

20030617-02

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

**Re: Policy Clarification of Appeal Rights -
Policy Item #108.50 of the *Rehabilitation Services & Claims Manual***

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Chapter 14 - Reopenings and Reconsiderations - was deleted from the *Rehabilitation Services & Claims Manual*, Volumes I and II, effective March 3, 2003 as part of the policy changes made by the former Panel of Administrators ("Panel") to implement the *Workers Compensation Amendment Act (No. 2), 2002* (or "Bill 63");

AND WHEREAS:

Policy item #108.50 - Appeals Against Decisions on Applications for Reconsideration - was among the policies in Chapter 14 deleted by the former Panel;

AND WHEREAS:

Policy item #108.50 states (in part):

Where the application questions the validity of the original decision, there is no doubt that a decision denying the application on its

merits may be appealed to the review board, the Appeal Division or a Medical Review Panel, as the case may be. However, no appeal lies from a decision on the preliminary question whether any grounds for a reconsideration have been submitted in support of the application. That decision is essentially preliminary and discretionary whereas a decision on the merits (once the sufficiency of grounds has been accepted) involves an application of law and policy to the facts.;

AND WHEREAS:

Policy item #108.50 does not apply to Workers' Compensation Board ("WCB") decisions on reconsideration made on or after March 3, 2003;

AND WHEREAS:

An issue has arisen as to whether policy item #108.50 applies to the consideration by the WCB Review Division ("Review Division") or the Workers' Compensation Appeal Tribunal ("WCAT"), under the Bill 63 transitional provisions or otherwise, of pre-March 3, 2003 WCB decisions on reconsideration;

AND WHEREAS:

In view of the wording and substance of policy item #108.50, the Board of Directors does not consider that the policy item was intended to apply in regard to matters before the Review Division or WCAT, however they may arise;

AND WHEREAS:

The Board of Directors wishes to facilitate the disposition of matters to be decided under the Bill 63 transitional provisions in order to achieve finality in relation to them;

AND WHEREAS:

The Board of Directors considers that it would be advisable to establish certainty and avoid disputes by providing clarification in relation to the applicability of policy item #108.50;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. For greater certainty, policy item #108.50 of the *Rehabilitation Services and Claims Manual*, Volumes I and II, was not intended to, and does not, apply to the consideration by the Review Division or by WCAT of pre-March 3, 2003 WCB decisions on reconsideration matters.
2. This policy clarification applies from March 3, 2003, when Bill 63 generally came into force.
3. This policy clarification constitutes a policy decision of the Board of Directors.

DATED at Richmond, British Columbia, on June 17, 2003.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**