

Reconsideration, review, and appeal

OBJECTIVE..... 1
 INTERPRETATIVE GUIDELINES..... 1
 I RECONSIDERATION..... 1
 II REVIEW AND APPEAL..... 2
 ADJUDICATIVE GUIDELINES 3
 I DECISION..... 3
 II RECONSIDERATION..... 3
 III RECTIFICATION..... 4
 IV REVIEW..... 5
 V APPEAL..... 5
 VI SETTING ASIDE..... 6

OBJECTIVE

1. This practice directive examines the Assessment Department’s authority to reconsider a decision, describes the review and appeal processes, and aids in the interpretation of *Assessment Manual Item: AP1-96-1*.

INTERPRETATIVE GUIDELINES

I RECONSIDERATION

2. Generally, a final decision of an administrative decision-maker such as the Board cannot be reconsidered except in very limited and exceptional circumstances.¹
3. One such circumstance is where the power to reconsider is conferred by legislation. Sections 96(4), 96(5), and 96(7) of the *Workers Compensation Act* are legislative conferral of authority which permit the Board to reconsider the following:

(4) ... the Board may, on its own initiative, reconsider a decision or order that the Board or an officer or employee of the Board has made under this Part.

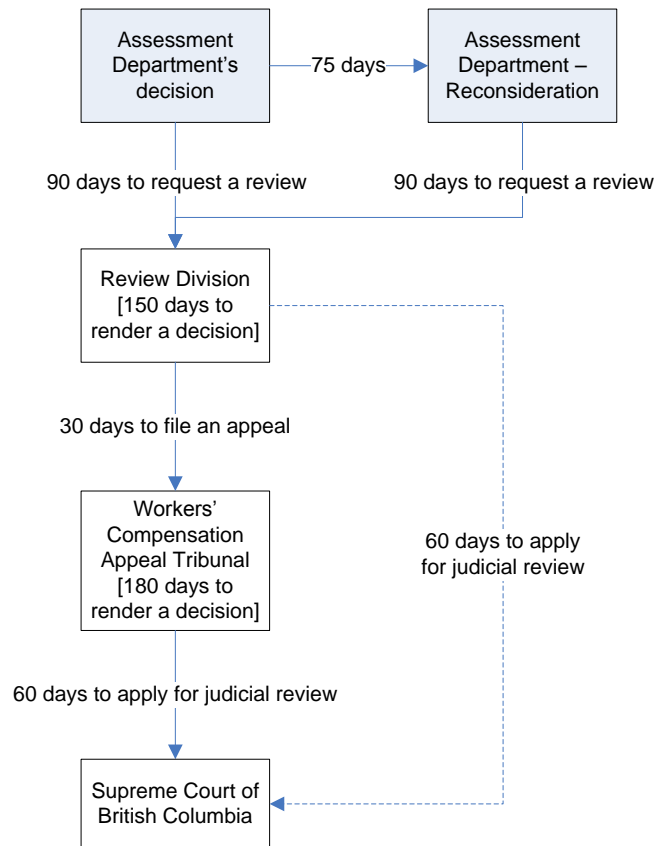
(5) Despite subsection (4), the Board may not reconsider a decision or order if ... (a) more than 75 days have elapsed since that decision or order was made ...

(7) ... the Board may at any time set aside any decision or order made by it or by an officer or employee of the Board under this Part if that decision or order resulted from fraud or misrepresentation of the facts or circumstances upon which the decision or order was based.

¹ This is the common-law doctrine of *functus officio*, which is defined in *Black’s Law Dictionary*, 7th ed. (St. Paul Minn.: West Group, 1999) as follows: “[Latin ‘having performed his or her office’] (Of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.”

II REVIEW AND APPEAL

4. The *Act* creates a two-level appellate process: the first level is a review by the Board's Review Division, an internal division of the Board that is distinct and independent from the Board's operating divisions (including the Assessment Department); and the second level is an appeal to the Workers' Compensation Appeal Tribunal, which is an external tribunal, fully independent of the Board.
5. The Review Division's authority under sections 96(6) and 96.2 to 96.5 of the *Act* allow the Review Division to review specific Assessment Department decisions. A request for review must be filed within 90 days after the Assessment Department's decision [s. 96.2(3)].²
6. A final decision of the Review Division respecting an assessment matter is appealable to the Workers' Compensation Appeal Tribunal within 30 days [s. 239(1), s. 243(1)].



² The information concerning the Review Division and Workers' Compensation Appeal Tribunal are provided for information purposes only. Detailed information on the Practices and Procedures of the Review Division and the Rules of Practice and Procedure of the Workers' Compensation Appeal Tribunal are accessible at: www.worksafefbc.com and www.wcat.bc.ca, respectively.

ADJUDICATIVE GUIDELINES

I DECISION

DECISION: A determination made by the Assessment Department that is final, substantive (i.e., it affects a person's rights or imposes an obligation or liability under Part 1 of the Act), and operative.

7. A response to a question about general legislative, policy, or administrative application, or an action of an administrative nature is generally not a decision.

EXAMPLE 1:³ An employer telephones to inquire about a payment due date. The Board officer determines the due date and advises the employer. The answer is one of general application and accordingly is not a decision.

8. The Assessment Department informs employers and independent operators of its decisions through various means, including: orally in person or by telephone, by system generated notices or letters (which often do not contain complete written reasons), and by letters containing detailed analysis and reasons. Certain system generated notices and letters document and advise of one or more new department decisions, and others are mere records or reminders of previous decisions.

EXAMPLE 2: The Assessment Department's Welcome Letter documents and advises of several decisions, including a determination of a firm as an employer under the Act and the firm's classification unit.

9. A payroll assessment is not a decision: the Assessment Department is merely accepting (without determining accuracy or veracity) a payroll assessment for administrative application. However, the department may, at any time and of its own volition, determine the accuracy or veracity of a payroll assessment; and, on so doing, makes a decision as to the amount of the assessable payroll.

II RECONSIDERATION

RECONSIDERATION: A new decision by the Assessment Department that confirms, varies, or cancels a previous decision of the department.

10. Only a decision or order may be reviewed.
11. The Board recognizes the specialized knowledge, expertise, and experience possessed by the Assessment Department's officers and permits these officers to exercise

³ Examples are intended to be illustrative, and the conclusions drawn in each example are based solely on the facts included in the example.

reasoned discretion in effecting reconsideration on their own initiative. However, such reconsideration of a decision is prohibited by the *Act* if,

- (a) more than 75 days have elapsed since that decision was made [s. 96(5)(a)],⁴ or
- (b) a review has been requested in respect of that decision [s. 96(5)(b)] (whether or not 75 days have elapsed).

12. Any reconsideration of a decision by an Assessment Department officer after the occurrence of either (a) or (b) above is beyond the powers of the Board and may be determined to be a nullity.
13. If either (a) or (b) above occurs while a reconsideration is in progress, the reconsideration process must cease.
14. The mere upholding or confirmation of a previous decision may be reconsideration, for, by definition, what is statute-barred is the exercise of reason to or the adjudication of the underlying premises of a previous decision (whether or not such results in a variation or cancellation of a previous decision).

III RECTIFICATION

RECTIFICATION: An administrative action to correct a clerical error, an accidental slip (e.g., a transposed keystroke) or omission, or a clerical oversight.

15. A rectification is neither a decision nor a reconsideration of a decision; and, therefore, an Assessment Department officer may rectify any of the following types of errors outside of the 75-day time limit imposed by section 96(5):
 - (a) A clerical error – an error in a document arising in the mechanical process of writing or transcribing.
 - (b) An accidental slip – an error that occurs when the decision as recorded, implemented, or administered does not reflect the plainly expressed intent of the decision-maker.
 - (c) A clerical oversight – an error that arises as a result of an omission in the administrative process.

EXAMPLE 3: An employer uses on-line registration to register as ABC Bananas Inc. Six months later the employer advises the Board that its correct name is ABC Bananas Ltd. and requests that its account information be amended to include its proper name. The

⁴ If the 75th day falls on either a Sunday or a holiday, the time is extended to the next day that is not a Sunday or a holiday.

correction of the employer's account information is an administrative action and is not a decision.

EXAMPLE 4: On 1 April 2009 (01/04/2009) an employer telephones to register with the Board. The officer carrying out the registration inadvertently transposes the day and month such that the date of registration reads as 4 January 2009 (04/01/2009). While the effective date of registration is a decision, the inadvertent transposition of the day and month of the registration date is not a decision and therefore may be rectified.

16. As a general rule, rectification should not be undertaken while a firm has a matter before either the Review Division or the Workers' Compensation Appeal Tribunal.

IV REVIEW

REVIEW: A re-adjudication by the Review Division to confirm, vary, or cancel a decision of the Assessment Department or to refer a decision of the Assessment Department back to the department.

17. Only an employer or independent operator may request review of an Assessment Department decision to the Review Division [s. 96.3(2)]; and any such request for a review must be filed within 90 days after the decision [s. 96.2(3)] was made. However, the Chief Review Officer may extend the time to request a review based on special circumstances which precluded the filing of a request for review within 90 days and where an injustice would otherwise result [s. 96.2(4)].
18. A request for review to the Review Division statute-bars reconsideration by the Assessment Department [s. 96(5)(b)].
19. The Review Division is authorized to refer a decision under review back to the Assessment Department [s. 96.2(3)]. There is no statutory or policy time-limit on such re-evaluation.
20. Subject to appeal, a decision of the Review Division is final and binding upon the Board [s. 96.4(9)].

V APPEAL

APPEAL: A re-adjudication by the Workers' Compensation Appeal Tribunal of a Review Division decision.

21. There is no direct appeal of an Assessment Department decision to the Workers' Compensation Appeal Tribunal [s. 239].
22. The Workers' Compensation Appeal Tribunal is empowered to:

- (a) request the Board to investigate further into a matter relating to a specific appeal and report in writing to the appeal tribunal [s. 246(2)(d)], and
- (b) consider there to be a matter that should have been determined but that was not determined by the Board and refer that matter back to the Board for determination [s. 246(3)].

In either case, there is no statutory or policy time-limit on such referrals.

23. A decision of the Workers' Compensation Appeal Tribunal is final and binding upon the Board [s. 255(3)].

VI SETTING ASIDE

24. Pursuant to section 96(7) of the *Act*, the Board may at any time set aside a decision if that decision resulted from fraud or misrepresentation and may thereafter make a new decision. If either fraud or misrepresentation is established, the Board is neither

- (a) obliged to set aside a decision, nor
- (b) prohibited by statute from setting aside a decision even if more than 75 days have elapsed since that decision was made, or a review has been requested in respect of that decision, or an appeal has been filed in respect of that decision.