

BILL 63
EFFECTIVE DATES AND TRANSITION RULES FOR
REOPENINGS, RECONSIDERATIONS, REVIEWS & APPEALS

Practice Directive Effective Date: March 3, 2003

A. BACKGROUND

The Legislature has enacted the *Workers Compensation Amendment Act (No. 2), 2002* ("Bill 63"), which amends the *Workers Compensation Act* (the "Act").

On November 30, 2002, Bill 63 amendments closing access to Medical Review Panel ("MRP") proceedings came into effect. On March 3, 2003, the remainder of Bill 63 was proclaimed.

Bill 63 creates a new review and appeal structure for the workers' compensation system. A primary change under the new legislation will be the discontinuance of the Workers Compensation Review Board, the Appeal Division and the Medical Review Panel.

Bill 63 reduces the levels of review and appeal from three to two and creates the following review/appeal bodies:

- An internal review body at the Board called the Review Division to review most initial decisions by Board officers.
- The Workers' Compensation Appeal Tribunal ("WCAT"), an independent appeal body external to the Board, which is the final level of appeal on most issues.

Other changes include the following:

- Significant limitations are placed upon the Board's authority to reconsider decisions.
- New rules have been established for reopening matters that were previously decided by the Board.
- Policy is now binding throughout the workers' compensation system.
- The process for levying administrative penalties for health and safety violations under Part 3 of the *Act* is changed.

B. PURPOSE OF PRACTICE DIRECTIVE #57

This Practice Directive discusses how the transition will occur for reopenings, reconsiderations, reviews and appeals.

Definitions:

For convenience, in this Practice Directive the following terms are used:

- Law and policies relating to the former MRP provisions, as they read immediately before November 30 2002, are called “the former MRP provisions”.
- Law and policies, other than the former MRP provisions, as they read immediately before March 3, 2003, are called “the former provisions”.
- Law and policies relating to reopenings, reconsiderations, reviews and appeals, as they read on or after March 3, 2003, are called “the current provisions”.

C. DISCUSSION

1. REOPENINGS

The effective date of the current provisions is March 3, 2003. After March 3, 2003, the following transition rules apply to reopenings:

1. Reopenings that were completed (i.e. a decision letter was provided) before March 3, 2003 will have been dealt with under the former provisions.
2. Reopenings that are requested on or after March 3, 2003 will be dealt with under the current provisions.
3. Where a reopening was requested before March 3, 2003, but decided after March 3, 2003, the current provisions apply.

[See Practice Directive #58, “*Reopenings*,” for more details]

2. RECONSIDERATIONS

The following transition rules apply to reconsiderations:

1. Decisions on reconsiderations that were completed (i.e. a decision letter was provided) before March 3, 2003 will have been dealt with under the former provisions.
2. Reconsiderations that are requested on or after March 3, 2003 will be dealt with under the current provisions.

3. Reconsiderations that are not completed before March 3, 2003 *cannot* be completed if, on March 3, 2003:
 - (a) 75 days have passed since the decision was made;
 - (b) a review to the Review Division has been requested in respect of the decision;
or
 - (c) an appeal to WCAT has been filed in respect of the decision.

After March 3, 2003, where a reconsideration is in progress and either 3(a), 3(b) or 3(c) has occurred, the reconsideration process *must cease*. The Board officer who was in the process of reconsidering the matter will advise the applicant that reconsideration of the decision will not proceed, as either 75 days have passed, a review to the Review Division has been requested or an appeal to WCAT has been filed.

[See Practice Directive #C14-2, "*Reconsiderations*", for more details]

3. REVIEW BOARD

All proceedings before the Review Board on March 3, 2003 in which the Review Board:

- has completed an oral hearing; or
- has received final submissions and commenced its deliberations;

will continue to completion under the former provisions and a Review Board finding will be rendered.

This Review Board finding will be appealable to WCAT within 30 days after the Review Board finding is made. Under special circumstances, if an injustice would result, the WCAT Chair has the authority to extend the time for an appeal to WCAT (of a Review Board finding).

All other proceedings before the Review Board on March 3, 2003 (i.e., those in which the Review Board has *not yet* completed an oral hearing; or has *not yet* received final submissions and commenced its deliberations) must be completed by WCAT under the new provisions -- except that the 180 day time-frame for making a WCAT decision will not apply.

WCAT may confirm, vary or cancel the decision under appeal -- or may refer the decision back to the Board, with or without directions. If WCAT refers the matter back to the Board, the Review Division may review the Board's decision made under the referral under s.96.2 of the *Act*.

If a party has not exercised his or her right to file an appeal to the Review Board by March 3, 2003, and the 90 day appeal period has not expired, the party may request a review by the Review Division. Under special circumstances, if an injustice would result,

the Chief Review Officer in the Review Division has authority to extend the time limit to file the review.

4. APPEAL DIVISION

All proceedings, (including appeals, reconsiderations, section 11 applications and criminal injury matters) before the Appeal Division on March 3, 2003 in which the Appeal Division:

- has completed an oral hearing; or
- has received final submissions and commenced its deliberations;

will continue to completion under the former provisions and an Appeal Division decision will be rendered.

All other proceedings before the Appeal Division on March 3, 2003 (i.e., those in which the Appeal Division has *not yet* completed an oral hearing; or has *not yet* received final submissions and commenced its deliberations) must be completed by WCAT under the new provisions -- except that the 180 day time-frame for making a WCAT decision will not apply.

WCAT may confirm, vary or cancel the decision under appeal -- or may refer the decision back to the Board, with or without directions. If WCAT refers the matter back to the Board, the Review Division may review the Board's decision made under the referral under s.96.2 of the *Act*.

If a party has not exercised his or her right to appeal a Review Board finding to the Appeal Division by March 3, 2003, and the 30 day appeal period has not expired, the party has a right to file an appeal to WCAT. This must be done within 30 days after the Review Board finding has been made. Under special circumstances, if an injustice would result, the WCAT Chair has the authority to extend the time to appeal to WCAT.

5. MEDICAL REVIEW PANEL PROCEEDINGS

All MRP proceedings pending on November 30, 2002 will be continued and completed under the former MRP provisions.

If the 90 day time limit for requesting an MRP review had not expired before November 30, 2002, a person retains his or her rights to an MRP under the former s.58 (3) or (4) within 90 days of the decision.

The authority of the WCB (and the Appeal Division) to refer a worker for examination by a Medical Review Panel ended on November 30, 2002. The right of a dependant of a deceased worker to request a MRP into the death of a worker also ended on November 30, 2002.

6. SETTING ASIDE DECISIONS OR ORDERS RESULTING FROM FRAUD OR MISREPRESENTATION

The current section 96 (7) provides that:

*“...the Board may **at any time** set aside any decision or order made by an officer or employee of the Board ...if that decision or order resulted from fraud or misrepresentation of the facts or circumstances upon which the decision or order was based.”* [emphasis added]

Policy clarifying fraud and misrepresentation is outlined in RSCM, Vol. II, Policy item #104.01, *Changing Previous Decisions – Fraud and Misrepresentation*.

A decision to set aside a decision or order resulting from fraud or misrepresentation should only be made with a manager’s approval.

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