
In All Fairness

**Rules
of
Procedure**



Workers' Compensation Act - Alberta

Appeals Commission Mission Statement

“Provide a timely, independent and responsive appeals process to injured workers and employers, consistent with natural justice and fairness applying relevant legislation, policy and procedure.”

These Rules of Procedure, as passed by the Appeals Commission on December 15, 1995, are effective February 15, 1996, pursuant to Section 7(4) of the Workers' Compensation Act.

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RULES THAT GOVERN APPEAL PROCEEDINGS

The Appeals Commission hearing appeals is required by law to follow the provisions set out in the *Workers' Compensation Act* and the *Regulations* made under that *Act*. The Commission is also bound by policies determined by the Board of Directors of the Workers' Compensation Board.

The Appeals Commission has passed its own *Rules of Procedure* to help parties prepare for and participate in the appeal process. Workers, employers and their representatives should review the Appeals Commission's *Rules of Procedure* as well as the important sections of the *Act* and *Regulations*. For convenience, key sections of the *Act* and the *Regulations* are set out below, after the *Rules of Procedure*.

I. Definitions

- (a) "**Act**" means the *Workers' Compensation Act*.
- (b) "**Appeal**" means an appeal pursuant to section 8(1) of the *Act*.
- (c) "**Board**" means the Workers' Compensation Board.
- (d) "**Chief Appeals Commissioner**" means the person appointed under section 5.1(1) of the *Act*, and includes any other commissioner designated under section 5.1(5) to act in that person's place during a temporary absence.
- (e) "**Commission**" or "**Appeals Commission**" means the Appeals Commission established under section 5.1 of the *Act*.
- (f) "**Commissioner**" or "**Appeals Commissioner**" means a person appointed to the Appeals Commission under section 5.1 of the *Act*.
- (g) "**Day**" means a calendar unless the Commission directs otherwise.
- (h) "**Hearing Chair**" means the commissioner designated by the chief appeals commissioner to chair a panel of the Commission, or a commissioner designated under section 8(10) hearing a matter under that section.
- (i) "**Party**" means an appellant, worker or employer respondent, or any person declared by the Commission to be an interested party.
- (j) "**Proceeding**" means any matter under section 7(1) of the *Act* and any request to reconsider any matter or decision under section 12(3) of the *Act*.
- (k) "**Representative**" means agent, solicitor, appeals advisor or other representative authorized in writing to act on behalf of any person in a proceeding before the Appeals Commission.
- (l) "**Senior Registrar**" means a person appointed to that position by the chief appeals commissioner, and any person designated by the chief appeals commissioner to act in the absence of the senior registrar.

II. Appeal

- (a) All appeals shall be in writing and filed with the Appeals Commission. The written appeal shall:
 - (i) set out the date and place of the accident, where applicable, and any other relevant particulars;
 - (ii) identify each decision of the Assessment Review Committee (ARC) or the Claims Services Review Committee (CSRC) to be appealed, or the decision of the Board under section 16(3) appealed from;

- (iii) set out the grounds for the appeal;
 - (iv) set out the specific relief sought for each decision appealed;
 - (v) designate any representative authorized on behalf of the appellant, along with their address, phone and any facsimile number; and
 - (vi) include the appellant's full name, address, phone and any facsimile number.
- (b) Forms commencing proceedings are provided by the Commission for the convenience of the parties. The use of any form is not mandatory.

III. Notice of Application

- (a) Upon receipt of an appeal, the Commission will forthwith give notice of the appeal to the affected employer or worker at the last address disclosed in the Workers' Compensation Board file.
- (b) The Commission will give notice of an appeal to any other person who, in the opinion of the Commission, might be an interested party to the application.
- (c) Any person to whom notice is given under this rule must respond in writing to the Commission within the time specified in that notice indicating:
- (i) whether they wish to make any representations in the matter or to appear at any hearing;
 - (ii) their designation of any representative authorized on their behalf, along with their address, phone and any facsimile number;
 - (iii) the respondent's full name, address, phone and any facsimile number; and
 - (iv) a brief summary of their position in respect to the matters under appeal.
- (d) If a person fails to comply with subsection (c), or having given notice of intention to intervene, fails to appear, the Commission may deem their interest abandoned and proceed to dispose of the application without further notice to them.

IV. Interested Parties

- (a) The Commission may, on its own motion or the application of any party, grant status to any person for the purposes of a proceeding.
- (b) Any person claiming to be an interested party in any proceeding before the Commission shall give the Commission written notice of their wish to intervene in the matter. This notice must be given within 15 days of the date when they knew or ought to have known that the appeal had been filed, or at least seven days before the hearing, whichever is the earlier date.
- (c) A person claiming to be an interested party, in their request to intervene, shall indicate:
- (i) whether they wish to make any representations in the matter or to appear at any hearing;
 - (ii) their designation of any representative authorized on their behalf, along with their address, phone and any facsimile number; and

- (iii) their full name, address, phone and any facsimile number; and
 - (iv) a brief summary of their position in respect to the matters under appeal and the reasons why they wish to intervene.
- (d) If a person fails to comply with subsection (c), or having given notice of intention to intervene, fails to appear, the Commission may deem their interest abandoned and proceed to dispose of the application without further notice to them.
- (e) When a person is granted status that person will thereafter be treated as a party to the proceeding.

V. Filing and Service

- (a) Notice to a party's designated representative in a proceeding is notice to the party unless the representative has advised the Commission and all other parties otherwise.
- (b) Documents in any proceeding may be filed with the Commission by mail, facsimile or delivery of the document to the Edmonton or Calgary office of the Commission, directed to the attention of the senior registrar.
- (c) Where a document is mailed or delivered to a Commission office, the Commission shall stamp the date of delivery thereon which shall be presumed to be the date of receipt.
- (d) Service of Court documents may be effected on the Commission by service upon the senior registrar, chief appeals commissioner, or by any means allowed by the Rules of Court.

VI. Hearings

- (a) In any matter, the Commission may, among other things:
- (i) set the date, time and place for the hearing;
 - (ii) direct that two or more matters be heard together at one hearing;
 - (iii) adjourn any hearing, either before or after it begins, to such new date, time and place, and upon such conditions, as it considers appropriate;
 - (iv) in cases where an in-person hearing is not necessary to present evidence, or where the presentation of evidence can be accommodated by such methods, direct that a hearing be held by teleconference, video conference or on the basis of written submissions and the materials before the Commission;
 - (v) convene a pre-hearing conference, either in-person or by tele or video as stated above;
 - (vi) require the submission of written submissions and set dates by which such submissions and any replies must be received;
 - (vii) direct a time, prior to hearing, by which a party must identify its witnesses, including medical and technical witnesses; and
 - (viii) direct a time, prior to hearing, by which a party must submit the qualifications and a summary of the evidence of any medical or technical witness to be called in any matter.

- (b) Unless otherwise directed by the Appeals Commission, the proceedings of the Appeals Commission will be held in camera, and witnesses will be excluded from the hearing room except during the giving of their evidence. The exclusion of witnesses will not apply to parties to the proceeding or may not apply to medical or technical witnesses.
- (c) Unless the Commission otherwise directs, evidence from a witness will be received without oath or affirmation.

VII. Translators

A party wishing a translator for a hearing, or for witness in a hearing, shall advise the Commission of their request not later than 30 days prior to the hearing. Such requests should include the language or languages for which translation is necessary.

VIII. Recording of Proceedings

- (a) Unless otherwise directed by the Commission, no proceedings may be recorded electronically or otherwise. Where a party alleges that recording is necessary, an application may be made to the Commission no less than 30 days prior to the hearing date. Such application must:
 - (i) be in writing; and
 - (ii) set out the reasons recording is required.
- (b) In the event the Commission authorizes the transcription or recording of any proceeding, the transcript or tape of those proceedings shall, as a condition of the consent, be subject to the directions of the Commission as to custody, costs, transcription or distribution.

IX. Travel Expenses

The Commission may authorize payment for lost wages, travel and subsistence to an injured worker where their attendance is required.

- (a) No travel or subsistence will be paid to persons residing in or in the immediate vicinity of the location where their attendance is required.
- (b) For those persons residing outside the immediate vicinity of the location where their attendance is required, but within the province of Alberta, the Commission will normally authorize payment for lost wages, travel and subsistence.
- (c) For those persons residing outside the province of Alberta, the Commission will normally authorize payment for lost wages. Travel and subsistence will normally be based on travel from the Alberta border to the location where their attendance is required.
- (d) Subsistence and travel will be paid according to guidelines set out by an Order of the Board of Directors as authorized by section 76 of the *Act*.

X. Notice to Attend

- (a) The Commission may, in any proceeding and on its own motion issue a notice to attend or a notice to attend and produce documents to any person where it believes it is appropriate to do so. Any person required to attend under this sub-Rule shall be paid travel expenses in the same manner as an injured worker under Rule 9.
- (b) Any party to a proceeding may make application to the Commission for an order to issue a notice to attend or a notice to attend and produce documents for a hearing before the Commission. Such application shall:
 - (i) be in writing;
 - (ii) state why the notice is required; and
 - (iii) describe any documents in sufficient detail that the person to whom the notice is directed may identify and produce the requested documents without undue difficulty.
- (c) A notice to attend or a notice to attend and produce documents, if directed to an individual, shall be personally served on the witness.
- (d) A notice to attend or a notice to attend and produce documents shall be served by the party requesting the notice.
- (e) A party may apply for a notice to attend and produce documents in the name of a corporation.
- (f) Service on a corporation may be effected by personally serving it on:
 - (i) the registered office of the corporation;
 - (ii) the corporation's manager, agent or officer transacting business on behalf of the corporation in Alberta;
 - (iii) a director of a corporation; or
 - (iv) the corporation's designated representative for the purpose of the proceedings.
- (g) Unless otherwise agreed, the party that requested and obtained the notice shall provide to the witness in advance of the hearing:
 - (i) conduct money for each day, or any portion of that day that the party requires the person's attendance; and
 - (ii) transportation arrangements to and from the hearing, or, in its place,
 - (a) an allowance for air, bus or train fare by the most direct route,
or
 - (b) mileage costs for private vehicle, and
 - (iii) arrangements for overnight lodging of reasonable quality or an allowance per night; and
 - (iv) a meal allowance for breakfast, lunch and supper.

- (h) The Commission may require the filing of an affidavit of service.
- (i) The Commission may refuse to issue any order under this section where, in the opinion of the Commission, the evidence or documents sought are insufficiently relevant to the proceedings, the request is abusive or frivolous, or the evidence is already available from other sources.

XI. Depositions

- (a) Any party to a proceeding may make application to the Commission for a deposition of a witness residing in or outside Alberta. Such application shall:
 - (i) be in writing;
 - (ii) state why the deposition is required;
 - (iii) should be in the form of a statutory declaration; and
 - (iv) be filed with the Commission no less than 30 days prior to the hearing.
- (b) The Commission may refuse to order or accept a deposition under this section where, in the opinion of the Commission, the witness could or should attend the hearing, the evidence sought is not relevant to the proceedings, or allowing the use of a deposition is otherwise inappropriate.

XII. Adjournments and Cancellations

- (a) At the direction of the chief appeals commissioner or a hearing chair, a proceeding or any part of a proceeding may be dealt with the Commission on a documentary basis.
- (b) Where all parties to a proceeding have agreed to adjourn a proceeding without setting a new date, the proceeding shall be deemed to have been withdrawn at the expiry of six months from the date the adjournment was granted unless, during that period of time, a party has requested the Commission schedule the matter for further hearing, or unless the Commission otherwise orders.
- (c) If a hearing chair is of the opinion that a party to a proceeding is unable to present or respond to a proceeding, the hearing will be adjourned and that party may be directed to seek a representative. The Commission is not responsible for any fees, expenses or costs incurred by the party seeking representation.
- (d) Parties to any proceeding are responsible for:
 - (i) reviewing the Workers' Compensation Board file should they wish to do so;
 - (ii) obtaining any additional information or evidence; and
 - (iii) obtaining any medical treatment, examination, diagnosis or reportprior to confirming their availability for a hearing date.

Following confirmation of a hearing date, the pursuit of such matters will not be accepted as grounds for an adjournment of a hearing to a later date, and the hearing may proceed.

- (e) Should a party, without sufficient prior notice, fail to attend a scheduled hearing, either in person or by a representative with authority to proceed in the party's absence, a hearing chair may:
 - (i) decide to have the matter heard on the basis of the documents before the Commission, and the representations of any parties present, or
 - (ii) adjourn the matter to a later date, subject to such conditions as the Commission may impose.

XIII. Reconsideration Application

- (a) A party may request the Commission to reconsider any matter, order or decision made by it. Such request shall:
 - (i) be in writing;
 - (ii) identify the decision sought to be reconsidered and set out the reason for the request;
 - (iii) provide or describe any new evidence which would impact the Commission's decision; and
 - (iv) set out the nature of the relief requested.
- (b) The Commission may refuse to reconsider any matter if, in the opinion of the Commission:
 - (i) the grounds for the request exhibit disagreement or dissatisfaction with the decision, but do not disclose substantial reasons to justify a review; or
 - (ii) with reasonable diligence, the evidence could have been presented at the previous hearing; or
 - (iii) in the opinion of the Commission, the evidence said to be new is not new or is insufficiently substantial to justify a reconsideration.
- (c) Unless the Commission decides summarily under Rule 13(b) not to reconsider, it shall give notice of the request for reconsideration in the same manner as provided for an appeal in Rule 3.
- (d) The Commission may, on its own motion, and on notice to the parties, reconsider any matter it has dealt with.

XIV. Decision

- (a) The Commission will issue written reasons for its decision on all appeal issues.
- (b) A decision of a panel of the Commission may be signed on behalf of the panel by the hearing chair, or in that person's absence, by any commissioner who participated in the hearing.

XV. Assignment of Powers

In any proceeding, the chief appeals commissioner, or the hearing chair assigned to the matter may exercise the powers of the Commission under Rules 4(a), 6(a)(ii), (iii), (iv), (v), (vi), (vii), (viii), and 8.

XVI. Relief Against Non-Compliance

- (a) The Commission may, where it considers necessary, relieve against the failure of any person to comply with these Rules, and may make such direction in respect of the non-compliance as it deems appropriate.
- (b) The Commission may amend or extend any time frames in any matter before the Commission where it is appropriate to do so, either before or after the expiry.

Excerpts from the Workers' Compensation Act

POWERS OF APPEALS COMMISSION

7(1) Subject to section 8(7), the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of

- (a) appeals from decisions of the claims services review committee under section 40,*
- (b) appeals from decisions of the assessment review committee under section 116,*
- (c) appeals from determinations of the Board under section 16(3), and*
- (d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,*

and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court.

- (2) The chief appeals commissioner may authorize a panel of 2 or more appeals commissioners to act on behalf of the Appeals Commission under subsection (1) and that panel may exercise the powers of the Appeals Commission for that purpose.*
- (3) Section 12(2) to (6) apply to the Appeals Commission as if it were the Board.*
- (4) The Appeals Commission may make rules governing the practice and procedure applicable to appeals before it and generally with respect to its operations.*

APPEAL TO APPEALS COMMISSION

8(1) An interested party who is dissatisfied with

(a) a decision of the claims services review committee or assessment review committee referred to in section 7(1), or

(b) a determination of the Board under section 16(3)

may in accordance with the regulations and the Appeals Commission's rules, appeal the decision or determination to the Appeals Commission.

(2) In considering an appeal from a decision of the claims services review committee the Appeals Commission shall consider the records of the claims adjudicator and the review committee relating to the claim.

(3) In considering an appeal from a decision of the assessment review committee the Appeals Commission shall consider the records and information available to the assessment review committee relating to the matter under consideration.

(4) In considering an appeal from a determination of the Board under section 16(3) the Appeals Commission shall consider the records and information available to the Board relating to the matter under consideration.

(5) In considering an appeal under this section the Appeals Commission shall give all interested parties an opportunity to be heard and to present any new or additional evidence.

(6) The Appeals Commission may confirm, reverse or vary the decision or determination appealed, and the Appeals Commission's decision may be enforced in the same way as if it were made by the Board.

(7) In the hearing of appeals under this section the Appeals Commission is bound by policy determined by the board of directors that relates to the matter under appeal, and where the board of directors considers that the Appeals Commission has not properly applied that policy or the provisions of this Act and the regulations that are applicable to the matter under appeal, the board of directors may in writing direct the Appeals Commission to rehear the matter and to give fair and reasonable consideration to that policy or those provisions.

(8) The board of directors may stay the decision of the Appeals Commission pending a rehearing of the subject matter of the decision under subsection (7).

(9) An appeal from a decision of the claims services review committee or the assessment review committee shall not be accepted unless a written notice of appeal is received by the Appeals Commission within one year from the date that the claims services review committee or assessment review committee made its decision.

(10) Notwithstanding subsection (9), if the chief appeals commissioner, or the appeals commissioner to whom the chief appeals commissioner delegates his duties, considers there is a justifiable reason for a delay, he may extend, with or without conditions, the deadline for commencing an appeal to the Appeals Commission.

(11) *There is no appeal from a decision made under subsection (10).*

JURISDICTION OF BOARD

- 12(2) No proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Board or any member of the Board in respect of any act of decision done or made in the honest belief that it was within the jurisdiction of the Board.*
- (3) *The Board has authority to reconsider any matter that it has dealt with and to rescind or amend any decision or order previously made by it.*
- (4) *Each matter shall be decided on the merits and justice of the case and the Board is not bound to follow any previous decision or ruling of the Board as a precedent in reaching its decisions or making its rulings.*
- (5) *The Board has the same powers as the Court of Queen's Bench for compelling the attendance of witnesses and of examining them under oath and compelling the production and inspection of books, papers, documents and things.*
- (6) *The Board may cause depositions of witnesses residing in or outside Alberta to be taken before any person appointed by the Board in a manner similar to that prescribed by the Alberta Rules of Court.*

Section 9 of the General Regulations

APPEAL

- 9(1) A request for review by the Assessment Review Committee or the Claims Services Review Committee or an appeal to the Appeals Commission shall be in writing.*
- (2) *Unless the Assessment Review Committee, the Claims Services Review Committee or the Appeals Commission specifies otherwise, the request for review of an appeal shall*
- (a) set out the date and place of the accident, where applicable, and any other relevant particulars,*
 - (b) identify each decision to be reviewed or appealed,*
 - (c) set out the grounds of review or appeal for each decision to be reviewed or appealed,*
 - (d) set out the reason for the appeal, and*
 - (e) set out the specific relief sought for each design to be reviewed or appealed.*
- (3) *On a review or an appeal the interested party may be represented by counsel or another agent.*
- (4) *The Assessment Review Committee, the Claims Services Review Committee or the Appeals Commission shall inform any interested party involved in the review or appeal of the facts in its possession that are contrary to the interest of that party in sufficient detail to permit the party to understand them.*