

## COMPENSATION PRACTICE AND QUALITY DEPARTMENT

### PRACTICE DIRECTIVE # C12-6

**TOPIC:** Implementation of Appellate Decisions  
**ISSUE DATE:** July 4, 2005, Amended December 5, 2011

### Objective

This practice directive provides guidance to WorkSafeBC officers regarding the implementation of Review Division (“RD”) and Workers’ Compensation Appeal Tribunal (“WCAT”) decisions. In particular, it expresses WorkSafeBC’s commitment to ensuring timely implementation of appellate decisions.

### Law & Policy

Section 96.4(9) of the *Workers Compensation Act* (the “Act”) requires WorkSafeBC officers to comply with decisions of review officers and provides that such decisions are final, subject to being reconsidered on the direction of the chief review officer or being appealed to WCAT.

Section 255 of the *Act* states that WCAT decisions are final and conclusive and requires the WCB to comply with such decisions.

Section 258 and *Rehabilitation Services and Claims Manual* (“RSCM”) Vol. II, Policy item #100.83, *Implementation of Review Division Decisions* provide direction on the payment of benefits and interest following a RD or WCAT decision.

RSCM Vol. II, Policy item #C14-101.01, *Changing Previous Decisions - General*, confirms that in order to fully implement a RD or WCAT decision it may be necessary to revisit other decisions that are dependent on the result of the review or appeal and the reconsideration and reopening provisions do not place any limits on that process.

### Adjudicative Guidelines

#### (A) Immediate Steps

Upon receipt of a RD or WCAT decision, the claim owner should assess it to determine the appropriate course of action necessary to implement the decision, as follows:

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*Implementation of Appellate Decisions*

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- **Identify any questions, issues or difficulties that may affect timely implementation of the decision**

The officer should seek assistance from their Client Services Manager as soon as they realize they may have difficulty implementing the decision. If the Client Services Manager is unable to resolve the difficulty, he or she contacts the Compensation Practice and Quality department who will provide advice on how to proceed with implementation.

- **Identify any missing information** required to implement the decision, the source of such information and timeframes for obtaining it;

Under section 56 of the *Act*, physicians and qualified practitioners are required to provide WorkSafeBC with reports on a worker's condition. Some health care providers require a current authorization form in order to release information. If there is no current authorization on file, the WorkSafeBC officer should obtain it immediately in order to expedite attainment of any missing medical information.

- **Make referrals to other WorkSafeBC departments** such as medical services, vocational rehabilitation or disability awards.
- Where a RD or WCAT decision has a potential impact on a worker's entitlement to further vocational rehabilitation ("VR") benefits or to permanent disability benefits, the claim owner should notify the appropriate WorkSafeBC officer or department as soon as the RD or WCAT decision is received. The claim owner should not wait until his/her actions on the claim are completed to make referrals to other departments. **Notify the Assessments Department** if the RD or WCAT decision varies a previous WES decision regarding:
  - the acceptability of a claim or reopening,
  - the termination date of temporary disability benefits, or
  - relief of costs (please see paragraph (F) *Charging of Claims Costs*).

### **(B) Communicating Implementation**

Once the claim owner has determined the appropriate course of action, he or she should send either:

- (1) **A Decision Letter** explaining the implementation and stating any decisions made as part of the implementation (where the implementation can be completed immediately or within a very short time); or

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- (2) **A Plan of Action Letter** detailing the implementation plan (where the implementation cannot be completed immediately or within a very short time).

The Plan of Action Letter is intended to outline to the worker the actions and decisions that the WorkSafeBC officer needs to complete in order to implement the appellate return and the timeframe for completion of those actions and decisions.<sup>1</sup>

At least one of the above letters is to be sent:

- in the case of all **RD decisions**, within **45 days** of the date of the RD decision; and
- in the case of all **WCAT decisions**, within **60 days** of the date of the WCAT decision.

Where further information is required to implement some portion(s) of the RD or WCAT decision, the rest of the decision should be implemented without delay, subject to the provisions of section 258 of the *Act*. In such cases, it may be appropriate to send a combined decision/plan of action letter.

If the timelines for completing the actions and decisions necessary to implement the appellate return, as provided in the Plan of Action Letter, are not met, WorkSafeBC officers are required to send a follow-up letter to the worker. This new letter informs the worker which actions and decisions were not completed as planned, the reason for the delay, and the new expected timelines for completion.<sup>2</sup>

Workers and employers are notified of implementation decisions in accordance with the requirements of RSCM Policy item #99.20, *Notification of Decisions*. In the decision letter, WorkSafeBC officers should advise the parties of their right to request a RD review of the implementation decisions (see RSCM Policy item #99.21, *Notification of Rights of Review and Appeal*).

### **(C) Types of Appellate Documents and Decisions**

#### **Review Decision Documents**

A review officer may issue one decision document that contains several separate RD decisions pertaining to the same worker.

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<sup>1</sup> A *Plan of Action Letter* template is available on the Compensation Practice & Quality Team site.

<sup>2</sup> A *Delay in Implementing Plan of Action Timelines* template letter is available on the Compensation Practice & Quality Team site.

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In other words, a RD document may address more than one Request for Review (“RFR”), each one of which relates to a specific WES decision. The WorkSafeBC officer should implement the decisions contained in the RD decision document without delay. However, if one of those RD decisions is appealed to WCAT, the WorkSafeBC officer must ensure that any benefits retroactive to the RD decision are deferred until WCAT has made its decision.

### **Types of Appellate Decisions**

Both the RD and WCAT can make a decision to confirm, vary or cancel the decision under review or appeal. Each appellate body can also refer a matter back to the WES Division but the process to be followed by the WorkSafeBC officer differs depending on whether it is the RD or WCAT referral back.

### **RD Referrals Back to WES**

- Where the RD refers a matter back to the WES Division, with or without directions, that referral back constitutes the RD’s final decision on the matter and the RD does not retain jurisdiction over the claim. The officer in WES should implement the decision to refer back in the same manner as any other RD decision. Implementation of refer back decisions requires the WES officer to take further action, usually in the form of completing additional investigation and making decisions. It would be inappropriate to delay this process for 40 days. Section 258 of the Act, which requires certain benefits to be withheld for 40 days or until a subsequent WCAT appeal is complete, has no application in the case of refer back decisions. The WES officer should fully implement return to Board decisions immediately upon receipt of the RD decision.
- Where a refer back from the RD for reassessment or redetermination is decided by the same WES officer who originally decided the matter, and the WES officer comes to the same conclusion as previously, the matter is referred to the WES officer’s manager or delegate for a second look.<sup>3</sup> If the manager or delegate’s opinion varies from that of the WES officer, the manager or delegate’s opinion prevails.
- If the officer notes an error in the original WES decision while implementing the RD referral back, that error may be corrected as long as the correction does not contradict any directions provided by the review officer. Such a correction is not a reconsideration because when the RD refers a matter back, the effect is to cancel the original WES decision and require the officer to make a new decision to replace it.

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<sup>3</sup> RSCM Policy #100.75, *Implementation of Review or Appeal Decisions Directing Reassessment or Redetermination*  
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### **WCAT Suspensions and Referrals Back**

- WCAT can suspend an appeal proceeding under section 246(3) or section 252 or refer a matter back to WorkSafeBC to conduct further investigation under section 246(2)(d). In the case of a section 246(3) suspension or a section 246(2)(d) referral back for investigation, WCAT retains jurisdiction over the claim and the suspension/referral back does not constitute a final decision of WCAT.

### **Section 246(3) Suspensions**

Where WCAT suspends an appeal under section 246(3), it is because it has been determined there is a question that needs to be answered by WorkSafeBC before the appeal can be decided by WCAT. Once that question is answered by WorkSafeBC, the matter is sent back to WCAT so the appeal can be completed. The WorkSafeBC officer does not adjudicate other issues related to the matter identified by WCAT. Instead, the officer limits his/her involvement to determining the matter(s) raised by WCAT and communicating the response in a determination letter to the worker with copies to WCAT and other parties to the appeal.

Determination letters do not contain the right of review/appeal paragraph but officers may wish to include the following language:

*“I have made this determination as a result of a request by WCAT. There is no right to request a review of this determination. However, WCAT will consider this determination along with the original appeal. Before issuing its decision WCAT will provide you with an opportunity to make submissions.”<sup>4</sup>*

An example of a section 246(3) suspension would be the following. WCAT suspends a worker’s appeal and asks the Case Manager whether the worker suffers, or did suffer, from a depressive disorder caused by the workplace injury. The Case Manager’s response is limited to a determination as to whether the worker has (or had) a depressive disorder caused by the workplace injury. Even where the Case Manager determines the worker is suffering from a depressive disorder related to the workplace injury, the officer would not adjudicate the worker’s entitlement to benefits or further treatment related to that disorder. WCAT will consider the matter in the context of the appeal before it.

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<sup>4</sup> A Section 246(3) WCAT Suspension Determination template letter is available on the Compensation Practice & Quality team site.

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### **Section 246(2)(d) Referrals Back for Investigation**

In the course of conducting an appeal, WCAT can refer a matter back to WorkSafeBC for investigation in accordance with section 246(2)(d). In these cases, the WorkSafeBC officer reports back to WCAT in a log entry. The officer does not make any decisions or determinations and as a result no review rights are given.

### **Section 252 Suspensions**

In the case of a section 252 suspension, the appeal proceedings are suspended where a WorkSafeBC decision on a related matter is pending. The related matter may be on the same claim or a different claim. WCAT does not have jurisdiction over the new decision on the related matter. The WorkSafeBC officer makes the decision on the related matter and communicates it to the parties in a decision letter which contains the right of review/appeal paragraph. The decision letter on the related matter is not sent to WCAT. The appellant has 30 days from the date of the decision on the related matter in which to request that WCAT continue the appeal proceedings.

### **(D) *Payment Process***

#### **RD Decisions**

- **Prospective Payments**, representing entitlement to wage loss benefits, health care benefits or a permanent disability award payable from the date of the RD decision forward, are paid without delay.
- **Retroactive Payments**, representing entitlement to wage loss benefits, health care benefits or a permanent disability award for a period of time prior to the RD decision are deferred for a period of 40 days following the date of the RD decision. This mandatory deferral period cannot be waived even if the employer confirms that it does not intend to appeal the RD decision.

If any portion of the RD decision is appealed to WCAT, the retroactive payments are further deferred until WCAT issues a final decision or the appeal is withdrawn. The deferral period is a requirement under section 258(3) of the *Act* and applies whether the issue appealed to WCAT is related to the retroactive payments issue or not.

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WES officers are encouraged to begin the implementation process immediately upon receipt of the RD decision. Although the retroactive payment cannot be sent until 40 days have expired, the WES officer can take steps required to calculate the payment during the 40 day period. For example, in order to make the retroactive payment it may be necessary to gather additional earnings information and have the Long-Term Rate Setting Unit set a long-term wage rate. These steps can be undertaken during the 40 day deferral period. The WES officer will then be able to make the retroactive payment in a timely manner when the 40 day deferral period expires, meeting the service expectation of implementing the RD decision within 45 days of the date of the decision.

- **VR Benefits** are paid without delay following the RD decision whether they relate to a period of time prior to the RD decision or a period of time following the date of the RD decision. There is no legislative authority to defer payment of retroactive VR benefits.

### **WCAT Decisions**

Any compensation payable following a WCAT decision is paid immediately.

### **(E) Interest**

Where retroactive wage loss benefits or permanent disability lump-sum payments are payable following a WCAT decision:

- interest is paid in accordance with RSCM Vol. II, Policy item #50.00, *Interest*, if the benefits are payable due to a blatant Board error; or
- interest is paid for the period of time commencing 41 days after the date of the RD decision in cases where no interest is payable under Policy item #50.00 because there was no blatant Board error (see section 258(6)).

In either case, the amount of interest is calculated in accordance with the rates set out in RSCM Vol. II, Policy item #50.00.

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### **(F) Charging of Claims Costs**

Where a WorkSafeBC officer implements a RD or WCAT decision that:

- reverses a previous decision to accept or deny a claim,
- reverses a previous decision to accept or deny the payment of further compensation related to a reopening,
- varies the duration of wage loss entitlement, or
- varies a relief of costs decision (applicability, percentage, or effective date);

the officer notifies the Assessment Department to ensure the claims costs are charged in a manner consistent with the RD or WCAT decision.

### **(G) Clarification of Decisions and Quality Assurance**

Where a WorkSafeBC officer requires clarification or thinks a RD or WCAT decision contains an error of law and/or policy, assistance should be sought from the officer's Client Service Manager or Supervisor.

If the Client Service Manager or Supervisor is unable to provide enough clarification for the decision to be implemented, he or she immediately raises the matter to a Senior Compensation Advisor in Compensation Practice & Quality. The Senior Compensation Advisor will provide advice on how to implement the decision and will liaise with the appellate body as necessary.

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<b>CROSS REFERENCES:</b>	See RSCM Vol. II, Policy item #100.75, <i>Implementation of Review or Appeal Decision Directing Reassessment or Redetermination</i> , PD #C7-2, <i>Interest</i> , PD #C12-4, <i>Obligation to Provide Information</i> , <i>WCAT Suspensions and Referrals – Business Process (available on WSN under Published Policy and Practice)</i>
<b>HISTORY:</b>	This item replaces PD #65, <i>Implementation of Review Division and Workers' Compensation Appeal Tribunal Decisions</i> . More details regarding refer back decisions of the RD and implementation of retroactive benefits were added in July 2007. In January 2008 information concerning the requirement for a second look on reassessment/redetermination decisions was added. On February 2009, the PD was amended to reflect the new requirement to send a follow-up letter where the actions and/or decisions outlined in the Plan of Action letter were not completed in the timelines outlined in that letter.
<b>APPLICATION:</b>	This item is intended to clarify existing corporate practice.