WorkSafeBC

REVIEW DIVISION

PRACTICES AND PROCEDURES

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REVIEW DIVISION – PRACTICES AND PROCEDURES

INTRODUCTION

The Review Division of WorkSafeBC (the “Board”) has authority under Part 6 of the *Workers Compensation Act* (the "*Act*") to review decisions in specific cases made by officers in the Board. These decisions cover the following main areas:

(a) whether a claim for compensation should be allowed, the amount and duration of compensation benefits, including vocational rehabilitation and medical assistance, and how the costs of that claim should be allocated,

(b) the obligation of employers to pay assessments to the Board, and the amount of those assessments, and

(c) whether employers have violated the prevention provisions of the *Act* and regulations, whether a variance should be given from a provision of a regulation, a certificate awarded to a first aid attendant or similar person should be cancelled or suspended and whether an administrative penalty should be imposed on an employer.

In conducting reviews of these decisions, the Review Division has three main objectives:

(a) to provide a simplified and flexible process for obtaining within the Board an independent review of a specific decision made under the *Act*,

(b) to be part of the Board's overall strategy to develop and maintain consistent, predictable and quality decision-making, including a timely information loop between the Review Division and the Board's senior management, and

(c) to provide final resolution to disputes with Board decisions within the required statutory timeframes.

The Review Division is independent of the other Divisions of the Board that make decisions under the *Act*. The Chief Review Officer, who is in charge of the Review Division, reports directly to the President and Chief Executive Officer of the Board. The Chief Review Officer appoints Review Officers who conduct most of the reviews carried out by the Review Division.

This Manual sets out the practices and procedures of the Review Division established pursuant to section 338 of the *Act.*

The decisions that are subject to review are made by a wide variety of processes and by persons of different areas of expertise. In particular, there are differences amongst the processes followed for compensation, assessment and prevention matters. These differences will be reflected to some extent in the processes followed by the Review Division for different matters.

The changes to the workers’ compensation appeal system, including the statutory review function carried out by the Review Division, took effect on March 3, 2003. The prior appeal system, and when requests for review can be submitted for pre-March 3 decisions, are summarized in Appendix B2 of this Manual.

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A1. PRIOR TO MAKING A REQUEST FOR REVIEW

With some exceptions discussed below, Board decisions are normally communicated in a letter or other document that includes an explanation of the reasons for the decision.

An affected person who is not satisfied with the decision may wish to obtain more information before deciding whether to request a review. The person may wish to:

(a) contact the decision maker to obtain written clarification of the decision,

(b) request disclosure of the Board's file prior to the submission of a request for review or appeal (in some situations, this may be subject to restrictions imposed by the *Freedom of Information and Protection of Privacy Act*),

(c) consult with a representative (the Provincial Government has appointed Workers' Advisers and Employers' Advisers to provide free advice to workers and employers related to the Workers' Compensation system),

(d) visit the Board's internet site at http://www.worksafebc.com for information on appeals.

If a person directly affected by a Board decision wishes to obtain a change in the Board's decision, he or she will normally have to request a review under the process discussed in this Manual. In a few situations, the Board's decision must be appealed directly to the Workers' Compensation Appeal Tribunal ("WCAT"). (See Item A2.1 of this Manual.)

The *Act* authorizes a Board division to reconsider its decisions on its own initiative. This authority ceases as soon as a request for review is submitted or, except for prevention decisions and certain other limited situations, within 75 days of the decision being made. [Sections 123 and 20(1) of the *Act*.] [1]

A1.1. Decisions not supported by written reasons

Board decisions often take the form of notices or form letters that do not provide reasons. This is normal in the case of prevention orders that are included in a notice posted at a workplace and in the case of notices regarding assessments.

Before requesting a review of a decision or order for which the Board has not provided written reasons, the applicant may first advise the Board division or department concerned that the review is being contemplated and request it to provide reasons for the decision. It is possible that the applicant and the Board may be able to resolve the dispute at this point, without the need for a formal review. However, the fact that the applicant may be waiting for the Board to provide reasons for the decision does not extend the time limit for requesting a review.

For those decisions that are not supported by complete reasons and the Board has not subsequently provided reasons, the Review Division may ask the Board division or department concerned to provide written reasons. If in the course of preparing reasons, the department concludes that the decision under review should be varied or withdrawn, it will indicate this to the Review Division. The Review Division will then, depending on the circumstances, immediately

[1] See the reconsideration policies in the *Rehabilitation Services & Claims Manual* - Chapter 14, *Prevention Manual* - D2-113-1 and the *Assessment Manual* - AP1-96-1

refer the matter back to the Board to make a new decision or consider the matter after the parties have had an opportunity to comment and make submissions.

A2. INITIATING A REVIEW

Before the Review Division can review a Board decision,

(a) the decision must be made in a specific case and be of a type that the Review Division is allowed to review under the *Act*,

(b) the person concerned must be directly affected by the decision and fall within a category of persons listed in the *Act*, and

(c) the person concerned must submit a written request for review containing sufficient information, and the written request must be received within the time limit specified in the *Act*.

These requirements are discussed below in more detail.

A2.1. What decisions may be reviewed?

Most decisions made by Board officers on individual compensation, prevention and assessment matters are reviewable. The main exceptions are decisions concerning:

(a) prohibited action complaints,

(b) an employer's assessment rate except to the extent it is affected by experience rating,

(c) an employer's Industry Group or Rate Group for assessment purposes, and

(d) allocations of amounts to and from classes, subclasses and reserves for assessment purposes, except for relief of costs applications by individual employers under sections 240(1)(b), (c) and (d) of the *Act* and cost transfer applications under section 249 of the *Act*. [Section 268 of the *Act*.]

The first item on this list is appealable directly to WCAT. There is no formal right of review or appeal on the other items. Concerns regarding decisions on these matters should be addressed to the Board's Finance, Assessments and Corporate Operations Division.

Section 268(1) of the *Act* states that the following Board decisions in a specific case may be reviewed:

(a) a Board order respecting an occupational health or safety matter under the OHS provisions, a refusal to make such an order or a variation or cancellation of such an order;

(b) a Board decision respecting a compensation or rehabilitation matter under the compensation provisions;

(c) a Board decision under the compensation provisions respecting

(i) an assessment or classification matter,

(ii) a monetary penalty, or

(iii) an employer payment to the Board under any of the following:

A. section 251 [levy of contribution from specific employer];

B. section 262 (2) [employer assessment in relation to injury not reported as required];

C. section 263 [employer payment for compensation in relation to injuries during period of default].

The application of these provisions in certain situations is discussed below together with the exceptions created by the *Act*.

A2.1.1. Administrative or Incidental decisions

The Review Division's jurisdiction is limited to decisions in a specific case. Therefore, a review cannot be requested of decisions of a general legislative, policy, or administrative nature.

The right of review is also restricted to decisions that affect a person's entitlement to a benefit or impose an obligation or responsibility. It does not cover incidental decisions or actions of an administrative nature that might happen in dealing with a specific case, for example:

(d) a decision as to which Board officer should be assigned a case,

(e) a delay in making an initial decision (the Board has a Fair Practices Office that deals with such matters),

(f) a decision by a Board officer as to how the officer will investigate or reach a decision on the matter (for example, whether the officer will visit the workplace or meet with an affected person), and

(g) a decision to take court or other proceedings to collect an assessment found to be owing or an overpayment of compensation. (A review may be requested of the decision as to the amount the employer or worker owes.)

A provisional wage rate decision issued under Policy C9-65.10 of the *Rehabilitation Services & Claims Manual* ("*RSCM*") is not a reviewable decision. A preliminary determination under Policy #96.21, to provide temporary financial relief to a worker until the Board receives the information necessary to make a decision on the validity of the claim, is also not a reviewable decision.

A finding of fact may not be reviewed except where it forms part of an express or implied decision regarding an entitlement to benefits or obligation under the *Act*. (See Policy C12-99.20 of the *RSCM*.)

A2.1.2. Reconsideration decisions

A review may be requested where the Board exercises its initiative under section 123 of the *Act* to reconsider a prior decision, and then makes a new decision on the same matter. It is necessary to distinguish a decision under section 123 from a response to a request to clarify or explain the prior decision. (See Policy C12-99.21 of Volume II of the *RSCM*.) A clarification or explanation of a prior decision does not create a new reviewable decision.

Sections 123(2) and (3) of the *Act* places certain restrictions on the Board's power to reconsider, including that the Board may only reconsider a decision or order referred to in subsection (1) after the 75 days have elapsed since that decision or order was made if the decision or order contains an obvious error or omission.

No new decision is made for the purpose of requesting a review where a Board officer simply communicates the fact that the Board no longer has authority to reconsider under section 123(2)

or (3). However, if there is a substantial issue as to whether the Board had authority to reconsider, a review may be conducted to consider that issue, and if it is determined that there was authority, the Review Officer may deal with the merits of the case or refer the matter back to the Board to make a new decision.

A communication that the Board will not be taking the initiative under section 123 of the *Act* to reconsider the previous decision, and advising of the right to a review, is not a reviewable decision.

A2.1.4. Prior review/appeal decision

No review may be requested of a prior decision of the Review Division. A request for reconsideration may be submitted to the Chief Review Officer in certain circumstances. (See Item A5.2 of this Manual.) Nor can a review be requested of a decision of another appeal body such as:

(a) WCAT (a request for reconsideration may be submitted to WCAT in certain circumstances - See section 310 of the *Act*),

(b) the Workers' Compensation Review Board that existed prior to March 3, 2003 (a request for an extension of time to appeal can be submitted to WCAT),

(c) the Appeal Division that existed prior to March 3, 2003 (WCAT can reconsider Appeal Division decisions under section 310 of the *Act*),

(d) the Medical Review Panel that existed prior to November 30, 2002, or

(e) the Commissioners of the Board who existed prior to June 3, 1991.

If, in an appeal, WCAT considers that a matter should have been determined by the Board, it may suspend the appeal proceedings and refer that matter back to the Board for determination. In such a case, WCAT will consider the Board's determination in the context of the appeal and no review of that determination by the Review Division may be requested. [Section 297(3)-(4) of the *Act*.]

Where a decision is made that implements a decision of the Review Division or another appeal body, a review may be requested if the applicant is concerned with whether the review or appeal decision was properly implemented.

A2.1.5. Decisions not communicated in a letter

A decision is reviewable whether communicated in writing or orally. However, if a review of an oral decision is requested, the Review Division must satisfy itself that a decision was in fact made. If so satisfied, the Review Division may request written reasons from the Board division that made the decision.

A request for review may be submitted in relation to a decision letter that on its face did not deal with the issue raised by the request. The request may be accepted if a decision on that issue can reasonably be implied, for example, if a worker makes a specific request that health care benefits be provided and the response is to issue a decision stating that the criteria for reopening the claim have not been met.

A2.1.6. Prevention Decisions

A Board order, a refusal to make a Board order, a variation of a Board order or a cancellation of a Board order respecting an occupational health or safety matter in a specific case can be reviewed. Two exceptions where there is no right of review are:

(a) An order relating to a complaint of prohibited action made on or after March 3, 2003. These are appealable directly from the Board's Fatal and Serious Investigations department to WCAT. [Sections 268(1)(a), 268(2)(a) and 289(1) of the *Act*].

(b) The collection of an administrative penalty once it has been imposed. The decision imposing the penalty can be reviewed, including a decision to charge an employer with the costs of a claim under section 251 of the *Act* for an injury, death or disablement due to gross negligence of the employer. [Sections 268(1)(a)-(c) and 268(2)(b) of the *Act*.]

A2.1.7. Assessments/Relief of costs

There is a right to request a review of a decision respecting an assessment or classification matter, a monetary penalty or a payment under section 263 of the *Act* by an employer to the Board of compensation paid to a worker where the employer was not registered with the Board or otherwise had defaulted in assessment payments at time of injury.

No review can be requested of the following:

(a) An assignment of an employer or a subclass to a class or a subclass, except the assignment of an employer to a class or a subclass that:

(i) has employers as members, and

(ii) does not have subclasses as members (Section 268(2)(c) of the *Act*).

This means that a review can be requested of a decision assigning an employer to a Classification Unit ("CU"), but not a decision assigning the CU to an Industry or Rate Group.

(b) A withdrawal of an employer or a subclass from a class or a subclass, except a withdrawal of an employer from a class or a subclass that:

(i) has employers as members, and

(ii) does not have subclasses as members (Section 268(2)(e) of the *Act*).

This means that a review can be requested of a decision withdrawing an employer from a CU, but not a decision withdrawing the CU from an Industry or Rate Group.

(c) The allocation of income, compensation payments, outlays, expenses, assets, liabilities, surpluses or deficits to or from the account of a class or subclass, or to or from a reserve of the accident fund, except an allocation as it relates to a specific employer or an independent operator respecting:

(i) the account of a class or subclass described in section 249, or

(ii) the reserve described in section 240(1)(b), (c) or (d). (Section 268(2)(g) of the *Act*.)

This provision means a review cannot be requested of general decisions concerning the management of the Board's finances even though these decisions may indirectly affect individual employers. A review can be requested of certain specific decisions in this

category that directly affect individual employers. In particular, Section 249 of the *Act* allows an employer in some circumstances to seek a transfer of claim costs to the CU, Industry Group or Rate Group of another employer. Section 240(1) of the *Act* allows an employer to request relief from the costs of a claim attributed to it in certain circumstances.

(d) The determination of an assessment rate for a class or subclass, except the modification to the assessment rate determined for an employer on the basis of the employer's own experience (Section 268(2)(h) of the *Act*). This means an employer cannot request a review of the general assessment rate charged to its CU, Industry or Rate Group, but can request a review concerning the modification of that rate by the experience rating system.

(e) *Collection of assessments*. A review will not be conducted of a decision to initiate court or other proceedings to collect assessments determined to be owed, including the collection of a prevention penalty. (See Item A2.1.1 of this Manual and Sections 268(2)(b) and 108(1)(a) of the *Act*.)

There is no other formal right of review or appeal on the items excluded from the review process. Concerns regarding decisions on these matters should be addressed to the Board's Finance Division.

A2.1.8. Refusals or failures to make decisions

Section 268(1)(a) of the *Act* grants a specific right to request a review of a refusal to issue a prevention order. By necessary implication, there is no right to request a review of a refusal, or failure, to issue a decision regarding a compensation, rehabilitation or assessment matter. If, in the course of a review, a Review Officer becomes aware of a failure of the Board to respond to a request to adjudicate an issue, the Review Officer may ask the Review Division Quality Assurance Group to notify the Board's Practice & Quality Support Services department. Whether this is done will depend on the circumstances, including the reasonableness of the request, the lapse of time since it was made and the relevance to the decision currently under review. In some situations, the current review may be suspended pending such an adjudication. (See Item A3.9.1.)

A2.2. Who may request a review?

A worker who is directly affected may request a review of a claims or a prevention decision. An employer who is directly affected may request a review of a claims, prevention or assessment decision. As discussed below, the *Act* also allows certain other persons to request reviews of different types of decisions (see section 269 of the *Act*).

A2.2.1. Compensation decisions

Any of the following persons who is directly affected by a decision relating to compensation or rehabilitation may request a review of that decision

(a) a worker;

(b) a deceased worker's dependant (defined in section 1 of the *Act*);

(c) an employer (Section 269(1) of the *Act*).

"Worker" and "employer" are defined in section 1 of the *Act*, but see also policies AP1-1-1 to AP1-2-2 in the *Assessment Manual*.

The estate of a deceased worker has the right both to initiate a review, and to continue a review on behalf of the deceased, concerning a claim for arrears of compensation up to the date of the worker's death. Documentation is required to establish the identity of the estate's representative. This may include the Letters of Administration or Letters Probate, or a copy of the will if the estate is small and probate is not required, or a statutory declaration or other form of evidence where there is no will and the estate is small or substantially held in joint tenancy. A sample statutory declaration is contained in section B3 of this Manual.

As a result of section 10 of the *Fishing Industry Regulations* made pursuant to section 48 of the *Act*, the employer, for the purpose of a review, is the fishing vessel owner or charterer where the vessel is owned or chartered by a commercial buyer or other commercial recipient of fish. If the vessel is not chartered or owned by such a person, the employer is:

(a) the vessel master,

(b) the vessel owner,

(c) any commercial buyer or other commercial recipient of fish,

(d) any other persons required to pay assessments, or

(e) such other persons or association of employers, as may be designated by the Board for these purposes.

The spouse and children of a worker do not have standing to request a review of a decision on the question whether compensation should be diverted under section 232(3) of the *Act*.

However, if the worker requests a review of such a decision, the Review Division may allow the spouse and/or children to be a party to the review.

A2.2.2. Assessment decisions

An employer or an independent operator who is directly affected by an assessment or classification decision may request a review of that decision. (Section 269(3) of the *Act*.)

"Worker" and "employer" are defined in section 1 of the *Act*, but see also policies AP1-1-1 to AP1-2-2 in the *Assessment Manual*. Section 10 of the *Fishing Industry Regulations* may also apply to assessment reviews. (See Item A2.2.1 of this Manual.)

A2.2.3. Prevention decisions

In addition to an employer and a worker, any of the following directly affected by a decision or order may request a review:

- an owner of a workplace (section 269(1)(d) and definition of "owner" in section 13 of the *Act*);
- a supplier (section 269(1)(e) and definition of "supplier" in section 13 of the *Act*);
- a union (section 269(1)(f) and definition of "union" in section 13 of the *Act*);
- a family member of a deceased worker (section 269(1)(b) and definition of "family member "in section 1 of the *Act*).

In the prevention context, "employer" includes persons referred to in section 13 of the *Act*. In particular, "employer" includes the owner and master of a fishing vessel that has a crew. In the Prevention context, this definition overrides the provisions of section 10 of the *Fishing Industry Regulations* discussed in Item A2.2.1 of this Manual.

With respect to decisions charging the employer with the cost of a claim under section 251(2) of the *Act*, only the employer as defined for the purpose of assessment reviews can request a review. (See Item A2.2.2 of this Manual.)

A2.2.4. Federal employees

Section 4(2) of the federal *Government Employees Compensation Act* provides that workers of federal government entities are entitled to receive compensation under the same provisions as are provided by provincial law. Accordingly, these workers and their employers have the same review and appeal rights as other workers and employers. (See Policies #8.10 and C3-12.10 (Federal Government Employees) of the *RSCM*.)

A2.3. Representatives

It is not necessary for an applicant or party to a review to have a representative. However, a party to a review may decide to be represented by a person of their choosing. A representative may be a lay person or a "professional", such as a union representative, lawyer, or Workers' or Employers' Adviser. (See sections 350 and 354 of the *Act*.)

Except in the case of the Workers' and Employers' Advisers, the representative must have a signed, written authorization in a form acceptable to the Review Division. Sufficient authorization is provided if the Request for Review form is:

(a) personally signed by the actual applicant (not by the representative); and

(b) identifies the representative of the applicant's choice.

The Review Division will also accept a request for review directly from a representative on behalf of the applicant, if a valid authorization is attached to the request for review.

If a properly authorized representative is identified in the request for review, and if the applicant so directs, the Board will forward disclosure to the representative.

A2.3.1. Forms of Authorization

The Board provides forms of authorization for the use of both workers and employers.

The Review Division may accept authorizations other than in the Board's own recommended formats if they:

(a) identify the party granting the authority to the representative;

(b) are directed at the Board (e.g. specifically contemplate the workers' compensation system of British Columbia, including reviews before the Review Division);

(c) specify the records or information to be disclosed;

(d) specify the person to whom the information may be disclosed (e.g. the representative);

(e) specify the purpose(s) for which the disclosed information may be used (e.g. for the purpose of a review);

(f) are signed by the person on whose behalf the representative purports to act (e.g. an employer or worker); and

(g) have a clear termination date, not exceeding 2 years from the date of the authorizing signature.

These requirements are primarily intended to protect the confidentiality of claims information pursuant to sections 235, 349 and 353 of the *Act*. They should also allow the Review Division to be confident that communications made by representatives are in accordance with the wishes of the applicant or other party to a review.

Whether the Board recommended forms of authorization or an alternative meeting (a) to (g) above is used, the authorization will be valid for the purposes of a review for two years from the date of the authorizing party's signature. If the two years expires during the course of a review, the representative will be considered authorized until the end of the review unless the party advises to the contrary. If the Request for Review form is used to authorize the representative, the authorization only applies in relation to that review.

A2.3.2. Standard of Conduct for Representatives

The Review Division follows the Board's "Standards of Conduct for Practice and Procedure before the WCB" found on the Board's Internet site at https://www.worksafebc.com/en/legal/standards-conduct-practice-procedure-before-worksafebc

Although these standards indicate that they apply to "lay advocates", the Review Division considers that they also apply to professional advocates.

A2.4. When can a request for review be made?

Under section 270(1) of the *Act*, a request for review of a Board decision or order on:

- a claim or assessment matter must be submitted within 90 days of the date the decision was made; or
- an occupational health and safety or claims cost levy matter must be submitted within 45 days of the date the decision or order was made.

As discussed further below, the Chief Review Officer may extend this time period in certain situations.

A2.4.1. Calculating the time limit for requesting a review

A decision on compensation or rehabilitation is made, for the purpose of triggering the timelines for reviews, on the date the decision is communicated to an affected person. If the decision is communicated to affected persons on different dates, the time commences on the date the decision is first communicated to an affected person. Where a decision is provided in writing and mailed to an affected person, the decision is deemed to have been communicated on the 8th day

after it was mailed. (Section 344 of the *Act* and Policy C12-99.20 of the *RSCM*, which also discusses the means of communication.)

For the purpose of calculating the time limit, the Review Division assumes that all Board decisions are mailed and allows 8 days for mailing. It recognizes that different methods of communication are used for the many different types of Board decisions. However, mailing is the predominant form of communication and it would not be practicable to make inquiries in every case as to the exact form of communication used. This means that in the relatively few reviews where the Board decision was not communicated by mail, the 8 days will still be added.

A2.4.2. Extensions of the time limit

On application, and where the Chief Review Officer is satisfied that:

(a) special circumstances existed which precluded the filing of a request for review within the required time period (as described in item A2.4 above), and

(b) an injustice would otherwise result,

the Chief Review Officer may extend the time to file a request for review even if the time to file has expired. [Section 270(2) of the *Act*.]. Under section 274 of the *Act*, the Chief Review Officer may delegate this authority to other Review Officers.

A2.4.2.1. Special circumstances

It is not possible to list all the situations that might be recognized as “special circumstances”. The Chief Review Officer will consider the particular facts of each late request and determine whether special circumstances apply. The Chief Review Officer will only consider the reasons for not filing a request for review before the required time limit, as described in item A2.4 above. The merits of the claim or other matter that is the subject of the decision under review are not generally considered. If the reasons do not amount to special circumstances, the request for review will be barred from consideration on the merits.

In some cases it is necessary to consider the merits to a limited degree to decide the particular extension of time issue. This may occur, for example, when the request is suggesting that significant new evidence has been received since the Board’s decision [Paragraph (d) below] or the decision contains an error [Paragraph (f) below]. In these cases, if a decision is made to grant an extension of time, the decision maker may also make an immediate decision on the review to refer the matter back to the Board for the Board to make a new decision on the merits. There is no prejudice to any other potential parties to the review since the Board will make a new decision that any eligible person can request to be reviewed.

The following are examples of common reasons that are submitted in support of a request for an extension of time and the criteria that will be considered in deciding whether the special circumstances requirement has been met. Where the outlined criteria in any one section are not met, the cumulative effect of a number of factors being present in the same case may be sufficient to result in a finding of “special circumstances”.

(a) “Personal” reasons

The Chief Review Officer will give careful consideration to the personal circumstances of the applicant including those provided by or on behalf of the applicant and other evidence

apparent from a review of the claim file. While factors such as illiteracy, lack of English skills, or inexperience with the review and appeal systems will merit significant consideration, applicants must still take some responsibility for seeking out assistance and advice. Documented evidence of serious physical or psychological illness that could hinder participation in the claim and review process will generally support a finding of special circumstances. Serious illness or death of a close family member, e.g. spouse, sibling, or parent, may also be accepted as having interfered with the party's ability to focus on the claim and the review time limits.

(b) Acts or omissions of representative

A party cannot simply retain a representative and then absolve themselves of all further responsibility for filing the request for review in time. The factors that may be considered when deciding whether the acts or omissions of a representative constitute special circumstances include:

- whether there is evidence that the applicant intended to request a review within the required time limit, as described in item A2.4 above,
- whether there is evidence that the applicant gave instructions to the representative promptly (early in the required filing period),
- whether it is reasonable to expect that the applicant would follow up with the representative, or the Review Division, within the required time period for requesting a review to ensure that the representative acted in accordance with the party's instructions,
- whether the failure to comply was somehow the responsibility of the applicant, for example, failure to provide the necessary information to file a request for review, such as the date of the decision in dispute,
- whether the applicant was, due to his or her individual circumstances, significantly reliant upon the representative, and whether the failure to comply resulted from a choice on the part of the representative in dealing with the party's case.

In general, the more the applicant acted responsibly in pursuing their interests and following up with their representative, the more the errors or omissions of the representatives will be considered a special circumstance. If the delay results from a representative's personal circumstances consideration will be given to the applicable factors outlined in (a) above.

(c) Representative not copied on decision

In some cases, failure to notify a properly authorized representative of a decision constitutes a special circumstance that precluded the filing of the application. Such circumstances include:

- the authorization was specific and clear. In particular, with respect to a matter involving a particular claim, the representative's written authorization specifically and clearly referenced the claim involved,
- there was prior communication between the representative and the Board on the specific matter,

- the representative initiated the inquiry in response to which the Board decision was generated,
- absent the receipt of a copy, the representative could not have known of the existence of the Board decision or could not have known at an earlier date, and
- the applicant was, due to his or her individual circumstances, significantly reliant upon the representative.

(d) New evidence

A party should not delay filing a review to obtain new evidence. Where a party wishes to gather new evidence, such as would result from further medical investigation, a timely review should be filed in any event. If there is some delay in obtaining the new evidence, an extension of time to complete the review, as provided in section 272(8) of the *Act*, can be considered (see Item A3.9.2.).

Where the applicant has delayed in filing a request for review, the relevant factors when considering whether new evidence constitutes special circumstances include:

- whether the new evidence is relevant to the issue in dispute,
- whether, at the time the Board Officer's decision was issued, the new evidence did not exist, or existed but was not discovered and could not, through the exercise of reasonable diligence, have been discovered,
- whether there was an unreasonable delay in requesting a review after the applicant became aware of the new evidence or should have become aware of it, and
- whether the new evidence is of an objective nature, for example, findings at surgery that revealed a previously unknown condition would be more likely to support a finding that special circumstances existed than if the new evidence merely consisted of a medical opinion that such a condition likely existed.

The merits of the decision are usually not relevant to the consideration of requests for an extension of time. However, the "new evidence" cases require some assessment of the merits in order to determine the relevancy and significance of the new evidence.

(e) No notification of review rights

Failure of a decision letter to explain the right to request a review and the relevant time limit for requesting a review will generally result in a finding of special circumstances, unless it is clear that the applicant had adequate knowledge through other means of the right to request a review. The relevant factors include:

- experience with the appeal/review process over a period of time. This will show the applicant's level of awareness of his or her review rights in a general sense. This will be reinforced by a demonstrated understanding of review rights as evidenced by the filing of prior requests for appeal/review,
- the degree of confusion that it is reasonable to assume the applicant had concerning the right to review, and
- whether there was any ongoing dialogue and involvement with the claim file such that the applicant had sufficient opportunity to learn of the right to a review, e.g. a finding of

special circumstances may not be made where the applicant shortly thereafter receives another decision that does contain review rights.

(f) Errors

Special circumstances may be found on the basis that there was a clear and significant error of fact, law or policy in the Board's decision. "Error" refers to a situation where the applicant is not simply disagreeing with the decision maker's exercise of judgment or weighing of the evidence but the decision is not within the reasonable range of possible decisions allowed by the law, policy or evidence. Regard will be had to all the circumstances, including how significant was the error, whether the Board had the relevant information and overlooked it, and whether there was an unreasonable delay in requesting a review after the applicant became aware of the error. As discussed in Item A2.4.2.3, error may also be considered in determining whether an injustice would occur, regardless of whether it is considered for determining special circumstances.

(g) Board decision not received

Sections 344(1)(b) and (2) of the *Act* provide that a document sent by mail to a party's last known address is deemed to have been received on the eighth day after it was mailed. Section 344(4) states that this does not apply if through absence, accident, illness, or other cause beyond the party's control, a party who acts in good faith does not receive the copy until after the eighth day. These provisions create a rebuttable presumption that a party has received a properly addressed document within eight days of mailing.

In order to rebut the presumption, it is not sufficient for the applicant to simply state that he or she did not receive the decision when it was sent or to make general statements about the postal system or the Board. The applicant must also provide evidence of specific circumstances that led, or may reasonably have led, to a decision not being received. Examples include evidence of previous interference with a party's mail box or previous incidents of confusion between mailboxes or addresses due to their similarity or proximity.

A2.4.2.2. Precluded

Section 270(2) of the *Act* requires that the special circumstances must have precluded the applicant from a timely filing. In determining whether the applicant was precluded, the steps taken by the applicant to ensure a timely appeal was filed will be considered. However, "precluded" is interpreted as something less than "prevented", but similar to "hindered" or "made difficult."

A2.4.2.3. Injustice

Where special circumstances are found to exist, the Chief Review Officer must then consider whether an injustice would result if the time limit was not extended. "Injustice" will be determined on the basis of the circumstances of the specific case. In many cases, the only relevant circumstances will be

(a) the significance of the matter that is the subject of the Request for Review (i.e., is there a serious or significant issue to be reviewed); and

(b) the degree of prejudice to the applicant that would arise from the denial of the extension request.

Other circumstances will be considered in some cases. For example, where a significant period of time has elapsed since the expiry of the time limit for requesting a review, the reasons for the delay will be considered. This includes the factors discussed above in relation to the special circumstances requirement (Item A2.4.2.1) and the following:

- whether the applicant followed up with the Board, the Review Division or a representative within a reasonable time regarding a Board decision the applicant was expecting but did not receive, or regarding a review of a decision the applicant believed had been filed but for which no prompt acknowledgement was received from the Review Division, and
- whether the applicant or representative initiated the request for review within a reasonable period of time after first becoming aware of circumstances indicating the need to request a review. These circumstances include the existence of, or error in, a Board decision, the right to request a review of a decision, a failure of a previous attempt to request a review, or new evidence received since the Board decision.

Where more than one factor must be considered, the various factors will be weighed to determine whether an injustice would arise from a denial of the extension of time. In weighing factors, the following will be considered:

- an injustice is more likely to be found if the Board decision has a present, continuing effect as opposed to only applying to a period in the past, though a significant effect in the past could be considered,
- an injustice is more likely to be found if there is a clear and significant error of fact, law or policy in the Board decision and particularly if the error was beyond the applicant's control, and
- the longer the period of applicant delay that has not been sufficiently explained, the less likely an injustice will be found in denying the extension of time.

A2.4.2.4. Discretion of Chief Review Officer

Even if the requirements for special circumstances and injustice are met, the Chief Review Officer has discretion whether or not to grant an extension of time. Normally this discretion will be exercised in favour of granting an extension. However, the discretion may be exercised not to grant the extension if, having regard to all the circumstances, it is not considered reasonable to do so. The circumstances considered will generally be the same as are considered with regard to special circumstances and injustice above. In particular, the overall length of delay and the reasons for this will be considered. This is to reflect the general principle underlying the system that appeals must be filed in a timely fashion and that granting an extension of time is an exceptional process. There may also be factors that could not be considered with regard to special circumstances or injustice, such as the impact of granting the extension of time on other parties or the worker's compensation system. The delay in requesting a review may, for example, have hindered the ability of the Board or a party to investigate the matter that is the subject of the decision in question.

A2.4.2.5. Process for requesting extension

There is no formal process within the Review Division for extension of time applications. Parties who require an extension of time should attach a written submission to their request for review.

The submission must outline what special circumstances prevented the request from being filed within the required time period, why an injustice would result if the request were rejected and the explanation for any additional delay beyond the required time limit for requesting a review. (The time limits for requesting a review are described in item A2.4 above.)

In considering extension of time requests, the Review Division does not recognize participants other than the applicant. This is because of the need for timeliness but more importantly because determination of the request does not address the merits of the decision for which the review is sought. It is concerned solely with the statutory requirements of special circumstances and injustice. These factors are personal to the applicant. Where the application is granted and the review proceeds, others may participate.

A2.4.2.6. Reconsideration of decisions on extension of time application

The Chief Review Officer will, at the request of an applicant, consider again and make a new decision on a request for an extension of time application that has been previously denied. The limits on reconsideration set out in section 273 of the *Act* do not prevent this because, as discussed in item A5.2.2, the *Act's* limitations on reconsideration apply only to final decisions on a review made under section 272(9) of the *Act*. However, an application for a new decision is more likely to be successful if made without unreasonable delay and supported by the provision of new information or an error in the previous decision.

A2.5. How is a request for review made?

The request for review must be in writing and normally signed by the applicant. The Board provides a "Request for Review" form that can be obtained from its internet site at http://www.worksafebc.com. Proper completion, including the applicant's signature on this form will ensure that all the information required to start a review is provided to the Board. This will expedite the progress of the review.

The Review Division may accept a signed letter from the applicant in place of the form. If the letter does not contain all the required information, the Review Division will request further information from the applicant.

Request for Review form can also be completed by using the Review Division's online request and manage reviews application. To use this application, an online service account must be opened with the Board and can be accessed from its internet site at http://www.worksafebc.com. Once an account is opened, existing reviews can be managed, and past reviews can be accessed, through the Review Division's online application.

A review request may be rejected if the applicant does not provide sufficient information before the time limit for requesting a review expires. The application must, at a minimum, allow the Review Division to identify the name and address of the person requesting the review and the decision that the applicant wishes to have reviewed. The applicant should also provide a clear statement of:

(a) the reasons for objecting to the decision, and

(b) the outcome or alternate decision that the applicant is seeking.

The form or letter can be sent to the Review Division at REVIEW DIVISION, WorkSafeBC, PO BOX 2071, STN TERMINAL, VANCOUVER, BC, V6B 3S3. The form can also be faxed to the Review Division at 604-232-7747.

If a Request for Review form is submitted electronically, the document is deemed to have been received when the person transmitting the document receives an electronic acknowledgement of the transmission. The page a fax machine produces that shows the number dialed and that the fax was successfully sent, or a printout of an electronic transmission, will normally be proof of delivery of service.

Once it receives a request for review, the Review Division will send written confirmation of receipt and provide the applicant with a reference number. If an applicant does not receive such confirmation within three weeks, they should contact the Review Division to verify that the request was received. If the request for review was submitted outside the required time period, the Review Division may take longer to respond.

A2.6. Parties to a review

A decision under review may affect persons other than the applicant. These persons may be invited to participate in the review.

A party to a review must have a direct and personal interest in its subject matter, e.g. the particular claim, prevention order or assessment. It is not sufficient that the person has a general interest in the subject matter, for example, a worker or employer organization or consultant that deals with the same issues in other workplaces but has no member or client at the workplace in question. A person who is not a party to a review can participate in the review if a party authorizes that person to act as his or her representative.

The parties do not have any onus to prove that the decision in question should be either confirmed or varied, as the case may be. Rather, their role is to provide the reasons for which they believe the original decision is correct or incorrect, any additional evidence they can readily obtain, and to generally assist the Review Division in ensuring it is aware of all the evidence, law and policy material to the issues under review. In conducting the review, the Review Division is not restricted to obtaining information from the parties. It can contact any person that it considers may have relevant information.

The Board division or officer that made the decision under review is not considered a party to the review. However, as explained in Item A3.10 of this Manual, the Board division or an officer may assist the Review Division by providing any clarification or additional information required or requested by the Review Officer.

A2.6.1. Notice to participate

The Review Division will forward a “Notice to Participate” to persons that it considers to be affected by the decision under review. Affected persons will have 15 days to complete and return the “Notice to Participate” form to the Review Division. They will only become a party to the review if they return the completed notice.

A person’s failure to return the Notice to Participate within 15 days does not bar that person from future participation in the review. At the Review Division’s discretion, the person may still participate. In exercising this discretion, the Review Division considers such factors as the reason

the person did not return the Notice to Participate on time, as well as the time remaining on the review. A ground for refusing to allow a person to participate could arise, for instance, where the person frequently makes late requests to participate. Once a person is added as respondent to the review, disclosure is provided.

“Notice to Participate” forms are routinely sent to the employer when a worker requests a review of a claims decision and likewise to the worker if the employer seeks a review of a claims decision that affects the worker. A worker is not a party on a request for review by the employer where the decision under review is concerned only with relieving the employer from claim costs and the decision cannot affect the worker. An employer is not a party where the only issue on a request for review by a worker is a commutation of his or her permanent disability award.

“Notice to Participate” forms may also be sent out in reviews of certain assessment and prevention decisions.

If a person considers that he or she should be party to a review and is not sent the form by the Review Division, he or she may obtain the form from the Board’s internet site or from any Board office and submit it to the Review Division. On receipt of the completed form or a letter with all the required information, the Review Division will determine whether the person should be recognized as a party.

A2.6.2. Employer out of business

The “employer” who can request or participate in a review request is normally the employer of record at the time of the injury or other circumstances that led to the decision under review. However, an employer’s status with the Board may change for a number of reasons: it may sell its business operations, merge with another company, become bankrupt or inactive, or otherwise cease to operate. The employer's assessment account with the Board may be cancelled or transferred to another entity.

If a review involves an employer that is no longer in business, the Board will attempt to identify a successor employer. If no successor is identified, then the Chief Review Officer may deem an employers’ adviser or an organized group of employers to be the “employer”.

A2.6.3. Successor companies

A “successor employer” is an employer that is carrying on essentially the same business as the out-of-business employer and, pursuant to Policy AP5-247-3 of the Assessment Manual, has assumed the experience rating position of the former employer. A successor employer has standing to request and participate in a review.

A2.6.4. Deemed employers

The Chief Review Officer may, for the purposes of a specific review, deem an employers’ adviser or an organized group of employers to be the employer. [Section 271(2) of *the Act*] Under section 274 of the *Act*, the Chief Review Officer may delegate this authority to other Review Officers.

"*Employers’ adviser*" refers to the advisers appointed under Section 94 of the *Act*.

The Chief Review Officer may recognize an organized group of employers for these purposes only if the organized group includes among its members employers in the subclass of industry to which the employer who has ceased to be an employer belonged. [Section 271(3) of the *Act*.]

The situations when the Chief Review Officer may exercise this authority include:

(a) an employers' adviser or an organized group of employers seeks to review a decision or participate in a review;

(b) issues which could be best resolved with the assistance of submissions presenting the employer point of view;

(c) evidence which is best tested with the participation of an employer representative;

(d) an employer representative could provide helpful factual information about circumstances affecting the issue in a review;

(e) the review involves a significant issue concerning the interpretation of law or policy; or

(f) the review may involve an issue having a significant financial value.

A deemed employer may request a review or be a party to a review, obtain disclosure, submit evidence and make submissions.

A2.6.5. Prevention reviews

An employer requesting a review may be requested to provide the names and addresses of the co-chairs of the joint committee at the workplace or the worker health and safety representative, as applicable, and of the union (if any) representing the workers at the workplace. These persons may then be sent a "Notice to Participate". (See Item A2.6.1 of this Manual.)

A Review Officer may require an employer who is a party to a review respecting a prevention matter to post a notice in a specified form and manner to bring the review to the attention of the employees of the employer. [Section 272(4) of the *Act*.] This does not apply where the decision was on a variance request by a worker or the issue arose at a workplace that no longer exists.

If a worker was employed at a workplace at a time when a violation of a prevention provision occurs, the fact that his or her employment ends does not automatically prevent the worker from requesting or participating in a review in relation to a previous matter. However, the worker must show that he or she is directly affected by the resulting orders or failure to issue orders. (WCAT decision 2005-06063.) A worker employed at one workplace of an employer may request a review or participate in a review where the orders in question relate to another workplace of the employer but may have an effect going beyond the particular workplace. (WCAT Decision 2009-02179.)

Family members of a worker who dies as a result of a work incident may request a review of a prevention order or failure to issue a prevention order arising from that incident [Section 269(1)(b) of the *Act*]. If another person requests a review of such an order or failure to issue such an order, the family member may participate in the review even though he or she has no immediate financial interest. (Review #R0056789.)

A2.6.6 Parties request reviews of same Board decision

Once a Review Officer issues a decision, the Review Division has no further legal authority over the matter. This means that, unless grounds for reconsideration in item A5 of this Manual have been established, the Review Division can review a Board decision only once. As a result, when two parties request reviews of the same Board decision, the Review Division will establish a single review. The party first requesting the review is the applicant, while the second party is added as the respondent.

The respondent is not limited to the issues raised by the applicant, but may raise all of their issues with the Board decision in their submission. The Review Division will follow the submission process described in item A3.5 of this Manual. However, the Review Officer has discretion to modify the process to fit the circumstances, as required.

A2.7. Disclosure

As soon as practicable after a request for a review is filed, the Board must provide the parties to the review with a copy of its records respecting the matter under review. [Section 271(1) of the *Act*.] If a party to the review has previously received disclosure of the Board's file, the party will be provided with copies of any documents received after the date of that previous disclosure.

As discussed in Items A3.5 and A3.6 of this Manual, submissions received from parties, material new information coming onto the Board's file or additional information obtained by the Review Officer in connection with the review, may also be disclosed in the course of the review. Aside from the disclosure of information required by the *Act* and the rules of natural justice, the Review

Division is subject to the *Freedom of Information and Protection of Privacy Act.* In addition, section 235(1)(c) of the *Act* limits the purposes for which persons can use information they receive from the Board in connection with a review.

A2.8. Withdrawal/Abandonment of a review

In situations where an applicant wishes to withdraw a review, the Review Division considers the withdrawal request in accordance with Items A2.8.1 and A2.8.2. As well, in certain circumstances, as described in Item A2.8.4, the Review Division may deem a review abandoned and close the review file.

A2.8.1 Withdrawal request before review assigned to Review Officer

An applicant may request to withdraw a review at any time before the review has been assigned to a Review Officer. However, if the applicant requests the withdrawal so that a Board Officer may reconsider the decision under review, the Review Division will normally not permit the withdrawal. Section 123(2)(b) of the *Act* provides that the Board may not reconsider a decision if a review has been requested of that decision. The *Act* does not provide that the Board regains jurisdiction to reconsider the decision once the review has been withdrawn. Where a Board Officer wishes to change the decision under review, the Board Officer may contact the Review Division to request an expedited refer back. (See items A3.9.3 and A4.4 of this Manual.)

Where the parties request a review of the same Board decision, the Review Division will not allow one party to withdraw the review. (See item A2.6.6 of this Manual.) Both parties to the review must agree to the withdrawal and the withdrawal must not be requested to allow the Board to reconsider the decision under review.

A2.8.2 Withdrawal request after review assigned to Review Officer

After the review has been assigned, the Review Officer will consider any request for withdrawal. The Review Officer will normally grant the request, but has the discretion to decline it. For example, where there is evidence of fraud or misrepresentation by the applicant, the Review Officer may refuse a withdrawal. Similarly, where the evidence indicates that there was an error of law or policy in the decision under review, the Review Officer may refuse a withdrawal.

The Review Officer will refuse an applicant's request to withdraw the review so that a Board Officer may reconsider the decision under review. As well, as described in item A2.8.1, where the parties request a review of the same Board decision, both parties to the review must agree to a withdrawal and the withdrawal must not be requested to allow the Board to reconsider the decision under review.

A2.8.3 Reinstatement of withdrawn review

The Review Division has a discretion to reinstate withdrawn requests for review. In exercising this discretion, the Review Division considers the reasons for the withdrawal and request for reinstatement, whether there was undue delay in seeking reinstatement and any other relevant factors.

A2.8.4 Abandonment of a review

As provided in section 272(3)(b) of the *Act*, a review may be deemed abandoned if an applicant fails to make a submission in the time allowed. The term "submission" is understood in a broad sense to include a party's response to a request by the Review Division for information required to begin or continue a review. For instance, it may include a response to a request for representative authorization or documentation relating to the status of a worker's estate, such as a statutory declaration, Letters Probate or Letters of Administration. (See also Item A2.2.1 and A3.5 of this Manual.)

A2.9. Determinations of preliminary matters

It may be necessary for the Chief Review Officer or a Review Officer to make a formal determination concerning preliminary matters, including whether the requirements of a valid request for review have been met.

Preliminary issues include:

(a) Whether the decision is one that the Review Division can review. (See Item A2.1 of this Manual.)

(b) Whether a person is authorized to request a review or be a party to a review. (See Items A2.2 and A2.6 of this Manual.)

(c) Whether the request for review was received within the required time limit or whether the time limit should be extended. (See Item A2.4 of this Manual.)

(d) Whether the decision under review should be stayed or suspended during the review. (See item A2.9.1 of this Manual.)

(e) Whether the 150-day time period for issuing a review decision should be suspended to allow the Review Officer to deal with a related matter. (See Item A3.9.1 of this Manual.)

(f) Whether the Chief Review Officer should extend the 150-day time period for making a decision due to the complexity of the proceedings or matter. (See Item A3.9.2 of this Manual.)

Before making this decision, a short period of up to 14 days may be allowed for the parties to make written or oral submissions, but the aim is to determine these issues expeditiously.

A2.9.1. Stays of decisions under review

Unless, on application, the Chief Review Officer orders otherwise, the filing of a request for a review does not operate as a stay or suspend the operation of the decision or order under review. [Section 270(3) of the *Act*]. Under section 274 of the *Act,* the Chief Review Officer may delegate this authority to other Review Officers.

The Chief Review Officer will only grant stays in exceptional cases. In exercising the discretion, typically the most significant factor considered is whether compliance with the Board's decision prior to the Review Officer's decision would cause serious financial or other type of hardship to the applicant. If this requirement is met, consideration will be given to whether a stay of the decision will undermine the purpose of the decision, for example, the maintenance of safe workplaces, and if so, whether this can be avoided by alternative interim measures. Since administrative penalties typically relate to past violations by an employer and have the object of motivating future compliance, regard will be had to the employer's overall compliance history before and after the decision to impose the penalty.

The Chief Review Officer may consider any other relevant factors specific to a particular stay application.

If an employer has applied for a stay regarding an administrative penalty, Policy D12-196-7 of the *Prevention Manual* provides that the collection of the penalty by assessment or court proceedings under section 108 of the *Act* will be deferred until a decision is made on the stay.

An applicant for a stay must provide supporting information to confirm the serious financial or other hardship and other grounds on which the request is based. The application as well as any supporting information must be received by the Review Division within 30 calendar days of the date of the letter sent by the Review Division to acknowledge receipt of the request for review. An application received after the expiry of the 30 day period will normally not be considered, but may be considered if the Chief Review Officer concludes an earlier request was prevented by circumstances beyond the applicant's control.

The Review Division may provide any other parties to the review of which it is aware at the time of the application for a stay with a copy of the application and the opportunity to file submissions in response within 14 days. After all submissions have been filed, the Chief Review Officer will render a written decision respecting the application as soon as practicable.

A2.9.2. Moot reviews

A moot review occurs when a review of the decision in question would have no practical significance. This may occur, for example, where WCAT has decided that a claim should be disallowed that was previously allowed by the Board and Review Division, and the Review Division then receives a request for review in relation to a decision concerning the amount of benefits paid under the claim. In these cases, the Review Officer sends the parties and their representatives, if any, a letter explaining that the review will not proceed because there is no longer anything for the Review Officer to decide.

In some cases, it may not be clear whether a review is moot or not. For example, there may be an appeal under way to WCAT of a Review Division decision to disallow a claim previously allowed by the Board and the Review Division receives a request for review of a decision concerning the amount of benefits payable under the claim. In such cases, the Review Division may advise the parties that it will not be proceeding with the review, but that if the claim is again allowed following the decision by WCAT, a party may within a reasonable time ask the Review Division to reinstate the previous request for review.

A3. CONDUCT OF REVIEW

Subject to any Board practices and procedures for the conduct of a review set out in this Manual, a Review Officer may conduct a review as the Officer considers appropriate to the nature and circumstances of the decision or order being reviewed. [Section 272(2) of the *Act]*

A3.1. Determining how the review will be conducted

The Review Officer must first consider the available information and then determine the issues under review and the method by which the review will be conducted. There are three main methods:

(a) Read and review.

(b) Read and review with additional inquiries.

(c) Read and review with an oral hearing.

Each of these methods is discussed further below. In all cases, the Review Officer will have the discretion to meet or talk to the parties for the purpose of developing a better understanding of the issues and determining the process to be followed.

A3.2. Read and review

A read and review involves the Review Officer reading the Board's file together with any written submissions from the parties to the review.

A3.3. Read and review with additional inquiries

In addition to the read and review, the Review Officer may request additional information from a party or other person.

The Review Officer may conduct an informal inquiry when more information is required to decide the review than can be obtained by reading the material on the Board's files and the written submissions received during the review. The inquiry could range from a simple telephone call to a meeting comparable to the full oral hearing process described in Item A3.4 of this Manual. Some of the general principles outlined in connection with oral hearings may also be appropriately applied to other meetings where the circumstances require this.

If a review concerns an administrative penalty imposed for a prevention violation under section 95 of the *Act*, an employer's request for an oral hearing will normally result in a personal or telephone meeting, or an oral hearing if the criteria for an oral hearing are met.

All methods of normal communication may be used for informal inquiries, including:

(a) telephone/teleconferencing/videoconferencing,

(b) letter/fax,

(c) informal meetings,

(d) investigations conducted by Board staff, or

(e) assessments, tests and opinions obtained from internal and external experts.

If the party is represented, all communications will include the representative, or be done with the representative's approval.

Before engaging in further inquiries, the Review Officer will consider the nature and extent of the overall inquiry that is needed. It is expected that Review Officers will take action to supplement information that is missing following the investigation carried out before the decision under review was made. It is not expected that Review Officers will themselves conduct major inquiries that should have been conducted by the initial decision maker. The initial decision makers are generally in a better position to make such inquiries and have more available resources for this purpose. Where the initial decision maker has failed to carry out a reasonable investigation, the Review Officer should consider referring the matter back under section 272(9)(b) of the *Act.* (See Item A4.4 of this Manual.)

The need to disclose to the parties significant new information obtained during informal inquiries is discussed in Item A3.6.1 of this Manual.

A3.4. Read and review with an oral hearing

The Review Officer may, on his or her own initiative or at the request of a party, agree to hold evidence and submissions. This method will be used in exceptional cases in the circumstances discussed below.

A3.4.1. Eligibility for oral hearing

Reviews will generally be conducted by way of "read and review" alone or a read and review with additional inquiries. In particular, reviews where the issue is purely medical, legal or policy and the

facts are not at issue, will normally be handled in this manner. In other situations where, it is necessary or convenient to obtain information orally, this will, where possible, be done through additional inquiries under Item A3.3 of this Manual rather than through an oral hearing. However, there may be compelling reasons for holding an oral hearing in a specific case, such as where the credibility of a party or a witness is an important issue, or where there are significant facts in dispute.

Where a party to a review objects to a hearing on valid grounds (for example, they are in poor health and traveling to a hearing location would be an undue hardship), the Review Officer will weigh the objection against the factors which support an oral hearing and the need to meet statutory timeframes. Upon consideration of the objection, the Officer will render a written decision respecting the method of review as soon as practicable.

A3.4.2. Process for making decision on oral hearing

If an oral hearing is agreed to at the outset of a review, the normal process for requesting written submissions (See Item A3.5 of this Manual) may not be followed. If the request is not agreed to at the outset, and written submissions are obtained, the Review Officer making the decision on the review is not bound by the initial decision. He or she may still hold an oral hearing or carry out other forms of additional inquiries under Item A3.3.

A decision to hold or not hold an oral hearing cannot be appealed to WCAT (Section 272(2) and Subsection 288(2)(a) of the *Act).*

A3.4.3. Scheduling and postponements

Oral hearings are held at the Board's head office in Richmond and in various locations, as required, throughout the province.

A hearing is usually scheduled for 1-2 hours. The parties to a review will be provided reasonable notice of the hearing date. The initial scheduling of the oral hearing will be done without consultation with the parties, but each party will be advised that they have 14 days to request a change of date.

In determining whether to agree to an alternative date suggested by a party, the sole consideration is not the length of time before a hearing can be held. The Review Officer will also consider any potential prejudice to the parties as a result of the suggested date, and any other relevant factors in the particular circumstances of the case. If necessary, the Review Officer may request an extension of time to complete a review to accommodate a hearing date. However, if the Review Officer determines that a suggested date is not reasonable and an alternative date cannot be agreed upon, the Review Officer may choose not to proceed with the hearing and to continue the review by an alternative method.

If the oral hearing is rescheduled at the request of the parties, a further postponement of the date will not be granted unless exceptional reasons are provided as to why this is necessary. The factors considered include:

(a) Was the postponement request made sufficiently far in advance? Can the hearing be re-scheduled with a minimum of cost and disruption of schedules? Can the hearing date be used for another review?

(b) The effect of the postponement on the statutory time period for completing the review;

(c) Balancing the respective prejudice to the parties if the postponement is not granted;

(d) Emergencies (for example, serious medical problems or hospitalization, family crisis, bereavement, and motor vehicle accidents);

(e) The unforeseeable unavailability of an essential witness.

A Review Officer may consider any other factors relevant in a specific review. Factors considered in the first round of rescheduling will not be sufficient grounds for further postponement.

If a Review Officer denies a request for postponement, the requesting party will be advised of alternative options for the conduct of the review:

(a) read and review; or

(b) the submission of additional documentary evidence after a partial hearing.

A3.4.4. Late appearances or failures to appear

If the applicant does not appear at the hearing on time, the Review Officer will wait 15 minutes after the scheduled start of the hearing. If the applicant appears during this time, the hearing will proceed. If the applicant appears after 15 minutes, the Review Officer has the discretion whether or not to proceed. Relevant factors include whether other hearings will be delayed and whether a respondent has left.

An oral hearing will generally not proceed if the applicant fails to appear – unless there was prior agreement on this point. The Review Officer does, however, have the discretion to proceed. If the applicant's representative appears, with instructions from the applicant to proceed in his or her absence, the Review Officer has the discretion whether or not to proceed.

The Review Officer will invite the applicant, within 8 days after the scheduled date of the hearing, to provide written reasons for the failure to attend, unless already aware of those reasons. The Review Officer will then decide whether to:

(a) reschedule the hearing;

(b) continue the review based upon the written evidence alone; or

(c) determine that the review is deemed to have been abandoned under section 272(3) of the *Act*.

A failure to appear at a hearing without prior notice will only be justified by a personal emergency, and re-scheduling of a hearing may be considered in those limited circumstances.

Where a respondent is not present at the scheduled time, the Review Officer will wait 15 minutes before proceeding. A respondent may participate if he or she arrives late. If the respondent's representative appears at the hearing, with instructions from the respondent to proceed in his or her absence, the Review Officer has the discretion whether or not to proceed.

If the respondent has been unavoidably delayed or prevented from attending the hearing, the Review Officer may allow participation by means of disclosure of the voice recording of the hearing (if there is one), and time for written submission and new evidence.

A3.4.5. Witnesses

The Review Officer will require that witnesses be excluded from the hearing room until they are required to give testimony. This does not apply to the parties or their designated representatives, who are allowed to remain in the hearing room throughout the proceedings.

Upon request, the Review Officer may consider permitting a witness to stay in the room prior to his or her testimony if

(a) it is evident the witness is required as moral support for an unrepresented party (such as in the case of family members), or

(b) there is little chance the witness' evidence will be compromised by preceding evidence, for example if the witness' intended testimony is separate and distinct from the preceding witness' testimony.

Witnesses may remain as observers after they testify provided that neither party objects and there is no possibility of them having to provide further testimony.

The Review Officer will swear in or affirm each person giving evidence and will normally ask questions of any witnesses. The parties do not have a right to formally cross-examine witnesses. However, the Review Officer may permit a party, or another Board Officer, to question a witness where this will result in a more efficient elaboration of the issues. In these cases, the Review Officer will supervise the questioning process to ensure that questions are relevant and reasonable.

A3.4.6. Observers

Review Division hearings are not open to the public. However, the Review Division may, upon request, permit observers to attend where both parties consent. Unless there are compelling reasons for excluding observers (for example, sensitive factual issues, matters of space, potential security problems), observers will be allowed to sit in. The Review Officer will make it clear to an observer that they are not entitled to participate in the hearing.

At the Review Officer's invitation, Board security may attend an oral hearing without the parties' permission. Where practicable, the parties will be notified in advance that security officers will be present at the hearing. The Review Officer will seek the parties' permission if other Board staff are attending the hearing as observers only. However, the parties' consent is not required where a Board staff member is attending to provide relevant information.

A3.4.7. Interpreters

The Review Division will provide independent certified legal interpreters where required. The Review Division should be notified of the need for an interpreter when the oral hearing is requested. Friends or relatives are generally not permitted to act as interpreters, although the Review Division has discretion to make an exception in appropriate cases, such as where the party needs assistance with only a few words. Where it is apparent to the Review Officer that an interpreter is needed and none is present, the hearing may be rescheduled. Interpreters are normally affirmed or sworn in at the start of the hearing.

A3.4.8. Hearing objective and process

In keeping with the inquiry nature of Review Division proceedings, the purpose of an oral hearing is to gather information to supplement that already on file in a thorough, fair and courteous manner. Although a hearing is more formal than a meeting, it is conducted in a non- adversarial atmosphere to avoid the more litigious characteristics of a court proceeding.

Formal procedures related to the admission of evidence in court do not apply to an oral hearing. In addition, the scope of the hearing is limited to relevant evidence, as determined by the Review Officer.

The Review Officer will normally receive the presentations of the parties in the following order:

(a) Each party (or his/her representative) will be given an opportunity to make a brief opening statement. The applicant will go first followed by the respondent.

(b) The applicant will then provide his or her evidence as well as introducing any witnesses he or she has brought.

(c) The respondent will then have an opportunity to present information through his or her witnesses.

(d) After all testimony has been received, the Review Officer will invite closing arguments from each party with the applicant going first. The applicant may then respond to the other party's closing arguments.

See Item A3.10 for guidelines on the role of Board officers attending oral hearings.

A3.4.9. Adjournments

Where a hearing is not completed within the allotted time, and it is not possible to continue on the same scheduled day, a Review Officer may adjourn the matter and resume it at a later date or consider an alternative method for completing the review.

A3.4.10. Disruptive Behaviour during the Conduct of a Hearing

Where disruptive behaviour prevents the reasonable conduct of a hearing, the Review Officer will put the individual(s) on notice that their behaviour is unacceptable and advise them of the Review Officer's authority to exclude them from the hearing room if the behaviour continues.

Where an exclusion order is made against a party's representative, and to avoid prejudice to the affected party, the Review Officer has the authority to adjourn the hearing to a later date. (See Item A2.3.2 for the Standard of Conduct for Representatives.)

A3.4.11. Record of the hearing

Review hearings will be recorded by the Review Division where practicable. The audio-taped recording is the official record of the hearing. Where an oral hearing is adjourned for a lengthy period, the Review Division will, upon request, provide a copy of the recording of the proceedings to date to the parties.

Written transcripts are not generally made. A possible exception may be where the Review Officer determines that a transcript of specific evidence is necessary, or would be helpful, to assist both

the parties and the Officer. An example may be where lengthy or complex expert evidence is given, which may be used on more than one review.

After the decision has been rendered, the audiotape is stored as part of the Board's file.

A3.4.12. Materials obtained during and after hearing

Item A3.7.2 of this Manual states that any written expert evidence should be provided prior to the hearing and sets out what action the Review Officer may take if this is not done. The same applies also to documentary evidence and written submissions provided by a party.

New evidence and submissions received after the hearing date may be permitted or sought by the Review Officer. These will be disclosed to the other parties in accordance with Item A3.6.1 of this Manual.

A.3.5. Written Submissions

A review will usually involve obtaining written submissions from the parties. (Item A2.8 interprets the term "submission" in a broad sense to include a party's response to a request by the Review Division for information required to begin or continue a review.)

A3.5.1. Normal submission process

When a request for review is received, the standard procedure for reviews of compensation decisions is for the Review Division to:

(a) acknowledge receipt and advise the applicant that he or she has 34 days to provide any further written information and submissions,

(b) forward a copy of the information received from the applicant to any other party to the review and allow 34 days to respond, and

(c) allow the applicant a further 14 days to respond to any comments from the other parties.

These times have been adjusted to consider time required for typical mailing and file disclosure. Since the Review Division provides the file disclosure with its initial letter in the case of reviews of assessment and prevention decisions, the period allowed to the parties for submissions is 28 rather than 34 days.

The Review Division mails out to the applicant a submissions form. The applicant must complete and return this form within the time allowed. The form can be used to make the applicant's submission on the review or a separate written submission can be attached to it.

The Review Division will disclose the final submission received from the applicant under the above process to all other parties. Except where the final submission contains significant new information that needs to be disclosed under the criteria set out in Item A3.6.1 of this Manual, the other parties will be advised that further submissions are not expected and may not be accepted.

A3.5.2. Exceptions to normal submission process

The circumstances of a review may require the Review Officer to vary standard procedure. Depending upon the circumstances of the case, the Review Officer can adopt a different process for obtaining and disclosing submissions, extend the times for submissions and responses, or set different time limits. In some straightforward cases, a decision may be made on the review without obtaining written submissions (See, for example, Item A4.4 of this Manual). In all cases, the Review Officer must ensure that the rules of natural justice are complied with, and must consider the requirement in the *Act* that decisions be made within 150 days.

A party who requests additional time for making written submissions must provide the Review Division with reasons for the request. These reasons might include:

(a) the complexity of the issues under review;

(b) the party is seeking additional medical or other evidence;

(c) the party needs to interview witnesses and provides adequate reasons for requiring more time to do so;

(d) the party needs to seek representation;

(e) personal or family health problems, bereavement, or other emergencies;

(f) a pre-arranged vacation; or

(g) a current labour relations dispute which severely limits opportunity of a person to participate.

Such reasons may involve the party, the representative or a key witness.

Having regard to the 150 days for making decisions, the normal expectation is that all written submissions will be received by the Review Officer within 90 days of the request for review.

If a party to the review does not make a submission within the time required by any Board practices and procedures for the conduct of a review, the Review Officer may:

(a) complete the review and make a decision on the basis of the information before him or her, or

(b) determine that the request for review is abandoned. [Section 272(3) of the *Act*.]

The Review Officer has discretion to accept a late submission or reject it and return it to the sender. In so doing, the Officer will have regard to the extent of and reason for delay, the impact on the time limit for making decisions and other relevant circumstances of the case. If a Review Officer accepts a late submission, consideration must be given to disclosing the submission to any other party under the criteria in Item A3.6.1 of this Manual. For this purpose, it may be necessary to request the Chief Review Officer to extend the 150 day period allowed for making decisions. (See item A3.9.2 of this Manual.)

Written submissions may be requested even when it is decided at the outset of the review to grant a request for an oral hearing. (See Item A3.4 of this Manual.)

A3.6. New Matters Arising

A3.6.1. New evidence

In the course of the review, the Review Officer may obtain new information other than from the written submissions of the parties that adds significantly to the existing information and is material to the issues on the review. This may occur through a formal oral hearing, a conversation with the parties or other persons or through receiving written reports. Expert evidence from doctors or other experts will normally be requested in writing.

Apart from new information obtained at a formal oral hearing, significant new information will be disclosed to any person who is participating in the review and may be adversely affected, and an opportunity will be given for response. The party will normally be provided with copies of written material received or summaries of oral information. In appropriate cases, the Review Officer may advise the party of the information, in person or over the telephone, and ask for an oral response.

A3.6.2. New issues

The scope of a review is generally limited to the decision that is the subject of the request for review. Review Officers should not normally review other decisions for which no valid request for review has been received. However, it may be reasonable in certain situations to include within the scope of the review issues or decisions not specifically covered by the request for review or decision under review. These situations include the following:

(a) The submissions made on a request for review of one decision may expressly or impliedly request that the scope of the review be extended to cover another decision. A new review of another decision may be commenced if the submission containing the request was received before the time limit for requesting a review of the other decision. It may also be sufficient that the original request for review was received within the time limit for requesting a review of the other decision. The Review Division will consider whether the other decision relates to the same issue as the decision already under review or it is otherwise reasonable to interpret the original request for review as covering the other decision.

The Review Division will, if necessary, advise the parties of the new review, along with its reference number, before the decision is made on that review, and will consider whether the first review needs to be suspended so that it can be joined with the second (See Item 3.9.1). However, these steps may not be necessary where it is apparent that the parties were already aware of the additional issue and had the opportunity to make submissions.

(b) One decision will frequently address several issues, all of which may be the subject of a single request for review. Not all of these issues may be specifically placed in dispute by the person who requested the review. Review Officers will normally only address those issues that have been put into dispute by the parties. If, for example, a Board decision addresses both the determination of the worker's initial wage rate and the worker's period of temporary disability, and the worker is only seeking a review of the period of temporary disability, the Review Officer will not normally address the determination of the initial wage rate. However, if the employer is participating and addresses the initial wage rate, the Review Officer will also deal with that issue. It does not matter that the employer's first submission raising the additional issue is received outside the time limit for requesting a review. The decision is already under review.

In certain cases, a Review Officer may determine that it is necessary to deal with an issue in the decision letter under review that has not been raised by the parties. For instance, the Review Officer may notice that the Board decision on the issue contains an error. The fact that none of the parties has raised the issue does not preclude the Review Officer from addressing it.

It may not be possible to make a decision without addressing an issue not directly dealt with in the decision under review. For instance, on a review of a decision denying a worker's claim for a work-related injury, a Review Officer may have to consider whether the worker filed a timely application, as required under section 151 of the *Act*.

(c) A Review Officer may determine that a claim adjudicated under section 136 of the *Act* as an occupational disease should have been adjudicated under section 134 as a personal injury, or vice versa. In such cases, the Review Officer may address the issue if no further evidence is required and there are no procedural fairness concerns. The Review Officer may also refer the matter back to the Board for further investigation and a decision.

As discussed in Item A2.1.5, a request for review may raise an issue that is not explicitly covered by the decision letter in question, but a decision on that issue can be reasonably implied from the circumstances.

It is not possible to predict all the potential situations where Review Officers may need to deal with issues or decisions not covered by the decision referred to in the initial request for review.

In deciding whether to deal with such issues or decisions, Review Officers should consider

(a) whether the new issue is covered by a prior decision for which the time for requesting a review has expired and an extension of time to request a review would be needed from the Chief Review Officer under section 270(2) of the *Act*,

(b) how important or necessary it is to deal with the new issue,

(c) whether there are alternative ways of dealing with the issue,

(d) the difficulty or complexity of the new issue,

(e) the views of the parties, if known, and

(f) whether all the necessary information is available or easily obtainable.

A3.6.3 Submissions on new issues

If it is considered necessary to address issues not put into dispute by the initial request for review, Review Officers will generally give notice to the parties affected and an opportunity to provide submissions. This may not be necessary in some cases, for example if:

- the parties are already aware that the issue will be considered through the disclosure of submissions already made or other means; or
- the issue will be decided in the party's favour in reviews involving a single party.

A3.7. Evidence

Board proceedings are not bound by the common law rules of evidence. [Section 339(1) of the *Act*.] The Review Division may receive whatever evidence it deems appropriate, whether or not it would be admissible in a court.

Evidence may be submitted in any form, such as handwritten statements by witnesses, business records, sworn affidavits, transcripts of evidence given under oath at a hearing in another context, oral evidence at a hearing, or information provided over the telephone or during a meeting. While the strict rules of evidence do not apply, the type of evidence may affect the weight given to it.

A3.7.1. Subpoenas

The Board has the like powers as the Supreme Court to compel the attendance of witnesses and examine them under oath, and to compel the production and inspection of books, papers, documents and things. [Section 342(1) of the *Act*.]

The Board may cause depositions of witnesses residing in or out of the province to be taken before a person appointed by the Board in a similar manner to that established by the Rules of the Supreme Court for the taking of depositions in that court. [Section 342(2) of the *Act*.]

As Review Officers are part of the Board, they can exercise these formal powers, but this is not done as a normal routine. These powers will only be used in exceptional cases, such as where required information cannot otherwise be obtained. The Review Officer is conducting a review of a decision already made, not conducting an initial investigation of a matter. (See Items A3.2 and A4.4 of this Manual.)

A3.7.2. Expert Evidence (Evidence Act)

The statutory rules for admitting expert evidence in court proceedings, quasi-judicial or administrative hearings do not apply where a board or tribunal establishes its own rules. (Section 10 of the *Evidence Act.)*

The Review Division has adopted its own rules for the introduction of expert evidence and the testimony of experts. These rules are intended to prevent:

(a) a party to a review from being “ambushed” or surprised by expert evidence at a hearing; and

(b) the review process becoming too formal.

The rules set out below apply to the provision of opinion evidence by a person the Board deems to be an expert, based on the person’s training or qualifications (for example, a doctor, vocational rehabilitation consultant, occupational therapist, engineer, accountant, physiotherapist, or occupational hygienist). They do not apply to the provision of evidence by non-expert witnesses, persons who simply report what they saw or heard.

While these rules govern the introduction of expert evidence at an oral hearing, the principles upon which they are based are also generally applicable. In particular, Rules (a) to (d) also apply to a matter being conducted by way of “read and review”.

(a) Opinion evidence will generally only be accepted from a person the Review Division recognizes as being qualified by education, training or experience as an expert.

(b) The qualifications of the expert should be stated in or with their report. The assertion of qualifications in that manner will generally be considered as sufficient evidence of such qualifications. A job title will generally be accepted as evidence of the person's qualifications to hold the position.

(c) Objections to a person's qualifications as an expert will not generally cause his or her evidence to be excluded. Such objections will be considered by the Review Officer relative to the weight to be given to the evidence received.

(d) The evidence of an expert is admissible in the form of a written report by the expert, without the necessity of the expert attending an oral hearing. The correspondence requesting the written report of the expert should also be submitted. However, an expert's oral evidence will be admissible in a hearing, even if the expert has not provided a written report. It is expected that advance notice will be given to the Review Division of any expert who will be attending the oral hearing.

(e) Where an oral hearing is granted, the parties should provide written reports in their possession to the Review Division promptly after receipt by the party so that they may be disclosed to all participants to the review. If an expert who is to give evidence at a hearing has provided a written report, the report must be provided to the Review Division a minimum of 21 days prior to the hearing.

(f) A Review Officer may receive a previously undisclosed expert's report at an oral hearing. In such a case, the Officer will determine what steps are necessary to ensure the other party is given an adequate opportunity to respond. In determining whether to receive the report, the Officer will consider:

(i) the reasons for the failure to submit the report to the Board earlier, and

(ii) the impact of late evidence on the time limit for issuing the decision.

Where the other party would be prejudiced by not having sufficient opportunity to respond to significant new expert evidence, the Review Officer may:

(iii) allow an extension of time after the oral hearing for submissions,

(iv) postpone the oral hearing; or

(v) take other appropriate action.

(g) The Review Division will not require an expert to attend an oral hearing unless it believes the attendance is necessary to a fair hearing of the issues or a failure to do so would prejudice a party to the proceeding.

(h) The application of these rules may, in a specific case, be varied at the discretion of a Review Officer.

A3.8. Alternate Dispute Resolution

In circumstances it considers appropriate, the Board may recommend the use of alternate dispute resolution processes to assist in the resolution of matters under the *Act* (Section 345). The Review Division has not yet developed practices and procedures for applying this provision. Review Officers may refer a case back to the Board (See Item A4.4), suspend a review (See Item A3.9.1) or take other appropriate steps if the Board is engaged, or proposes to engage, in some kind of settlement negotiation with a party in relation to an issue under review.

A3.9. Time Limits on Reaching Decisions

The Review Officer must make a decision on a review within 150 days after the Board receives the request for review. This general requirement is subject to some limited exceptions in complex cases discussed below.

In some situations, the 150 day time period allowed for making a decision on a review may have expired or be substantially used up before the Review Division receives the request, notably if

(a) a request for review is received by the Board but not immediately referred to the Review Division, or

(b) WCAT overturns a decision of the Review Division declining to conduct a review and refers the matter back to the Review Division.

The Review Division Registrar may treat the review as commencing on the date it is received from the Board or WCAT for the purpose of computing the 150 days allowed for making a decision on the review.

Where an extension of the time limit for requesting a review is granted, the 150 day period commences from the date when the extension is granted. (See Item A2.4.2.). The 150-day time limit on reaching a decision on a review may be suspended by the Chief Review Officer under section 272(5) or extended under section 272(8) of the *Act.* Under section 274 of the *Act*, the Chief Review Officer may delegate this authority to another Review Officer.

A3.9.1. Suspensions under section 272(5) of the Act

On application, or on the Chief Review Officer's own initiative, the Chief Review Officer may suspend a review in a specific case in order to allow a Review Officer to deal with related matters at the same time. [Section 272(5) of the *Act*].

Applications from an external party must be submitted to the Review Division in writing, outlining the circumstances that support a suspension in the specific case.

There are 3 main situations where suspensions may be considered:

(a) Suspensions to coordinate the decision dates on existing related reviews. Examples are:

(i) Several reviews are commenced on different decisions dealing with related matters on one claim or matters on the claim occurring at about the same time.

(ii)The same incident gives rise to several decisions by the Board with regard to different persons, for example, multiple claims arising from the same incident or prevention orders issued to different persons as a result of one accident.

(iii) The same issue of general policy or practice arises on several claims.

Where a suspension is requested to await a decision on a review for which an extension of the time limit to request a review has been submitted, the normal procedure will be to avoid the need for a suspension by expediting the decision on the extension of time to request a review.

(b) Suspensions to wait for potential reviews on related decisions. The Board division that made the original decision under review may be about to make a related decision on which a review may be requested or that may affect the issue under the current review.

For example, the decision under review concerns a prevention order and the Prevention Services Division is considering an administrative penalty or is conducting a formal investigation into the incident giving rise to the orders that may result in further orders.

(c) Suspensions to wait for WCAT decisions on related issues. The mere fact that WCAT is considering an appeal on a related issue that could affect the issue before the Review Division is not a ground for granting a suspension. Suspensions will not normally be given where the issue before the Review Division is a decision implementing a prior Review Division that is now before WCAT. A suspension for a WCAT decision will be appropriate in some exceptional situations, for example

(i) The employer is challenging the worker's basic entitlement before WCAT and proceeding with the Review Division decision could result in the payment of additional benefits to which WCAT may later find the worker was not entitled.

(ii) Essentially the same issue is before WCAT.

A3.9.2. Extensions under section 272(8) of the Act

The Chief Review Officer may extend the 150 days for making a decision if the complexity of the proceedings in a review or the matter under review makes the time period impractical. [Section 272(8) of the *Act.]*

There are two main criteria for granting extensions.

(a) Complexity of the proceeding. Examples are

(i) Problems with the disclosure process.

(ii) Where submission extensions are granted to the parties and the 150 day time frame is no longer practical.

(iii) Extensive delay in resolving preliminary matters.

(iv) Reviews with more than two parties, for example, where the issue is whether to reopen more than one claim.

(v) Special procedures required for communicating decisions or other matters to parties with special physical or psychological needs.

(b) Complexity of the matter. Examples are

(i) Cases involving a question of jurisdiction, the constitution or other complex legal issues.

(ii) Complex or extensive medical issues.

(iii) Considerable additional inquiry conducted by the Review Officer.

(iv) Substantial new evidence presented on review.

Where an extension is being granted on a particular review, and there are related reviews that need to be dealt with at the same time, extensions will also be granted on those reviews.

A3.9.3. Expediting reviews

The Review Division may expedite the review process where

- A review is received at the Board but not forwarded to the Review Division in sufficient time to allow the review to be conducted through the normal process.
- There is a strong indication, either on the Request for Review form or through telephone contact that the worker is in financial or emotional distress.
- Where the original decision maker wishes to change the original decision but is prevented from doing so by the limitations on reconsiderations in section 123(2) of the *Act*. (See Item A4.4 of this Manual.)

The extent to which reviews will be expedited will depend on the need to provide time for the applicant or other parties to receive disclosure and make submissions, the availability of Review Officers, the overall number of reviews in process and other material factors.

A3.10. Role of Board Officers in Reviews

The guidelines set out below apply to prevention, assessment and compensation reviews but the differing circumstances mean that the application will be different for each. The overriding principle is that the Review Division obtain all the information it needs to make the best decision, while at the same time having an efficient and fair process that complies with the rules of natural justice.

1. A Review Officer conducts the review and determines what information should be obtained, and how, when and from whom it should be obtained.
2. Another Board division, department or officer is not a party to a review and does not have a right to make submissions or present information to a Review Officer in relation to a review.
3. A Review Officer may request information from another Board officer, member of Board staff or from a person external to the Board.
4. Information should not normally be requested from the person who made the decision under review. However, contact with that person may be desirable or unavoidable in exceptional situations. For example:

   (a) A decision may be so unclear that the review cannot be completed without additional explanation, and obtaining clarification may be preferable to making a formal referral back. Requests for clarification will be made in writing through the Review Officer's manager.

   (b) The person who made the decision may be the person who, apart from having made the decision, would ordinarily be contacted to obtain the information needed, for example, a prevention officer who issued an order under review in his capacity as a witness to the events.

5. Subject to paragraph 4, a Review Officer may request another Board officer to:

   (a) Provide an opinion on a matter in which the officer has expertise, most commonly a medical opinion. This is routine in compensation cases.

(b) Conduct further investigation into the facts. Where significant investigation is required, it will normally be preferable to make a formal referral back for a new decision to be made.

(c) Provide information on the provisions of a statute, regulation, policy or practice that may or may not be applicable.

(d) In response to a party's written submission, provide additional relevant information that may be needed as a result of new facts or arguments presented. This will commonly occur in prevention and assessment reviews, but will be unusual in compensation reviews.

(e) Provide other types of information that the Review Officer considers relevant and necessary to make a decision.

6. In asking for information from another Board Officer, the Review Officer will as much as possible ask specific questions as opposed to asking for general comments. However, in prevention and assessment matters, it is important that other Board officers be asked if there are any other relevant matters that may not have been thought of by the Review Officer or raised by a party to the review.
7. New information from other Board officers will be obtained in writing.
8. In responding to requests for information from a Review Officer, the role of the Board officer is to provide the Review Officer with relevant facts, issues and applicable statutory provisions, regulations, policy or practice, including matters that do not support the decision under review. The Board officer should not attempt to defend the correctness of the decision under review by, for example, presenting arguments that a review should be decided in a particular way.
9. Another Board division or department may appoint Case Officers, Quality Managers, Practice Advisers or similar officers as channels for routine communication where a Review Officer requests additional information. These officers are subject to these guidelines, and are therefore not a party to a review and do not have a right to make submissions or present information to a Review Officer in relation to a review. Where an officer is coordinating the obtaining of information for the Review Division, he or she should make clear the source of any information, particularly new information.
10. A Board officer or other member of Board staff may be asked to attend an oral hearing if the officer or staff member may be able to contribute relevant information or respond to new items of information that may arise. This will be at the discretion of the Review Officer, but will be normal practice in the case of prevention reviews and exceptional in the case of compensation reviews.
11. The conduct of an oral hearing is controlled by the Review Officer, including how and when in the process any Board officer contributes. This is subject to the following guidelines:

    (a) The Board officer should not present a case or submissions in support of the decision under review.

    (b) At a time or times determined by the Review Officer, the Board officer may be permitted to present relevant information or raise questions in respect of information or submissions presented at the hearing by a party to the review.

(c) The Review Officer or a party to the review will normally put the questions to any witnesses present.

12. Significant new information obtained from other Board officers or members of Board staff in the course of a review must be disclosed to the parties and opportunity given for response. However, this may not be required in some cases, for example, where the information is provided at an oral hearing or the Review Officer proposes to make the decision in favour of the only party.

A4. DECISION ON REVIEW

The *Act* states that the Review Officer may make a decision:

(a) confirming, varying or canceling the decision or order under review, or

(b) referring the decision or order under review back to the Board, with or without directions. [Section 272(9) of the *Act*.]

A4.1. Role of Review Officers in making decisions

The objective of providing a final resolution to disputed issues means that a Review Officer should strive to reach the best decision supported by the evidence and applicable law and policy. The Review Officer has full authority to substitute his or her own conclusion for that of the initial decision maker. This means that the Review Officer may make what the Officer considers to be the correct decision even though there may be no overt error in the initial decision; the Officer may simply form a different conclusion based on the evidence.

Notwithstanding this broad substitutional authority, the Review Officer is conducting a "review" of an initial Board decision. Therefore, when making a decision, the Review Officer must recognize the authority of the initial Board decision maker to exercise his or her discretion within the parameters of the *Act* and applicable Board policies. The Review Officer must also have regard to the nature and circumstances of the initial decision, including whether:

(a) the initial decision maker:

(i) conducted a full and thorough investigation or a hearing involving all the parties,

(ii) issued a comprehensive written decision dealing in logical fashion with the material issues,

(iii) had expertise relating to the subject matter of the decision,

(b) the decision shows a mistake of evidence, such as:

(i) material evidence was overlooked, or

(ii) facts were mistakenly taken as established which were not supported by any evidence or by any reasonable inference from the evidence,

(c) the decision shows a policy error such as:

(i) applying an applicable policy incorrectly, or

(ii) not applying an applicable policy, or

(d) the decision shows an error of law, such as a failure to follow the express terms of the *Act.*

The Review Officer will also consider whether significant, material new information has been presented as part of the review.

Where the Review Officer cancels or varies a Board decision or order, the Officer will provide a written explanation identifying why the decision or order was changed.

A4.2. Application of Board policy

Section 339 of the *Act* states:

(1) The Board may consider all questions of fact and law arising in a case, but the Board is not bound by legal precedent.

(2) The Board must make its decision based upon the merits and justice of the case, but in so doing the Board must apply a policy of the board of directors that is applicable in that case.

(3) If the Board is making a decision respecting the compensation or rehabilitation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the Board must resolve that issue in a manner that favours the worker.

This section applies to the Review Division. Therefore, Review Officers are bound by the same statutory rules, regulations and policies as all decision makers in the system.

Of particular note for the processing of reviews are the following policies in the *RSCM*:

Policy C1-2.00 (Application of the *Act* and Policies),[2] and

Policies C12-97.00 (Evidence) and C12-97.10 (Disputed Possibilities Evenly Balanced).

The Board issues published practice directives and guidelines for the guidance of staff as to the application of the *Act*, regulations and policy. The Review Division will consider these documents in reaching decisions on reviews.

A4.2.1 Constitutional and Human Rights challenges

The Board of Directors (BOD) has decided that the Review Division will consider issues raised by parties under the *BC Human Rights Code* and the *Canadian Constitution*, including the *Canadian Charter of Rights and Freedoms ("Charter")*. If it is determined that the challenge has merit, the BOD has directed that the Review Officer will not apply the part of the legislation, regulations or policy affected to the particular case under consideration. The issues related to the legislation, regulations or policy will be referred to the Board or provincial government, as the case may be, to consider whether changes should be made.

[2] Similar policies are found in the *Assessment Manual* (Policy AP1-1-0) and the *Prevention Manual* (Policy D1-107-1)

A party raising a constitutional or human rights challenge must provide more than a statement that a provision of the *Act*, regulations or policy is unconstitutional, or contrary to the *Human Rights Code*. If the party fails to provide evidence and/or argument to support the constitutional or human rights issue, the Review Division will decline to address the matter. The principles of natural justice do not require the Review Division to make constitutional or human rights arguments on a party's behalf.

A4.2.1.1A Constitutional Challenges

Where a party seeks to:

- challenge~~s~~ the constitutional validity or applicability of a provision of the *Act***,** regulations or policy; or
- obtain a constitutional remedy as defined in section 8 of the *BC Constitutional Question Act*

the party**,** when filing their request for review or their Notice to Participate, must:

(a) identify the specific provision of the *Act*, regulations or policy they intend to challenge, and the specific constitutional provision they intend to rely on; including any specific right or freedom alleged to have been infringed or denied; and

(b) give particulars necessary to show the point to be argued.

A party who seeks to challenge the constitutional validity or applicability of a provision of the *Act*, regulations, or policy or seeks a constitutional remedy, must also comply with the provisions of the *BC Constitutional Question Act*. The party must:

(a) serve notice on the Attorney General of BC and Attorney General of Canada pursuant to section 8 of the *BC Constitutional Question Act*;

(b) provide the Attorney General of BC and Attorney General of Canada with a copy of the Request for Review and the Board's decision letter; and

(c) provide the Review Division with proof of notice to each Attorney General, such as a letter from each Attorney General or their representative acknowledging delivery. The party should provide proof of notice by their initial submission due date. If proof of notice is not given by that time, the party must provide the Review Division with a copy of the notice it intends to give to each Attorney General. The party must then provide proof of notice within 30 days of the initial submission due date. If a party fails to provide proof of notice as required, the Review Division will decline to address the constitutional issue.

If an Attorney General indicates that it intends to participate on the review, the Review Division will not invite a submission from the Attorney General unless and until a Review Officer determines that it is necessary to address the constitutional issue. Until a Review Officer makes this determination, the submission process described in item A3.5 of this Manual will be followed.

A4.2.1.1B Submission process for a constitutional challenge

Where, after considering the substantive issue in the Board's decision, a Review Officer determines it is necessary to address the constitutional challenge, the Review Officer will advise the parties. The Review Division will then:

(a) arrange for the Board's records related to the matter to be disclosed to any participating Attorney General, who will be give~~n~~ 34 days to provide a submission;

(b) disclose any submission from a participating Attorney General to the other parties on the review and allow each party 14 days to respond;

(c) disclose any submissions in response to the Attorney General's submission to all other parties on the review for information purposes only, with the exception that the Attorney General will be given 14 days to provide a rebuttal on any submission in response to its submission on the application of section 1 of the *Charter;* and

(d) disclose any rebuttal described above from the Attorney General to the other parties on the review for information purposes only.

Once the submission process is complete, a Review Officer will determine the conduct of the review with reference to item A3 of this Manual.

A4.2.1.2 Human Rights Code and other non-constitutional challenges

Where a party seeks to challenge a provision of the *Act*, regulations or policy as contrary to the *BC Human Rights Code*, the party, when filing their request for review or their Notice to Participate, must:

(a) identify the specific provision of the *Act*, regulations or policy they intend to challenge and the specific *BC Human Rights Code* provision they intend to rely on; and

(b) give particulars necessary to show the point to be argued.

A party who raises a *BC Human Rights Code* issue must provide details describing how their rights have been infringed as part of their submissions.

In addition, section 8(3) of the *BC Constitutional Question Act* requires that a party challenging the validity or applicability of a regulation or policy on non-constitutional grounds, which include the *BC Human Rights Code*, must serve notice on the Attorney General of BC. The party must provide the Review Division with proof of notice to the Attorney General of BC within the timelines described in item A4.2.1.1A above. If the party fails to provide proof of notice as required, the Review Division will decline to address the non-constitutional challenge.

If the Attorney General of BC indicates that it intends to participate on the review and the Review Officer determines that it is necessary to address the non-constitutional issue, the Review Division

will follow the submission process described in item A4.2.1.1B above. However, the Attorney General of BC will not be given an opportunity to provide a rebuttal, as section 1 of the Charter does not apply.

Once the submission process is complete, a Review Officer will determine the conduct of the review with reference to item A3 of this Manual.

A4.3. Communication of decisions

The decision on a review will be issued in writing. It will state the conclusion of the Review Officer on each of the issues covered by the initial request for review and provide reasons for the Officer's decision. The conclusion on each issue will be to allow, allow in part, or deny the position of the person requesting the review or return the issue to the Board for further decision. Based on the conclusions on the issues, the Review Officer will advise whether the decision under review is confirmed, cancelled, varied, or returned to the Board for a new determination. The meaning of these terms is set out more fully in the Glossary in Item B1 of this Manual.

Decisions will normally be communicated through the general mail delivery system. Special means of communication may be used in some cases. These include where there are indications from the file or history of a party's relations with the Board that the party may react adversely to the decision due to a psychological condition or for other reasons. The special means could include personal delivery of the decision by a Board officer or, subject to their agreement, through a representative, a physician or other practitioner that has treated the party, or another appropriate person.

A4.4. Referrals back to the initial decision maker

One of the aims of the changes to the *Act* that created the review system is to promote greater finality of decision making. Therefore, a Review Officer who considers that a decision should be changed will in most cases make the new decision. In some cases, it will not be possible or desirable to do this, notably when significant further investigation or assessment is required that would be beyond the scope of the review function. In such cases, an issue may be referred back to the Board division that made the initial decision.

A referral back may also be made at the outset of a review in cases where the original decision maker wishes to change the original decision but is prevented from doing so by the limitations on reconsiderations in section 123(2) of the *Act*. (See Item A3.9.3 of this Manual.)

The referral back will be with directions if the Review Officer requires that the new decision be based on findings made as part of the review.

Where a decision is referred back to a Board division, the Board division will make a new decision that may be reviewable or appealable according to the general statutory rules.

A4.5. Costs and expenses

The Review Division may reimburse a party or a witness for reasonable expenses incurred during the course of a review. These expenses may typically be associated with attending an oral

hearing or medical examination. In particular, the Review Division may reimburse the cost of providing evidence in two situations:

(a) evidence of a kind which the Review Division would have sought had the party not produced it, and

(b) evidence such as a medical report where it is considered reasonable for the party to have assumed that such a report would be required. The Review Division may reimburse the party even if the evidence did not specifically serve the review.

Parties are not obligated to incur costs for the collection of evidence. Parties should advise the Review Division of possible sources of information and permit Review Officers to conduct the necessary inquiries. In this way, parties avoid incurring expenses which may or may not be reimbursed by the Board. Alternatively, if a party intends to obtain evidence or arrange the attendance of a witness that has not been specifically requested by the Review Division, then the party should contact the presiding Review Officer before the expense is incurred.

Parties or witnesses may be reimbursed for the out-of-pocket expenses of attending an oral hearing or medical examination. Such expenses usually include the costs incidental to a person's physical presence at the hearing or examination (i.e. loss of wages for the time missed from work and travel expenses). The following criteria will be considered in deciding whether to reimburse these expenses:

(a) Whether expenses were incurred by or on behalf of a successful party, although this is not itself determinative.

(b) Whether attendance of non-party witnesses assisted in deciding the review.

(c) Whether attendance of non-party witnesses was reasonable, based on the issues under review and evidence already available.

(d) Whether the witness attended the hearing at the request of the Review Division.

(e) Whether a party or witness incurred expenses to attend an oral hearing that did not proceed due to an administrative error. For example, where a party had not been informed of a postponement, and incurs travel expenses to attend the hearing, costs will generally be awarded regardless of the outcome of the review.

It is not necessary for a party to be represented during a review. If a party chooses to retain a representative for the purposes of review, they do so at their own expense. The Review Division is bound by the Board's policy respecting fees and expenses of lawyers and other advocates. As stated in Policy C12-100.10 of the *RSCM*, "No expenses are payable to or for any advocate. Nor does the Board pay fees for legal advice or advocacy in connection with a claim for compensation".

When a Review Officer has determined that a person is eligible for reimbursement of expenses, the Review Officer may decide the amount payable. Alternatively, in the case of claims files, the officer may refer the matter back to the Claims & Rehabilitation Services Division to determine all or some of the amounts payable. With regard to medical reports, the Review Division will normally limit reimbursement to the rate allowed by the Board's tariff or general practice.

A request for reimbursement of expenses should be made in the party's submissions during the review. The Review Division has the authority to reimburse expenses in a specific case even where no request has been made.

An award of costs is an alternative to the reimbursement of incidental expenses. An award of costs involves a Review Officer directing that one party pay the expenses of another under 343 of the *Act*. The principles governing this section are found in Policy C12-100.10 (The Awarding of Costs) of the *RSCM*.

A5. POST DECISION MATTERS

A5.1. Requests for clarification

A Review Division decision may be perceived to be unclear, incomplete or to have an obvious error (for example, a mathematical miscalculation). Clarifications of decisions may be provided in order to further the object of the Review Division of resolving disputes and avoiding further disputes and appeals.

The limits on the reconsideration of decisions do not prevent a Review Officer from issuing an addendum to clarify a decision or complete an incomplete decision. This may be done where the text of the decision did not correctly reflect the Officer's intent or include a decision on all the issues required to be decided.

The clarification process must not be used as a disguised challenge of the decision or as a means of having the Review Officer decide an issue that was not part of the original review.

A5.2. Reconsideration of Review Division Decisions

The *Act* envisages that parties who are dissatisfied with decisions will expeditiously move through its dispute resolution structure. If a person objects to a particular decision, he or she should use the next level of appeal that the *Act* recognizes. It makes no difference whether the objection relates to the substance of the decision or to the process under which the decision is made.

While finality of decision-making is one of the primary objectives of the changes to the *Act* that took effect on March 3, 2003, the Review Division does have authority to reconsider decisions in certain situations. This authority stems from two sources, the common law and the *Act*, and is exercised only in exceptional cases where there are clear grounds.

A5.2.1. Reconsideration under the Common Law

Under common law principles, the Review Division may reconsider one of its decisions where there has been fraud or an error of law “going to jurisdiction”, including a breach of the rules of natural justice/procedural fairness. The Review Division’s authority to reconsider a decision on common law grounds is discretionary and, to promote finality of decision-making, is exercised only in exceptional situations. Generally, if the applicant has a right to appeal under the *Act*, the Review Division will not grant requests on common law grounds to void decisions. Rather, persons making these requests will be advised of their right to appeal to WCAT. In all cases, the Review Division will not reconsider a decision if an appeal to WCAT has been initiated.

A5.2.2. Reconsideration under the Act

Section 273(1) of the *Act* sets out two situations where the Review Division may reconsider a decision:

(a) on the Chief Review Officer's own initiative; or

(b) on application from a party where certain criteria are met.

These two situations are described in greater detail below.

Section 274 of the *Act* allows the Chief Review Officer to delegate the authority to direct a reconsideration to another Review Officer.

The Review Division's limited reconsideration authority under section 273 applies only to final decisions on a valid review made under section 272(9) of the Act. Therefore, the Review Division may reconsider a preliminary decision, such as a decision declining to conduct a review, without meeting the requirements of section 273. (See Item A2.4.2.6 of this Manual concerning extension of time decisions.)

A5.2.3. Reconsideration at the Chief Review Officer's initiative

On the Chief Review Officer's own initiative, reconsideration must take place within 23 days after the review decision was made. [Section 273 (1)(a) and (3)(a) of the *Act*.]. The Chief Review Officer's exercise of this discretion will be limited to exceptional cases, in particular where:

(a) it is apparent that a review decision in a specific case contains a clear error of law or policy, or

(b) to implement the decision would result in an immediate danger that would likely result in serious injury, illness or death.

On the Chief Review Officer's own initiative simply means that the authority to act is without a formal application. It neither implies nor requires that the Chief Review Officer is acting purely on his or her own initiative. Although the Chief Review Officer has the discretion in relation to whether or not to act, in most cases, that consideration will have been triggered by some communication from someone bringing the information to the Chief Review Officer's attention.

This may come from a party, an interested person or from Board staff. In situations where the decision may be appealed to WCAT, the Chief Review Officer may direct a reconsideration of the decision provided no actual appeal has been filed.

A5.2.4. Reconsideration on application by a party

On application from a party to a completed review of a decision, the requirements are that:

(a) the decision is one that may not be appealed to WCAT, and

(b) the Chief Review Officer is satisfied that new evidence has become available or been discovered that

(i) is substantial and material to the decision, and

(ii) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered, and

(c) the same party has not submitted a previous application for reconsideration of the same decision (Section 273(1)(b) and (2) of the *Act*).

The requirement that the new evidence is "substantial" and "material" means it is not sufficient that the evidence is merely new and/or relevant. The new evidence must be significant, must be relevant to the review, and must have sufficient substance or weight to support a particular conclusion.

The "reasonable diligence" requirement means that if the new evidence existed prior to the Review Division decision, the applicant must adequately explain why he or she was unable to produce it or advise the Review Division that it existed. The applicant must show that he or she exercised the degree of care which a prudent or reasonable party would have exercised in ensuring that the Review Officer had all relevant information necessary to the proper consideration of the matter under review.

Even if the statutory requirements for reconsideration are met in a particular case, the Chief Review Officer still has the discretion whether to direct a reconsideration. The Chief Review Officer will have regard to other relevant factors, such as the length of time that has elapsed since the decision was made, the explanation for the delay in applying, and the potential impact of the reconsideration on other parties.

A5.2.5. Reconsideration process

There is no formal process within the Review Division for reconsideration applications. An application must be made in writing and must be filed with the Review Division as soon as possible after the decision has been rendered.

If the Chief Review Officer decides not to reconsider, the party making the application will be notified in writing with reasons.

Where the Chief Review Officer determines that a decision should be reconsidered, the reconsideration will normally be assigned to the Review Officer who made the original decision unless that Officer is unavailable or there are grounds for referring the matter to another Officer.

The legislative mandate to complete a reconsideration at the Chief Review Officer's initiative in 23 days creates an administrative difficulty in giving a party adversely affected by reconsideration an opportunity to make a submission. Where a party may be substantially adversely impacted, expedited submissions may be appropriate.

A5.3. Appeals of Review Division Decisions

A final decision of the Review Division may be appealed to the WCAT within 30 days, including a decision declining to conduct a review.

Review Division decisions with respect to the following may not be appealed to WCAT:

(a) Prescribed matters respecting the conduct of a review. The *Act Appeal Regulation* (BC Reg. 1039/2002) prescribes these matters, which include decisions concerning:

(i) extensions of the required time period for submitting a request for review,

(ii) deeming the employers' adviser or an organized group of employers to be the employer,

(iii) the conduct of a review,

(iv) proceeding to make a decision on a review or declaring a review abandoned after a failure to make a submission in time,

(v) posting a notice at a workplace during a review of a prevention decision,

(vi) suspending a review to enable the Review Officer to deal with a related matter,

(vii) extending the 150 day time limit for making a decision on a review,

(viii) a stay or suspension of a decision under review, and

(ix) referring a decision or order back to the Board,

(b) Vocational rehabilitation,

(c) The application of the Permanent Disability Evaluation Schedule to the assessment of a permanent disability award where the specified percentage of impairment has no range or has a range that does not exceed 5%,

(d) Commutations of pensions,

(e) A prevention order, other than an order

(i) relied upon to impose an administrative penalty,

(ii) imposing an administrative penalty, or

(iii) canceling or suspending a certificate of a first aid attendant or similar person. Orders placing conditions on certificates are not appealable to WCAT (Section 288 of the *Act*).

A judicial review by the courts of law may be possible where there is no right of appeal to WCAT.

A5.4. Publication of Review Division Decisions

Review Division decisions are generally published on the Board's internet site. This promotes transparency, accountability and consistency, and assists in the public understanding of workers' compensation decision making. However, in writing their decisions, Review Officers will avoid including identifying details that are unnecessary to explain the reasons for their decision. In exceptional cases, the information provided in the decision may still create a significant risk of persons being identified. In these situations, even if the names of the persons are omitted, the Review Division will not publish its decisions.

The Review Division will consider a party's request to publish a decision that was not published or remove from the internet a decision that was published. The Review Division may also on its own initiative remove or edit a published decision if it becomes aware that identifying information was inadvertently included or publish a decision that was not published in error.

B. APPENDICES

B1. GLOSSARY OF TERMS

This glossary provides the meaning of certain common terms or phrases used in this Manual or in connection with the administration of reviews that are not defined in the *Act* and are not discussed otherwise in this Manual.

Term or phrase	Meaning
Act	*Workers Compensation Act*, unless the context otherwise indicates.
Allow	The Review Officer disagrees with the determination made on an issue covered by a decision or order under review.
Allow in part	The Review Officer disagrees in part with the determination made on an issue covered by a decision or order under review.
Cancel	The Review Officer concludes that a determination on an issue in a decision exceeds the Board's legal jurisdiction and, as a result, should be set aside without a new determination being substituted. On a prevention review, the Review Officer may also conclude that an order is not supported by the evidence and, as a result, should be set aside without a new order being substituted.
Confirm	The Review Officer agrees with the determinations made on every issue covered by a decision or order under review, though not necessarily with the reasons for those determinations.
Decision	A determination of the Board to award, deny, reconsider or limit entitlement to benefits and services, or impose or relieve an obligation under the *Act* or policy. (This is the definition in Policy C12-99.20 of the *RSCM*. For jurisdictional purposes, the Review Division treats a letter or other form of communication as one decision, though it may concern the determination of more than one issue.)
Deny	The Review Officer agrees with the determination made on an issue covered by a decision or order under review.
Issue	Each benefit or obligation, or each aspect of a benefit or obligation, dealt with in a decision or order under review where the decision or order includes determinations regarding different aspects of a benefit or obligation, more than one type of benefit or obligation, or determinations regarding the same benefit or obligation at different places or times.

Order	A decision made under any section of the *Act* that authorizes the Board to issue orders. Orders are usually issued under the prevention provisions of Part 2 of the *Act* but can be issued under other sections, for example, the recognition of an occupational disease by order under the definition of "occupational disease" in section 1 of the *Act*.
Refer Back	A referral of a decision or order back to the Board so that the Board can conduct further investigation and make a new decision.
Review	Process established by sections 268 to 272, and 330 of the *Act* by which a Review Officer determines whether a reviewable decision or order should be cancelled, varied or confirmed or referred back to the Board for further consideration.
Section	Section of the *Act*, unless context otherwise indicates.
Vary	Any decision by a Review Officer other than one that confirms or cancels a decision or order. This covers situations where the Review Officer agrees with the determination made on one or more, but not all, the issues covered by a decision or order under review, or disagrees with the determinations on all issues, and decides to substitute a new decision or order.
WCAT	Workers' Compensation Appeal Tribunal

B2. PRE-MARCH 3, 2003 DECISIONS

The Review Division came into existence on March 3, 2003. This part of the Manual summarizes the pre-March 3, 2003, appeal system and the sections of the *Act* providing for transition from the old to the new systems for pre-March 3 decisions.

B2.1. Prior appeal system

Prior to March 3, 2003, the situation can be summarized as follows:

(a) There were 3 levels of appeal for claims decisions affecting workers: the Workers' Compensation Review Board ("Review Board"), the Appeal Division, and the Medical Review Panel. Decisions on claims made by the Board were appealable to the Review Board. Decisions of the Review Board were appealable to the Appeal Division. Medical decisions of the Board, Review Board and Appeal Division could be appealed to the Medical Review Panel.

(b) For Board decisions on assessments and prevention penalties, there was a right of appeal direct to the Appeal Division.

(c) For other prevention divisions, there was a right to a review conducted by the Prevention Division. In a few cases, the decision on this review could be appealed to the Appeal Division.

B2.2. Transitional provisions

The situations when a review can be requested by the Review Division in respect of pre-March 3, 2003, decisions are discussed below. For the convenience of persons wishing to request a review as of March 3 in respect of such decisions, the Review Division accepted requests for review prior to March 3. However, prior to March 3, no determination as to the validity of a request was made and the commencement date for a valid review request was considered to be March 3.

B2.2.1. Compensation Decisions

For the purpose of determining appeal rights for pre-March 3, 2003 compensation and rehabilitation decisions, it is necessary to distinguish decisions on entitlement to benefits that affect workers from decisions as to relief of costs that only affect employers as follows:

(a) Decisions affecting workers' entitlement to compensation. If prior to March 3 an appeal was filed with the Review Board, that appeal was continued either by the Review Board or WCAT. If no appeal was made to the Review Board prior to March 3, then a request for review may be submitted to the Review Division within 90 days from the day the decision was communicated. The 90-day period commences at the end of a 10-day period that is added to the date on the decision letter to allow for mailing. This means that no request for a review may be submitted for a decision dated prior to November 21, 2002, unless an extension of time is requested from the Chief Review Officer (Sections 38 and 40 of the *Workers Compensation Amendment Act* (No. 2), 2002 and Section 2(1) of the *Transition Review and Appeal Regulation* - BC. Reg. 1040/2002).

(a) Relief of costs. The Review Division only has jurisdiction over relief of costs decisions made on or after March 3, 2003. Relief of costs decisions made prior to March 3, 2003cannot be reviewed. If there was an existing appeal at the Appeal Division it was continued either by the Appeal Division or WCAT. If no appeal was filed by March 3, an appeal could still be filed with WCAT within 30 days of the decision (Sections 39 and 41 of the *Workers Compensation Amendment Act* (No. 2), 2002).

B2.2.2. Prevention Decisions

For the purpose of determining appeal rights for pre March 3, 2003, prevention decisions it is necessary to distinguish decisions on administrative penalties from other decisions as follows:

(a) Administrative penalties. The Review Division only has jurisdiction over administrative penalty decisions made on or after March 3, 2003. Penalty decisions made prior to March 3, 2003 cannot be reviewed. If there was an existing appeal at the Appeal Division it was continued either by the Appeal Division or WCAT. If no appeal was filed by March 3, an appeal could still be filed with WCAT within 30 days of the decision (Sections 39 and 41 of the *Workers Compensation Amendment Act* (No. 2), 2002).

(b) Other decisions. If prior to March 3 a request for review was filed with the Prevention Division under Division 13 of Part 3 of the *Act* as it then existed, the Prevention Division completed the review. A person who was dissatisfied with the Prevention Division decision on a complaint of prohibited action or cancellation or suspension of a certificate could appeal to the WCAT within 30 days. If no review request was made to the Prevention Division prior to March 3, then a request for review could be submitted to the Review Division within 60 days after the date of the decision. There is no power to extend these time limits on requesting a review or appeal (Section 37 of the W*orkers Compensation Amendment Act* (No. 2), 2002).

B2.2.3. Assessment Decisions

The Review Division only has jurisdiction over assessment and classification decisions made on or after March 3, 2003. Decisions made prior to March 3, 2003 cannot be reviewed. If the employer submitted an appeal to the Appeal Division before March 3, the appeal was continued by the Appeal Division or WCAT. If the employer did not submit an appeal before March 3, the employer could still submit an appeal to WCAT within 30 days of the decision.

B3. SAMPLE STATUTORY DECLARATION

STATUTORY DECLARATION

Canada	)	IN THE MATTER OF
	)	
Province of British Columbia	)	_____
	)	(Deceased's Name)
	)	_____
	)	(Claim Number)

I, _____ residing at _____

(Full Name of Person Making Declaration) (Address)

SOLEMLY DECLARE THAT:

I have personal knowledge of the matters set out in this Statutory Declaration.

1. The Deceased, _____, passed away on _____.
   (Deceased's name) (date of death)
2. The Deceased was my _____ and to the best of my knowledge had no will. (relationship to the Deceased)
3. The total value of the Deceased's estate is less than $25,000 (and the majority of the assets were held jointly). Therefore, there is no requirement to apply to the Court for Letters of Administration.
4. As the estate's representative, I have conduct of the administration of the deceased's estate.
5. I am applying to proceed on behalf of the deceased's estate to initiate a review or continue a review at the Review Division of the Workers' Compensation Board.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that is of the same legal force and effect as if made under oath.

DECLARED before me at the City of	)	
_____, in the Province of British	)	
Columbia, this ___ day of _____ 20____.	)	_____
	)	(Signature of person making Declaration)
	)	
_____	)	
Signature of a Commissioner for taking	)	
Affidavits, Lawyers, Notary Public	)	