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267 Definitions in relation to reviews

For the purposes of this Part:

"employer" means,

(a) in relation to a review under section 268(1)(a) *[reviews in relation to OHS provisions]*, an employer as defined in section 13 *[OHS definitions]*, and

(b) in relation to a review under section 268(1)(b) or (c) *[reviews in relation to compensation provisions]*,

(i) an employer as defined in section 1,

(ii) a person who is deemed to be an employer under the compensation provisions or the regulations under those provisions, or

(iii) the owner and the master of a fishing vessel for which there is crew to whom the compensation provisions apply as if the crew were workers;

"worker" means the following:

(a) a worker as defined in section 1;

(b) a person who is deemed to be a worker under the compensation provisions or the regulations under those provisions;

(c) a person to whom the compensation provisions apply as if the person were a worker.

268 Requests for review

(1) Subject to subsection (2), a person referred to in the applicable provision of section 269 may request a review officer to review the following in a specific case:

(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) an administrative or other monetary penalty,

(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]*, or

(iv) a matter set out in section 154.2 *[duty to cooperate]* or 154.3 *[duty to maintain employment]*.

(d) a Board decision respecting

(i) an imposition or variation of a term or condition on a licence under section 59.05(4) or (5) *[licence may be issued]*,

(ii) a refusal to issue a licence under section 59.06 *[refusal of licence]*, or

(iii) a suspension or cancellation of a licence under section 59.07 *[suspension or cancellation of licence]*.

(2) A review may not be requested under subsection (1) respecting the following:

(a) in relation to section 50 *[response to complaint respecting prohibited actions against a worker]*, a determination, an order, a refusal to make an order or a cancellation of an order under that section;

(b) an assessment under section 108(1)(a) *[levy of amount owed by employer under the OHS provisions]*;

(c) an assignment of an employer to a class or subclass, other than the assignment of an employer to a class or subclass that

(i) has employers as members, and

(ii) does not have subclasses as members;

(d) an assignment of a subclass to a class or subclass;

(e) a withdrawal of an employer from a class or subclass, other than the withdrawal of an employer from a class or subclass that

(i) has employers as members, and

(ii) does not have subclasses as members;

(f) a withdrawal of a subclass from a class or subclass;

(g) 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, other than an allocation as it relates to a specific employer or an independent operator respecting

(i) the reserve referred to in section 240(1)(b), (c) or (d) *[reserve purposes]* or

(ii) the account of a class or subclass referred to in section 249 *[compensation charged to different employer class or subclass]*;

(h) the determination of an assessment rate for a class or subclass, other than the modification to the assessment rate determined for an employer on the basis of the employer's own experience;

(i) [repealed].

269 Who may request a review

(1) Any of the following who is directly affected by a decision or order referred to in section 268(1)(a) *[OHS decisions]* may request a review of the decision or order:

(a) a worker;

(b) a family member of a deceased worker;

(c) an employer as defined in section 13 *[OHS definitions]*;

(d) an owner as defined in section 13;

(e) a supplier as defined in section 13;

(f) a union as defined in section 13.

(2) Any of the following who is directly affected by a decision referred to in section 268(1)(b) *[compensation or rehabilitation decisions]* may request a review of the decision:

(a) a worker;

(b) a dependant of a deceased worker;

(c) an employer.

(3) An employer or independent operator who is directly affected by a decision referred to in section 268(1)(c) *[assessment, classification and other decisions affecting employers and independent operators]* may request a review of the decision.

(4) An asbestos abatement contractor or an independent asbestos abatement operator, within the meaning of section 59.02 *[definition in relation to licensing]*, who is directly affected by a decision referred to in section 268(1)(d) may request a review of the decision.

270 Making request for a review

(1) A request for a review must be filed as follows:

(a) if a shorter time period is not prescribed under paragraph (b), within 90 days after the Board's decision or order is made;

(b) if a time period shorter than 90 days is prescribed by regulation of the Lieutenant Governor in Council with respect to the type of decision or order to be reviewed, within the shorter time period.

(2) The chief review officer may extend the time to file a request for a review, including making an extension after the time to file has expired, if this is done on application and the chief review officer is satisfied that

(a) special circumstances existed that preclude or precluded the filing of a request for a review within the applicable time period required by subsection (1), and

(b) an injustice would otherwise result.

(3) The filing of a request for a review under this section does not operate as a stay or suspend the operation of the decision or order under review unless, on application, the chief review officer orders otherwise.

271 General matters in relation to requests for review

(1) As soon as practicable after a request for a review is filed under section 270, the Board must provide the parties to the review with a copy of the Board's records respecting the matter under review.

(2) Subject to subsection (3), for the purposes of a specific review, if the employer has ceased to be an employer within the meaning of the compensation provisions, the chief review officer may deem an employers' adviser or an organized group of employers to be the employer.

(3) An organized group of employers may be recognized by the chief review officer under subsection (2) 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.

272 Conduct of review

(1) This section applies to a review requested under section 270.

(2) Subject to any Board practices and procedures for the conduct of a review, a review officer may conduct a review as the officer considers appropriate to the nature and circumstances of the decision or order being reviewed.

(3) If a party to the review does not make a submission within the time required by any Board practices and procedures referred to in subsection (2), the review officer may

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

(b) determine that the request for a review is abandoned.

(4) A review officer may require an employer who is a party to a review respecting a matter referred to in section 268(1)(a) *[OHS decisions]* to post a notice in a specified form and manner to bring the review to the attention of the employees of the employer.

(5) 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.

(6) After taking into account any applicable period of suspension under subsection (5), the review officer must make a decision on a review, within the following time period:

(a) if a time period is not established as set out in paragraph (b) of this subsection, within 150 days after the Board receives the request for a review;

(b) if a policy of the board of directors establishes a time period that is less than 150 days after the Board receives a request for a review, within the shorter time period.

(7) A time period referred to in subsection (6)(b) may be different for different types of decisions or orders.

(8) The chief review officer may extend the applicable time period in subsection (6)(a) or (b) if the complexity of the proceedings in a review or the matter under review makes the time period impractical.

(9) The review officer may make a decision

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

(b) referring the decision or order under review back to the Board, with or without directions.

(10) Subject to sections 273 *[reconsideration directed by chief review officer]* and 288 *[appeal of review decisions]*, a decision by the review officer under subsection (9) is final and the Board must comply with the decision.

273 Reconsideration directed by chief review officer

(1) The chief review officer may direct a review officer to reconsider a decision under section 272(9) in either of the following circumstances:

(a) on the chief review officer's own initiative;

(b) on application from a party to a completed review of a decision that may not be appealed to the appeal tribunal, if 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.

(2) Each party to a completed review may apply for reconsideration of a decision under subsection (1)(b) on one occasion only.

(3) Despite subsection (1), a review officer must not reconsider a decision

(a) more than 23 days after the decision was made, if a direction to reconsider was given under subsection (1)(a), or

(b) if the decision has been appealed under section 288 *[appeal of review decisions]*.

274 Delegation of chief review officer's powers and duties

(1) The chief review officer may delegate to a review officer a power or duty of the chief review officer.

(2) A delegation under subsection (1) must be in writing and may include limits and conditions on the exercise of the power or performance of the duty.

(3) If the chief review officer has delegated a power or duty and subsequently ceases to hold office, the delegation continues in effect

(a) so long as the delegate continues in office, or

(b) until the delegation is revoked by a new chief review officer.

(4) The chief review officer may designate a review officer to act in the chief review officer's place during the chief review officer's temporary absence and, while acting in the chief review officer's place, the designated review officer has the power and authority of the chief review officer.

275 Payment of compensation following review

(1) If, following a review under this Part, a review officer's decision requires payments to be made to a worker or a deceased worker's dependants, the Board must

(a) begin any periodic payments, and

(b) pay any lump sum due under section 167 *[payment to dependent spouse or foster parent]*.

(2) In the absence of fraud or misrepresentation, an amount paid under subsection (1) to a worker or a deceased worker's dependants is not recoverable.

(3) If a review officer has made a decision described under subsection (1), the Board must defer the payment of any compensation applicable to the time period before that decision

(a) for a period of 40 days following the review officer's decision, and

(b) if the review officer's decision is appealed under section 288 *[appeal of review decisions]*, for a further period until the appeal tribunal has made a final decision or the appeal has been withdrawn, as the case may be.

(4) Subsection (3) applies despite the following:

(a) section 168(2) *[dependants of deceased worker]*;

(b) section 191(1) *[temporary total disability]*;

(c) section 192(1) *[temporary partial disability]*;

(d) section 194(1) *[permanent total disability]*;

(e) section 195(1) *[permanent partial disability: general rules]*;

(f) section 196(3) *[permanent partial disability: exception to general rules]*.

276 Effect of review in relation to employer payment obligations

(1) The commencement of a review under this Part does not relieve an employer from paying an amount in respect of a matter that is the subject of the review.

(2) If the decision on a review under this Part requires the refund of an amount to an employer, interest calculated in accordance with the policies of the board of directors must be paid to the employer on that refunded amount.