

# EXTENDING TIME TO APPEAL

## Contents

Page #

A. Purpose of guideline .....2

B. Process involved to extend time to appeal .....2

C. When not to apply for an extension of time .....3

D. Filling out the *Application for Extension of Time* form .....4

E. What criteria will the chief appeals commissioner likely consider ?.....5

F. How to file your application... .....6

G. What happens next ?... .....6

**Contact the Appeals Commission**

For more information, contact the Appeals Commission for Workers' Compensation

- by calling our office in:
  - Edmonton (780) 412-8700
  - Calgary (403) 508-8800
- by picking up information from our office in Edmonton at:
  - 901, 10109 – 106 Street
  - Edmonton, AB T5J 3L7
- by picking up information from our office in Calgary at:
  - 206, 1701 Centre Street North
  - Calgary, AB T2E 7Y2
- through our website at [www.appealscommission.ab.ca](http://www.appealscommission.ab.ca)

*This is one of a series of Practice Guidelines issued by the Chief Appeals Commissioner to help parties who wish to appeal to the Appeals Commission. To get other Practice Guidelines, the Appeals Commission's Appeal Rules, or other information, please contact the Appeals Commission in one of the ways described above.*

## A. Purpose of guideline

- This practice guideline outlines the criteria that will normally be considered by the chief appeals commissioner to decide if there is a justifiable reason to extend the one-year appeal deadline for certain review body decisions.

### For more information

See rule 2.3 and 2.4 of the Appeal Rules for more details about time deadlines for filing appeals and extension of deadlines. Rules 2.3 and 2.4 read:

#### *Deadline for appeals to be received*

2.3(1) In accordance with section 13.2(8) of the Act, a notice of appeal must be filed with the Appeals Commission within one year from the date that

- (a) a review body made its decision on a worker's claim for compensation under section 46 of the Act, or
- (b) the Board made a decision on an employer's assessment under section 120 of the Act,

unless the time for the appeal is extended under rule 2.4.

(2) A notice of appeal from a Board determination about whether or not a worker, who is a party to a court action, is entitled to compensation under section 21(3) of the Act is not subject to a one year time limit.

#### *Extending the deadline for filing appeals*

2.4 The one year time limit within which an appeal must be filed may be extended under section 13.2(9) of the Act only if the chief appeals commissioner considers there is a justifiable reason for the delay.

See also sections 13.2(8) and 13.2(9) of the Act which support the above Rules. These sections read:

13.2(8) The Appeals Commission shall not accept an appeal from a decision under section 46 or 120 unless a written notice of appeal that complies with the regulations is received within one year from the date that the appropriate review body made its decision.

13.2(9) Notwithstanding subsection (8), if the chief appeals commissioner, or the appeals commissioner to whom the chief appeals commissioner delegates the chief appeals commissioner's duties, considers there is a justifiable reason for a delay, that commissioner may extend, with or without conditions, the deadline set out in subsection (8).

## B. Process involved to extend time to appeal

- If you file a *Notice of Appeal* form with the Appeals Commission after the one-year deadline to appeal a decision of the review body has expired, the Appeals Commission will notify you by letter that it cannot accept your "late" Notice of Appeal unless you apply and are granted an extension of time to appeal by the chief appeals commissioner or delegate.
- This letter will then advise you of your right to apply to the chief appeals commissioner for an extension of time, using the *Application for Extension of Time* form enclosed with that letter.

- If you apply, a copy of your application and any supporting materials filed will be provided to all parties with a direct interest in the review decision.
- All parties will be advised that they may file a written submission in response to your application within ten (10) days, or such further time as may be allowed. All submissions received will be provided to you and you will have seven (7) days, or such further time as may be allowed, to file a written reply to their submissions.
- Once all submissions and your reply have been received, the application for extension of time is referred to the chief appeals commissioner for decision or delegation.

### C. When not to apply for an extension of time

- If you disagree that your Notice of Appeal was filed late (i.e. you feel that you gave the Appeals Commission notice of your appeal before the one-year appeal deadline expired and that, as a result, applying for an extension of time is not required), you may request in writing that the Appeals Commission make a formal decision regarding the timeliness of your appeal.
- In your request letter, indicate how and why your notice of appeal was received in time.

#### **For more information**

In making a written submission that your notice of appeal was received by the Appeals Commission before the one-year appeal deadline expired, you may wish to take into account the statutory provisions for the computation of time under section 22 of the *Interpretation Act*, RSA 2000 c.I-8.

Section 22 of this Act reads:

#### **Computation of time**

- 22(1)** If in an enactment the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.
- (2)** If in an enactment the time limited for registration or filing of an instrument, or for the doing of anything, expires or falls on a day on which the office or place in which the instrument or thing is required to be registered, filed or done is not open during its regular hours of business, the instrument or thing may be registered, filed or done on the day next following on which the office or place is open.
- (3)** If an enactment contains a reference to a number of days expressed to be clear days or to “at least” or “not less than” a number of days between 2 events, in calculating the number of days, the days on which the events happen shall be excluded.
- (4)** If an enactment contains a reference to a number of days not expressed to be clear days or “at least” or “not less than” a number of days between 2 events, in calculating the number of days, the day on which the first event happens shall be excluded and the day on which the 2nd event happens shall be included.
- (5)** If in an enactment a time is expressed to begin or end at, on or with a specified day or to continue to or until a specified day, the time includes that day.
- (6)** If in an enactment a time is expressed to begin after or to be from a specified day, the time does not include that day.
- (7)** If an enactment provides that anything is to be done within a time after, from, of or before a specified day, the time does not include that day.

(8) If an enactment contains a reference to a period of time consisting of a number of months after or before a specified day, the number of months shall be counted from, but not so as to include, the month in which the specified day falls, and the period shall be reckoned as being limited by and including

- (a) the day immediately after or before the specified day, according as the period follows or precedes the specified day, and
- (b) the day in the last month so counted having the same calendar number as the specified day, but if that last month has no day with the same calendar number, then the last day of that month.

(9) For the purpose of construing a reference in an enactment to a specified age expressed as a number of years, a person is deemed to have attained the specified age at the beginning of the relevant anniversary of the day of the person's birth.

#### D. Filling out the *Application for Extension of Time* form

- If your Notice of Appeal is being filed, or it has already been filed, after the one-year deadline and you feel you have a justifiable reason for filing a Notice of Appeal late, you may complete and file an *Application for Extension of Time* form with the Appeals Commission. The chief appeals commissioner or delegate will then consider your application.
- A copy of the *Application for Extension of Time* form can be found under the Practice Guidelines and Forms section on-line at [www.appealscommission.ab.ca](http://www.appealscommission.ab.ca) or from:

Appeals Commission  
 901, 10109 – 106 Street  
 Edmonton AB T5J 3L7  
 Tel: (780) 412-8700  
 Fax: (780) 412-8701

Appeals Commission  
 206, 1701 Centre Street North  
 Calgary AB T2E 7Y2  
 Tel: (403) 508-8800  
 Fax: (403) 508-8822

- You can also apply for extension of time to file your Notice of Appeal by a letter. The letter must contain all the information required on the Application for Extension of Time form.
- In either the form or the letter, you must provide written reasons to justify why you are asking for the extension of time to be granted. In order to do this, review the criteria listed below, as the chief appeals commissioner or delegate will normally consider these criteria to determine whether to grant an extension of time.
- You have the evidentiary burden of showing a justifiable reason for the delay in pursuing the appeal. A justifiable reason may relate to, but is not limited by, the criteria outlined below. For example, this evidentiary burden would not be met if you merely disagree with the time limitation for appealing or you have filed a previous notice of appeal with respect to the same matter which was withdrawn.

## E. What criteria will the chief appeals commissioner consider?

- The chief appeals commissioner, or delegate, can only grant an extension of time to appeal if you establish a justifiable reason for the delay in filing the appeal.
- Each case is determined on its own merits, having regard to the justice and merits of the case.
- An extension of time will normally be granted where the applicant can establish, it is more likely than not (i.e. on a balance of probabilities basis) that:
  - i. The applicant's case being appealed is more than a hopeless or frivolous case.
  - ii. The applicant demonstrated a good faith intention to appeal before the one-year deadline expired.
  - iii. Other parties would not be seriously prejudiced by an extension of time being granted to appeal. Otherwise, the review body decision should remain final.
  - iv. The applicant has a reasonable explanation to justify the delay in filing the notice of appeal after the one-year deadline, which may include but is not limited to the applicant:
    - Being unaware of the decision appealed due to a lack of notice, and upon becoming aware of the decision, took reasonable and timely steps to advance the appeal.
    - Being misled as to the requirements to file an appeal within one year by any person who ought to have provided accurate information with respect to the requirements of appeals.
    - Having reasonably relied on a representative to file an appeal and, upon becoming aware of the representative's inaction or failure to file a notice of appeal, by the one-year deadline, took prompt and reasonable steps to pursue the appeal.
    - Suffering from a mental or physical incapacity that prevented the applicant from filing the notice of appeal before the one-year deadline.
    - Establishing that the review body decision appealed is affected by, closely connected with or dependent upon a later decision.
- In exercising the discretion to extend the one-year deadline, the chief appeals commissioner or delegate may take into account any other factor that affects the merits and justice of the case, including but not limited to:
  - i. The means and conduct of the parties;
  - ii. The impact of the decision on the administration of justice (i.e. was the delay deliberate, malicious and without good cause amounting to an abuse of process).

## F. How to file your application

When you have completed your *Application for Extension of Time* form, it must be filed with the Appeals Commission by:

- sending it by mail (ordinary, registered or double registered mail)
- sending it by courier
- dropping it off at an Appeals Commission office:

In Edmonton  
901, 10109 – 106 Street  
Edmonton AB T5J 3L7

or in Calgary  
206, 1701 Centre Street North  
Calgary, AB T2E 7Y2

- by faxing the notice of appeal to the Appeals Commission at:

Edmonton – (780) 412-8701

Calgary – (403) 508-8822

**Note: The Appeals Commission does not accept electronically submitted applications**

### For more information

See rule 6.1 of the Appeal Rules which reads:

#### *Filing documents with the Appeals Commission*

6.1(1) A document is filed under these rules when it is received in an office of the Appeals Commission.

(2) A document may be received by the Appeals Commission by

- (a) ordinary, registered or double registered mail;
- (b) fax;
- (c) personal delivery of a document, or by a courier or messenger.

(3) A person who files a document with the Appeals Commission must

- (a) include their name, address, and telephone number and the name and claim number to which the document relates, and
- (b) direct the document to the attention of the Appeals Commission staff member assigned to the appeal.

## G. What happens next?

- The chief appeals commissioner, or delegate, will send you a written decision on your application.
- If your application is granted, your Notice of Appeal will be accepted and your appeal will be processed. Alternatively, if you have not already filed a Notice of Appeal and your application is granted, you can file your Notice of Appeal and your appeal will be accepted for processing. If your application is denied, your Notice of Appeal will not be accepted or processed by the Appeals Commission.
- There is no legal appeal from this decision, according to section 13.2(10) of the *Act*. However, this decision may be judicially reviewed by the Alberta Court of Queens Bench.