

POLICY NUMBER: POL-48

Chapter:
GENERAL

Subject:
INTERNAL RECONSIDERATION

Effective Date:
February 18, 1999

Last Update:
June 7, 2022

REFERENCE:

Freedom of Information and Protection of Privacy Act, R.S.P.E.I 1988, Cap. F-15.01
Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Sections 26, 29, 32, 56, 56.1
Workers Compensation Act Appeal Regulations, 1988, Section 1
Workers Compensation Board Policy, POL-04, Access to Information – Worker Claim Files
Workers Compensation Board Policy, POL-18, Access to Information – Employer Assessment Files
Workers Compensation Board Policy, POL-27, Overpayments to Workers
Workers Compensation Board Policy, POL-160, Decision Making

DEFINITION:

In this policy:

“Internal reconsideration” means the process where the Workers Compensation Board reviews its previous decision in a claim or assessment matter and confirms, varies or reverses that decision.

“New evidence” means information that is factual, new, relevant and substantive to a decision.

“Person with a direct interest” related to a claim decision means the worker or dependants of the deceased worker, the accident employer where the decision has a direct financial, legal or operational impact on that employer, and the Workers Compensation Board.

POLICY NUMBER: POL-48

“Person with a direct interest” related to an employer assessment decision means the assessed employer and the Workers Compensation Board.

POLICY:

1. The Workers Compensation Board (WCB) is committed to making decisions on workers’ claims and employers’ accounts which are consistent with legislation and policies, and consider the facts and circumstances of each case.
2. If a person with a direct interest disagrees with a WCB decision, they have the right to request internal reconsideration of that decision.
3. Internal reconsideration is the first level in the WCB appeal system, where the WCB reviews its decision and decides whether the decision should be changed. The Internal Reconsideration Officer (IRO) operates independently and separately from the decision maker.
4. This policy explains the criteria for internal reconsideration, the process involved and how internal reconsideration decisions are made.

Criteria for Internal Reconsideration

5. To be eligible for internal consideration, all of the following criteria must be met:
 - There must be an applicable written decision.
 - A person with a direct interest in the decision, or another person authorized to act on their behalf, must make the request.
 - The request must be made in writing within the required timeframe.

Decisions

6. The types of decisions that can be reconsidered are written decisions made by the WCB on:
 - A worker’s claim. The factors considered when the WCB makes a claim decision are set out in the WCB policy, POL-160, Decision Making.
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POLICY NUMBER: POL-48

- An employer's assessment account. Assessment decisions are made under the relevant legislation and WCB Employer Services policies.
7. Internal reconsideration does not apply to:
- Matters that have not been decided and there is ongoing adjudication.
 - Previous internal reconsideration decisions.
 - Decisions made by the Workers Compensation Appeal Tribunal
 - Decision made under the *Occupational Health and Safety Act* or the *Freedom of Information and Protection of Privacy Act*.
 - General administrative, legislative or policy decisions made by the WCB.

Persons with a Direct Interest

8. For claims decisions, persons with a direct interest are limited to the following:
- The worker is a person with a direct interest.
 - If the worker is deceased, their surviving spouse or dependants may be persons with a direct interest.
 - The worker's employer may be a person with a direct interest if the decision directly affects them, such as having an impact on their claims costs or their efforts to return the worker to work.
 - If the WCB determines that the claim decision has no direct impact on the employer, they cannot request or participate in an internal reconsideration. For example, if the issue relates to returning to work and the worker is no longer works for the employer, if costs are no longer being charge to the employer's account or the business has closed.
9. For employer assessment decisions, the assessed employer is a person with direct interest.

Timeframe

10. For decisions made on or after April 1, 2002, the request must be made within 90 days from the date of the decision letter.

11. There is no time limit to request internal reconsideration for a decision made prior to April 1, 2002, provided it was the most recent decision made in the matter.

Internal Reconsideration Process

12. If a person with a direct interest requires clarification of a WCB decision, they are encouraged to contact the decision maker.
13. If the person with a direct interest does not agree with a decision, they have the right to request internal reconsideration of that decision.
14. The internal reconsideration request must be made in writing. A **Request for Internal Reconsideration** (IR-01) form is available. The request should include the reasons for the request as well as any other relevant information in support of the reasons.
15. Although not required, workers and employers have the right to be represented throughout the internal reconsideration process. Representation is available at no cost through the offices of the Worker Advisor and Employer Advisor. These offices operate independently from the WCB.
16. Internal reconsideration requests are handled by the WCB Internal Reconsideration Officer (IRO). If there is a conflict of interest, the WCB will appoint an alternate IRO.
17. If the internal reconsideration criteria are met, the IRO will confirm the applicant's issue with the decision under reconsideration and provide them with 30 days to respond with any changes.

The IRO will determine if there are other persons of direct interest, and notify them of the internal reconsideration and how they can participate in the process.

Access to Information

18. Persons with a direct interest have a right to access the information on file that is relevant to the decision under reconsideration. Subject to the *Freedom of Information and Protection of Privacy Act*,
 - Workers have a right to all of the information on their claim file, including

POLICY NUMBER: POL-48

submissions related to the internal reconsideration.

- Employers must request claim file information and will be provided with the information that is relevant to the issue in dispute.
- Employers have a right to all of the information on their assessment account.

Information is provided in accordance with WCB policies, POL-04, Access to Information – Worker Claims Files and POL-18, Access to Information – Employer Assessment Files.

Internal Reconsideration Decisions

19. Internal reconsideration is done through a review of the documents on the file. The IRO may contact those involved if clarification is required.
20. The IRO will consider all relevant information on the file and any submissions received, including any new evidence. The IRO will determine whether information is new evidence as set out in WCB policy, POL-160, Decision Making.
21. If the IRO determines that there is insufficient information to make a decision or if information was not considered in the decision, the matter will be referred back to the original decision maker.
22. The IRO will determine whether the decision in question was appropriate or if the decision should be changed.

Decisions are appropriate if the relevant facts and circumstances of the case have been considered and the decision is in accordance with the applicable legislation and policies.

23. Internal reconsideration decisions are made in accordance with the principles set out in WCB policy, POL-160, Decision Making.
24. If the internal reconsideration changes or reverses the original decision, the effective date for the change is the date of the original decision.
25. The IRO will provide the written decision, including rationale, to the persons with direct interest within 90 days, unless there are extenuating circumstances.

POLICY NUMBER: POL-48

Appeals

26. The internal reconsideration decision is considered the final decision of the WCB in the matter. Internal reconsideration decisions can be appealed to the Workers Compensation Appeal Tribunal within 30 days of the decision.

Costs

27. There are no costs to file a request for internal reconsideration or to participate in the process.
28. The WCB will not reimburse participants for expenses incurred in the internal reconsideration process.
29. Overpayments associated with internal reconsideration decisions will be handled in accordance with WCB policy, POL-27, Overpayments to Workers.

HISTORY:

June 7, 2022 - Non-substantive amendments to the process for clarifying WCB decisions.

December 10, 2020 – Amended the time limit to file an internal reconsideration request to 90 days from the date of the decision letter, and remove the 30 day requirement for persons with direct interest to respond. Non-substantive changes to existing content for clarification.

July 23, 2020 – Non-substantive changes to reflect Decision Making (POL-160) policy considerations around new evidence.

January 1, 2014 - Amended to reflect the revisions made to the *Workers Compensation Act* that became effective January 1, 2014.

October 24, 2013 - Amended the definition of person with a direct interest and made other amendments to provide clarity with respect to the internal reconsideration process.

December 16, 2010 - The policy was updated as a result of the 60 month policy review process. The changes include providing guidelines related to conflict of interest situations, providing

POLICY NUMBER: POL-48

more guidance to assist applicants with their submissions to internal reconsideration, and removal of the option of conducting a hearing.

June 23, 2005 - Modified to clarify that reconsideration will normally be conducted by a file review without a hearing.

November 27, 2002 - Modified to incorporate the reconsideration of decisions affecting employers as well as workers. Moved from the Client Services Division (POL04-14) to the Executive Division (POL06-01) and re-numbered. Replaces Employer Services Division policy - Internal Reconsideration (POL02-22).

March 28, 2002 - Policy revised to incorporate changes required as a result of Workers Compensation Act amendments (Bill 15) to be proclaimed April 1, 2002.

June 21, 2001 - Replaces Internal Reconsideration policy (IR-01) dated November 12, 1998 and approved by the Board of Directors on February 18, 1999.

Board of Directors Approval Date: February 18, 1999