

REVIEW DIVISION**PRACTICES AND PROCEDURES
SUMMARY OF UPDATES****Effective Date: December 1, 2011**

Item	Title	Update
A1.1	Decisions not supported by written reasons	<p>New section to organize existing material from Item A1.</p> <p>Deleted the statement, "Such requests are normally made to the Investigations Department in the case of prevention matters and the Assessment Policy Manager in the case of assessment matters". This is just internal process.</p> <p>Added statement that the Review Division may immediately refer the matter back to the Board to make a new decision when the Board wishes to change its decision. The parties are not normally prejudiced by this since they can request a review of the new decision. This is existing practice.</p>
A2.1.1	Administrative or Incidental decisions	<p>Referred to the statement in the recently amended Policy #99.20 that a finding of fact may not be reviewed except where it forms part of an expressed or implied decision regarding an entitlement to benefits or obligation.</p>
A2.1.5	Decisions not communicated in a letter	<p>A paragraph has been added to cover the situation where a request for review is 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 the letter was responding to a specific request from the applicant that the issue in question be decided, and if there has been no other decision communicated on this issue.</p>
A2.1.8	Refusals or failures to make decisions	<p>Added a statement that 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 Section to notify the</p>

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		Board's Compensation Practices Department.
A2.4.1	Calculating the time limits for requesting a review	<p>Incorporates the recent changes to policy #99.20 to the effect that the 90 day time limit starts when decisions are first communicated and that an 8 day mailing period applies to mailed decisions.</p> <p>States that all decisions are in practice deemed to have been received on the 8th day after mailing, even though some decisions are communicated by other means.</p>
A2.4.2.3	Injustice	<p>A BC Supreme Court decision (Kerton v Workers' Compensation Appeal Tribunal, May 5, 2010) found there was no residual discretion to deny an extension of the 90 day time limit when the two statutory criteria of "special circumstances" and "injustice" had been met. In paragraph 93, the judge commented "Perhaps the factors that WCAT has considered in determining whether to exercise this 'residual discretion' are more properly considered in determining whether the two statutory criteria are met". This led to changes last June deleting the practice regarding discretion (Item 2.4.2.4) and expanding the section on injustice. On January 10, 2011, the Court of Appeal overturned the Supreme Court decision and found there was a discretion to deny an extension of time. As a result, a note referring to the court decision has been deleted from this item and the practice on discretion has been restored along with additional explanation of the factors that will be considered.</p>
A2.4.2.4	Discretion of Chief Review Officer	See note on A2.4.2.3
A2.5	How a request for review is made	<p>Delete the statement that a request for review should state whether the applicant will be submitting further information. This is not required on the initial application form. It is covered by the standard letter sent out in response to the form and the submissions form.</p>

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A2.6	Parties to the Review	A statement is added that 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.
A2.6.1	Notice to participate	New section to organize existing material.
A2.6.3	Prevention reviews	Incorporates prior WCAT and Review Division decisions on the standing of workers after their employment ceases or at other workplaces of their employer and the standing of family members of deceased workers to participate in reviews requested by others.
A2.9.1	Stays or suspensions of decision under review	<p>Reference to the policy on stays is included (D12-196-7).</p> <p>A 30 day time limit on applying for stays and providing supporting information has been added. Provision is made for allowing later applications in exceptional situations due to circumstances beyond the applicant's control. The notification of other parties is made discretionary as the parties are often not identified within the 30 day period and the issues arising on stays are often personal to the applicant, e.g. its financial situation.</p> <p>The criteria for granting stays have been amended. Experience has shown that existing criteria do not recognize the realities of the cases. The criterion of a serious issue to be determined is almost always met. The criterion of "irreparable harm" is too restrictive in that, in the case of an employer, it would require that the payment of the penalty would put the employer out of business. The criterion about which party will suffer the greater harm is of little value because there is normally only one party and any concerns about safety in the workplace are covered by the last criterion. The draft amendments set up two main criteria, serious financial and other hardship and whether the purpose of the decision (typically workplace safety) would be undermined.</p>

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A2.9.2	Moot reviews	New section. Incorporates existing practice where there is or may be no point in conducting a review, e.g. WCAT has denied a claim and a party wishes a review of a decision on the amount of benefits.
A3.4.2	Process for making decision oral hearing	State that written submissions may be obtained even if it is agreed to hold an oral hearing.
A3.4.4	Late appearances or failures to appear.	<p>The wait time for a respondent is increased from 5 to 15 minutes, the period allowed for an applicant.</p> <p>The current wording obliges the Review Officer within 8 days to request written reasons for a failure to attend. This is made discretionary as it may not be needed in some cases.</p>
A3.4.8	Hearing objective and process	State that the applicant will be given a final opportunity to comment on the other parties' closing submissions at a hearing. The other parties do not have the same opportunity.
A3.4.12	Materials obtained during and after the hearing	Clarify that written expert evidence and documentary evidence from a party should be provided prior to a hearing.
A3.5.1	Normal submission process	New section to organize existing material.
A3.5.2	Exceptions to normal submission process	<p>New section to organize existing material.</p> <p>State that written submissions may be obtained even if it is agreed to hold an oral hearing.</p>
A3.6.2	New Issues	Material on notifying the parties of new issues in different parts of the item has been consolidated into one place.

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A3.7.1	Subpoenas	Add a statement that, as Review Officers are part of the Board, they can exercise formal legal powers of subpoena, 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.
A3.8	Alternative dispute resolution	Delete the statement that alternative dispute resolution may be suggested by a Review Officer in the particular circumstances of the case, or a party to a review, as a means of resolving one or more issues. It is not practical to do this when the Board has no set process for this. However, a statement has been added that Review Officers may refer a case back to the Board, suspend a review 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.
A3.9.1	Suspensions under Section 96.4(5) of the <i>Act</i>	Clarify that a suspension may be granted not only because the Board is about to make a decision on a related matter for which a review request may be submitted, but also because the related decision may affect the issues under the current review even if it does not generate another review request.
A3.9.2	Extensions under section 96.4(7) of the <i>Act</i>	Add as a possible ground for an extension: Special procedures required for communicating decisions or other matters to parties with serious mental or physical disabilities or conditions.
A3.9.3	Expediting reviews	This is a new section to include the Review Division criteria for expediting reviews for hardship or other reasons.
A4.2.1	Constitutional and Human Rights challenges	This largely reinstates material that was previously in the <i>Practices and Procedures</i> . It was previously deleted due to uncertainty about the Review Division authority. However, recent court decisions and decisions of the Board of directors have confirmed that the Review Division does have authority to consider these challenges to the <i>Act</i> and policies.
A4.3	Communication of decisions	Paragraph added to refer to the special procedures for communicating decisions required because of a psychological condition or other similar reason.

Item	Title	Update
A5.3	Appeals of Review Division decisions	A statement has been included that 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	More detailed criteria included regarding the publication of decisions.
B1	Glossary of terms	Revised definition of “decision” to accord with Policy #99.20