 96(4) and (5) of the *Act*. The purpose of these amendments is to promote finality and certainty within the workers' compensation system.

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Sections 96.2 to 96.5 establish a right to request a review by a review officer, where a party disagrees with a decision or order made at the initial decision-making level. It is this review, rather than the application of the Board's reconsideration authority, which is intended to be the dispute resolution mechanism for initial decisions and orders of Board officers.

The use of the words "on its own initiative" in section 96(4), and the availability of a review mechanism under sections 96.2 to 96.5, indicate that the Board is not intended to set up a formal application for reconsideration process to resolve disputes that parties may have with decisions or orders.

Rather, the Board's reconsideration authority is intended to provide a quality assurance mechanism by the Board. The Board is given a time-limited opportunity to vary or cancel, on its own initiative, any incorrect decisions it may have made.

However, this does not preclude the Board from basing a reconsideration on information that may be brought forward by a worker, employer or other party to a decision or order, provided the grounds for reconsideration have been met.

(c) Advice to parties

Parties to a decision or order will be advised at the time the decision or order is made of the right to request a review of the decision or order under section 96.2. The Board will take all reasonable steps to communicate a decision or order to a party. A party who requests the reconsideration of the decision or order will be reminded by the Board of the party's right to request a review under section 96.2.

If the Board reconsiders a decision or order before the request for review is made, the Board will provide the parties to the decision or order with a reconsidered decision. The reconsidered decision gives rise to a new right to request a review under section 96.2.

(d) Restrictions on reconsideration

The *Act* places a number of express restrictions on reconsidering previous decisions and orders. It is noted, in this respect, that "reconsider" means the making of a new decision and not merely the starting of the reconsideration process leading to the new decision.

- The Board may not reconsider a decision or order more than 75 days after the decision or order was made. In accordance with section 221, where a decision or order has been sent by either registered or regular mail, the

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document is deemed to have been received on the 8th day after it was mailed. If the decision is sent electronically, the document is deemed to have been received on the date the Board receives electronic acknowledgement of receipt. One exception to section 221 applies to decisions mailed to employers in accordance with section 39(6) regarding the amount of assessment due in respect of the employer's industry and the time when it is payable. This notice is deemed to be given to the employer on the day the notice is mailed.

- The Board may not reconsider a decision or order if a review has been requested by an employer or an independent operator in respect of that decision or order under section 96.2. A request for review under section 96.2 immediately terminates the authority of the Board to reconsider a previous decision or order, even if 75 days has not passed since the decision or order was made.
- The Board may not reconsider a decision or order if an appeal has been filed in respect of that decision or order to the Workers' Compensation Appeal Tribunal under section 240. The filing of an appeal under section 240 immediately terminates the authority of the Board to reconsider the decision or order, even if 75 days has not passed since the decision or order was made.

There are, in addition, a number of implicit restrictions on reconsidering previous decisions and orders. The Board is not authorized to reconsider appellate decisions or findings of the following bodies:

- the former Appeal Division;
- the former Commissioners, who existed prior to June 3, 1991;
- the boards of review and the Workers' Compensation Review Board; and
- the Board of Review, which existed prior to January 1, 1974.

Section 256 of the *Act* provides for the Workers' Compensation Appeal Tribunal to reconsider its own decisions and decisions of the former Appeal Division under certain limited conditions.

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(e) Grounds for reconsideration

Subject to the limitations set out above, the Board may reconsider a decision on its own initiative where:

- there is new evidence indicating that a prior decision or order was made in error;
- there has been a mistake of evidence, such as:
 - material evidence was initially overlooked, or
 - facts were mistakenly taken as established which were not supported by any evidence or by any reasonable inference from the evidence;
- there has been a policy error such as:
 - applying an applicable policy incorrectly, or
 - not applying an applicable policy;
- there has been a clear error of law, such as a failure by the Board to follow the express terms of the *Act*; or
- one or more of the reasons for reducing or cancelling a penalty under the policy in Item AP1-47-1 are met.

(f) Authority of Board officers, Managers and Directors to reconsider

A Board officer may only reconsider a decision made by another Board officer where there is new evidence, a mistake of evidence, a policy error or a clear error of law or where one or more of the reasons for reducing or cancelling a penalty are met.

A Manager or Director may reconsider a decision or order made by a Board officer in any of these circumstances, and may also reweigh the evidence and substitute his or her own judgment for that of the Board officer.

(g) Correction of administrative errors

The correction of an administrative error such as a clerical, typographical or mathematical error or a slip or omission does not result in a reconsideration of a

APPENDIX A

DRAFT ASSESSMENT MANUAL POLICIES

Additions In Bold, Deletions Struckthrough



WORKING TO MAKE A DIFFERENCE

ASSESSMENT MANUAL

previous decision. The ability to correct these types of errors, slips or omissions would not be considered a reconsideration of the original decision, as it would not change the intent of the original decision made by the Board officer.

This process for correcting errors, slips or omissions, however, cannot be applied to change previous decisions.

PRACTICE

For any relevant PRACTICE information, readers should consult the Practice Directives available on the ~~WCB~~**WorkSafeBC** website.

EFFECTIVE DATE:	January 1, 2005
AUTHORITY:	ss. 1, 39(6), 96(2) and 221 of the <i>Workers Compensation Act</i> .
CROSS REFERENCES:	See also Penalties (AP1-47-1); Fraud and Misrepresentation (AP1-96-2) in the <i>Assessment Manual</i> .
HISTORY:	Consequential changes made in accordance with the <i>Workers Compensation Amendment Act (No. 2), 2002</i> and applied to all reconsiderations on or after March 3, 2003. Replaces Policy No. 10:40:00 of the <i>Assessment Policy Manual</i> . This Item results from the 2002 "editorial" consolidation of all assessment policies into the <i>Assessment Manual</i> . The POLICY in this Item continues the substantive requirements of the policies and items referred to in the HISTORY as they existed prior to the Effective Date, with any wording changes necessary to reflect legislative and other changes since the policies and items referred to in the history were issued.
APPLICATION:	Applies to all decisions on and after January 1, 2005.