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The Chief Appeals Commissioner has a series of Practice Guidelines to help people who are involved in an appeal to the Appeals Commission. Please contact us for additional Practice Guidelines, *Appeal Rules*, or other information.

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

Edmonton	Calgary
1100, 10405 Jasper Avenue	2300, 801 – 6 th Avenue SW
Edmonton, AB T5J 3N4	Calgary, AB T2P 3W2
Tel: 780-412-8700	Tel: 403-508-8800
Fax: 780-412-8701	Fax: 403-508-8822

or, through our web site at www.appealscommission.ab.ca

Let us know if:

- your address or contact information changes
- you choose a representative or your representative changes
- you are no longer a representative for a party to or participant in an appeal

A. Reconsidering Appeal Decisions

Appeals Commission decisions are final, under Section 13.1(1) of the *Workers' Compensation Act*. Section 13.1(7) of the Act allows for reconsideration of decisions, but the need for finality of the appeal process means that the test applied in a reconsideration threshold review is very high. You may only reconsider appeal decisions; we will not reconsider time limit extension decisions.

Reconsiderations are only granted where a significant defect in the appeal process or content of the decision is shown, or new evidence is accepted, and it is demonstrated that it would have changed the decision.

Reconsideration is not an appeal. A party to an appeal asking for reconsideration must provide very good reasons that point to a serious defect in the original appeal decision. Reconsideration is not a chance to re-argue the original appeal.

The test applied in a reconsideration threshold review is very high. You must show that there was a significant defect in the appeal process or in the content of the decision which was likely to change the result of the original decision.

Reconsidering a decision allows us to:

- consider relevant evidence that was not available at the time of the appeal decision
- correct a significant defect in the appeal process or content of the decision

B. Who Can Apply for Reconsideration?

A party can apply to have a decision reconsidered. This is usually a worker or an employer. The Workers' Compensation Board (WCB) may not apply for reconsideration (see Appeals Commission Decisions 2007-713 and 2007-742 at www.CanLII.org).

C. Applying for Reconsideration

When you apply for reconsideration, you must complete the *Reconsideration Application* form. You can get a paper copy by downloading and printing a copy from our website, www.appealscommission.ab.ca, or from one of our offices (see page 1 of this guide for contact information). Note that you can also submit the form online through our website.

Complete sections 1, 2 and 3 of the form as well as the section that describes your grounds for applying for reconsideration. Complete:

- Section 5, if the application is about new evidence
- Section 6, if the application concerns a defect in the appeal process or content of the decision

Representation

If you want someone to represent you on the application for reconsideration you must ask them to agree to do this. To authorize a representative, you must submit a separate *Notice of Representation* form. The *Notice of Representation* form is valid for two (2) years from when it is signed and dated. This gives us the authorization to work with your representative.

If you do not have a representative now, you can still choose your representative after you file your *Reconsideration Application*. Check the box that says "I Plan to Get a Representative" and send us a completed *Notice of Representation* form once you have a representative.

If you have a representative, we will communicate only with your representative, unless circumstances require otherwise. It is the responsibility of your representative to communicate with you.

For more information about appointing and working with a representative, please see *Practice Guideline #3B – Standards of Behaviour for Representatives and Participants*.

D. When Must the Application be Made?

The *Appeal Rules* specify that we must receive your application within six months of the decision, unless you have new evidence. In that case, you must file the application within six months from the date you discovered the evidence or it became available.

When we receive your application, an Appeals Officer will decide if it met the deadline. If you disagree with the Appeals Officer's decision, you may ask for a panel to consider if your application is late.

Please note that filing an application for reconsideration does not delay or extend your deadline for filing an application for judicial review or judicial appeal with the Courts.

E. How Often Can an Application be Made?

Appeal Rule 5.2(1) states that a person may make an application for reconsideration only once.

If the application is based on new evidence, you may only apply once for that particular piece of evidence.

When we receive your application, an Appeals Officer will determine there has been a previous reconsideration application. If you do not agree with the determination of the Appeals Officer, you may ask for a panel to consider if your application is the only one received by the Appeals Commission.

F. Filing Your Application

Send your application for reconsideration to one of our offices.

You can send your form by:

- Submitting the form online through our website
- mail
- fax
- courier, or deliver it personally to an Appeals Commission office (see page 1 of this guide for contact information).

We do not accept applications by e-mail.

When applications are filed electronically through our website, we date stamp the application with the date attached to it by our e-mail server. When applications are filed by mail, fax, courier or personal delivery, we date stamp your application with the date it physically arrives in our office.

G. Reconsideration Process

Reconsideration involves three steps. The first step is called the preliminary review test. During this step we decide if we will exercise the discretion to reconsider a decision. Second, if the preliminary review test is met, we hold a hearing to determine if the new evidence or arguments of significant defect are sufficient to pass the threshold criteria set out below. This is called the threshold test. Finally, if the threshold test is met, then we may direct the original appeal will be reheard. This is the third step and it is called the decision on the merits.

H. How Do We Deal with the Application?

An Appeals Officer determines if the application is complete and meets all the requirements in the *Appeal Rules* and Practice Guidelines. When satisfied, the Appeals Officer will send a copy of your application and submissions to all parties who have a direct interest in the decision and invite them to submit a written response within a specified deadline.

We will send you copies of any submissions we receive, and you will have a specified period to file a written reply to the submissions.

When the deadline for all submissions has passed, the preliminary review panel will determine if your applications meet the criteria listed in the next section.

Your application must be made within the time limits set out under *Appeal Rule 5.2* and have all the information required on the Reconsideration Application form to be accepted for preliminary review.

I. Criteria for Meeting the Preliminary Review Test

The Commissioner conducting the preliminary review will first make sure the application for reconsideration was made within the time limit under the *Appeal Rules* and that the application includes all the information required by the Application for Reconsideration form attached to this Practice Guideline.

The Commissioner will then consider if the application is an arguable case for reconsideration. Some factors a Commissioner may consider in determining this are:

- whether the application addresses the threshold criteria (listed below)
- the type of information submitted as potential new evidence
 - e.g. internet articles, personal statements and other Appeals Commission decisions are generally not considered new evidence that makes an arguable case.

Please note that the definition of “arguable case” for a Reconsideration Preliminary Review is different than when applying for interim relief.

J. Criteria for Meeting the Threshold Test

New Evidence

We may reconsider a decision if evidence is now available that is either new, or was not available at the hearing for justifiable reasons. However, this evidence must be both relevant to the decision and likely to have had an impact on the outcome of the appeal.

The panel that made the original decision usually sits on the Threshold Panel for new evidence because the panel members are normally in the best position to decide if:

- they have seen the evidence previously
- the evidence could have, with due diligence, been provided to them for their original decision
- the new evidence is relevant to the appeal issues they dealt with earlier
- the new evidence is substantial enough to impact the decision they made earlier

The party requesting reconsideration must explain why it did not present the evidence to the original panel. The party must prove it took reasonable efforts to get all of the relevant evidence for the original hearing and show how it tried to obtain evidence.

If the evidence was created after the Appeals Commission's decision, and deals with a time period after that decision, the Threshold Panel may refer it to the Workers' Compensation Board (WCB) for review and assessment.

A Significant Defect in the Appeal Process or Content of the Decision

The threshold test applied is very high. Certain defects or other errors may be present in a decision but would not change the result. You must show that there was a significant defect in the appeal process or in the content of the decision which would change the result of the original decision. There are several types of problems that may form the basis for arguing there was a significant defect. Examples of types of defects include:

Acting without Authority

If the Appeals Commission acts outside its powers and authority under the *Workers' Compensation Act* (the Act) this is an error of authority. It includes the Commission making a decision beyond its authority or refusing to make a decision that is within its authority.

Incorrect application of the Act or policy

If the Appeals Commission makes a significant error involving the Act or policy, this may meet the threshold test. A decision will not be reconsidered simply because a party disagrees with our interpretation of the relevant sections of the Act or WCB policy. Examples of significant errors include:

- the decision fails to apply the relevant sections of the Act or policy
- the decision applies the wrong sections of the Act or policy
- the decision incorrectly interprets the Act or policy

An Unfair Process

The Appeals Commission must provide a fair process. Examples of what might be an unfair process include:

- a failure to consider a critical piece of evidence
- a failure to consider a crucial or central argument made at the hearing
- refusing to accept new or additional evidence at the hearing
- not permitting a party to respond to new evidence
- failing to inform a party with direct interest about the hearing

Rule 5.5 of the Appeal Rules sets out the criteria for reconsideration.

K. Who Hears the Reconsideration Application?

Preliminary Review

The preliminary review panel will have one or more Commissioner(s) who will consider the application for reconsideration and decide if the appeal should proceed to an in-person hearing before a Threshold Panel. The preliminary review proceeds on a documentary basis, meaning the review is done without parties present.

You will be notified of the decision made by the preliminary review panel. We will let you know what happens next.

Decisions of a preliminary review panel will not be reconsidered.

Threshold Review

The Threshold Panel will have at least two Commissioners who will conduct an in-person hearing on the application.

If the application is based on new evidence, the Threshold Panel will usually be the same Commissioners who made the initial decision. New Commissioners will form the panel if the commissioners who made the initial decision are not available.

If the application alleges a significant defect in the appeal process or content of the decision, the Threshold Panel will not include Commissioners who were involved in the initial decision.

If the reconsideration application is based upon both new evidence and a significant defect, the application will be considered by a new panel.

Decisions of a Threshold Panel will not be reconsidered.

L. What Happens After the Threshold Decision?

The Threshold Panel will issue a written decision with reasons. If the Threshold Panel dismisses the application, the original decision remains in place.

If the Threshold Panel decides the appeal should be reconsidered, then we will proceed with setting up a new hearing. If the Threshold Panel decides only part of the application meets the threshold test, we will only consider that part that meets the threshold test.

M. Does the Threshold Panel Review the Original Appeal Evidence?

A reconsideration is not a re-hearing of the original appeal. Therefore, the Threshold Panel will not typically review the entire record of evidence that was before the original appeal panel.

In some specific cases the Threshold Panel may consider it necessary to review portions of the original record. If the Threshold Panel does this, what they reviewed will be documented in their decision.

Examples of specific cases which may require a Threshold Panel to examine portions of the original record are:

- In the case of new evidence, to confirm that the documents were not part of the original hearing record.
- In the case of allegations of unfair process, or of arguments not considered at the hearing, a review of the recording of the hearing to determine if the allegations are sustained.

N. Reconsideration on Own Motion

The Appeals Commission may decide to reconsider any decision it has made. This is called reconsideration on *own motion*. A reconsideration on own motion may be initiated by the Appeals Commission at any time. It may also be requested by a person (such as the WCB) who does not otherwise possess the right to apply for a reconsideration using the process outlined in the *Appeal Rules* and this practice guideline. Requests by these persons are subject to the same timelines set out in the *Rules* and practice guidelines. A request for reconsideration on own motion is made by letter to the Chief Appeals Commissioner. The Chief Appeals Commissioner makes discretionary determination about whether to send the request to a Threshold Panel based on the nature and significance of the information contained in the letter. If it is referred to a Threshold Panel, the normal process applies.

O. Reconsideration Without Threshold Panel

We will reconsider a decision without appointing a Threshold Panel when:

- a court directs us to re-hear the matter and the deadline for an appeal has passed.
- the Ombudsman recommends a re-hearing and the recommendation is not subject to further review.

P. Forms

The following form applies to this guideline:

- *Reconsideration Application* form