

POLICY NUMBER: POL-83

Chapter:
CLAIMS

Subject:
NEW EVIDENCE

Effective Date:
March 28, 2002

Last Update:
March 26, 2009

REFERENCE:

Workers Compensation Act R.S.P.E.I.1988, Cap. W-7.1, Section 32, 56, 59(4).
Workers Compensation Board Policy, POL-48, Internal Reconsideration.
Workers Compensation Board Policy, POL-88, Workers Compensation Appeal Tribunal.

DEFINITION:

In this policy:

“Decision” means a written decision of the Workers Compensation Board which disposed of a substantive question.

“New evidence” means information not already considered in the decision-making process, such as:

- new health information from a treating health care provider;
- new work-related information;
- new earnings information; or
- new information pertaining to the employer’s operations.

“The Act” means the Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1.

“Person with a direct interest” means

- a) for employer assessment decisions:
 - the employer against whom the assessment is levied;
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- the Workers Compensation Board.
- b) for worker claim decisions:
 - the worker;
 - dependants of the deceased worker;
 - the accident employer, if it is determined by the Workers Compensation Board that the accident employer has a direct interest in the matter;
 - the Workers Compensation Board.

“Prior Act” means Workers’ Compensation Act, R.S.P.E.I. 1988, Cap. W-7 (repealed).

POLICY:

Application Of Policy

1. This policy applies where a person with a direct interest makes a request, in writing, that a decision of the Workers Compensation Board with respect to a worker’s claim for benefits be reopened based on new evidence.
2. To constitute new evidence, the information submitted must meet all of the following criteria:
 - (a) the information must be factual in nature.
 - (b) the information must be truly “new”. Information is not “new” if it:
 - (i) summarizes, reformats, reiterates, or reviews information that is already on file;
 - (ii) consists of an opinion which is based on evidence or findings that is already on file or substantially similar evidence or findings;
 - (iii) consists of legal argument or re-argument.
 - (c) the information must not have been reasonably available to the person who has submitted it at the time the decision was made.
 - (d) the information must be relevant and credible.

Jurisdiction

3. If the request to reopen a decision contains the required information, the Workers Compensation Board will determine whether it has the jurisdiction to consider the request. The Workers Compensation Board shall dismiss the request to reopen a decision that:
 - (a) denies a worker's claim for benefits on the grounds that the worker did not file a claim with the Workers Compensation Board within the time period prescribed by Section 59(4) of the *Act*;
 - (b) awarded a pension to a worker under the *Prior Act*;
 - (c) resulted from periodic reviews and adjustments of worker benefits which are specifically provided for in the *Act*. Those reviews shall be governed by the applicable provisions of the *Act*;
 - (d) was made under Section 32(3) of the *Act*.
4. The Internal Reconsideration Officer (IRO) shall not reopen an IRO decision under this policy.
5. This policy does not apply to periodic reviews and adjustments of worker benefits which are specifically provided for in the *Act*. Those reviews shall be governed by the applicable provisions of the *Act*.
6. This policy does not apply to determinations made under Section 32(3) of the *Act*.

Form Of Request

7. The Workers Compensation Board may consider the reopening of a decision of the Workers Compensation Board if the person with a direct interest submits a written request which:
 - (a) identifies and includes a copy of the information relied upon as new evidence;
 - (b) explains why that information constitutes new evidence; and
 - (c) explains why that information warrants a substantive change in or reversal of the

decision.

Decisions On Requests

8. Upon receiving a written request, the Workers Compensation Board may:
 - (a) dismiss the request because it does not pertain to a decision;
 - (b) dismiss the request because the Workers Compensation Board has no jurisdiction to reopen the decision;
 - (c) dismiss the request because the information relied upon does not constitute new evidence;
 - (d) make further inquiries with respect to the matter;
 - (e) find that the information relied upon is new evidence, and may decide that:
 - (i) the new evidence does not provide a basis for changing, or reversing the decision, and the decision ought to be confirmed; or
 - (ii) the new evidence does provide a basis for changing or reversing the decision, and the decision ought to be changed or reversed.

New Evidence On Reconsideration

9. The role of the IRO is to decide whether a decision of the Workers Compensation Board should be changed or reversed, and is based on the claim information as it existed at the time of the decision. Consequently, submissions made to the IRO shall be limited to argument based on that claim information.
10. If the IRO receives factual information that was not in the worker's claim file at the time the decision was rendered by the Workers Compensation Board, and the IRO determines the information is new evidence, the IRO shall return the case to the original decision maker for consideration and decision as outlined in Workers Compensation Board policy, POL-48, "Internal Reconsideration".
11. If the IRO receives factual information that was not in the worker's claim file at the time the decision was rendered by the Workers Compensation Board, and the IRO determines the information is not new evidence, the IRO shall disregard that

information, and shall give written notice to the person who submitted the information that it will be disregarded during the reconsideration process.

New Evidence On WCAT Appeals

12. Where an appeal to the Workers Compensation Appeal Tribunal (WCAT) from a decision of the Workers Compensation Board is pending, and the Workers Compensation Board receives a request to reopen that decision, the Workers Compensation Board may:
- (a) ask that the hearing of the pending WCAT appeal be conducted and a decision be made by WCAT without reference to the information filed with the request pursuant to paragraph 1; or
 - (b) ask that the pending WCAT appeal be stayed until the completion of all Workers Compensation Board proceedings with respect to the request, and
 - (i) an appeal of the Workers Compensation Board's decision on that request is filed with WCAT, or
 - (ii) the time for appealing that decision to WCAT has expired;
- whichever of (i) and (ii) comes first.
13. Where WCAT refers a matter back to the Workers Compensation Board pursuant to Sections 56(22) or 56(23) of the *Act*, the Workers Compensation Board shall proceed as if a request had been made under this policy.

Other Grounds For Refusal To Reopen

14. The Workers Compensation Board may refuse to consider a request to reopen a decision where it determines that:
- (a) the request is frivolous or vexatious;
 - (b) the person making the request is abusing the processes of the Workers Compensation Board;
 - (c) the decision sought to be reopened is more than 20 years old.

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Miscellaneous Matters

15. Nothing in this policy affects the authority of the Workers Compensation Board to reopen a decision of the Workers Compensation Board based on new evidence, on its own initiative, if it considers it appropriate to do so, or under Workers Compensation Board policy, POL-80, "Deliberate Misrepresentation".
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HISTORY:

March 26, 2009 - The policy was updated as a result of the 60 month policy review process. The policy has been amended to clarify what constitutes new evidence and how the submission of new evidence affects claim decisions.

Board of Directors Approval Date: March 28, 2002