

 Yukon Workers' Compensation Health and Safety Board	<b>Part:</b>	<b>Appeals</b>		
	<b>Board Approval:</b>	<b>Original signed by chair</b>	<b>Effective Date:</b>	<b>January 20, 2009</b>
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	<b>Board Order:</b>		<b>Review Date:</b>	

## OVERVIEW OF APPEALS

### GENERAL INFORMATION

The Yukon Workers' Compensation Health and Safety Board (YWCHSB) provides an appeal system that is simple, fair and accessible with minimal delays.

Workers and dependents of deceased workers have the right to appeal a decision made by the YWCHSB when it relates to:

- a worker's claim; or
- an Occupational Health and Safety (OH&S) matter.

Employers have the right to appeal a decision made by the YWCHSB when it relates to:

- a worker's claim;
- an assessment matter; or
- an OH&S matter.

For matters involving a worker's claims for compensation, reviews are heard first by a hearing officer (except appeals relating to duty to mitigate under subsection 14(2) of the *Workers' Compensation Act* S.Y. 2008 (the "Act") and then if required, by an external body, the Workers' Compensation Appeal Tribunal.

For employer assessment and for OH&S matters, appeals are heard by a panel of the Board of Directors.

### PURPOSE

This policy provides information on the review and appeal process for claims, assessment and occupational health and safety appeals for:

- workers;
- dependents of deceased workers;
- employers;
- the President/CEO, and staff of the YWCHSB;
- the Board of Directors; or
- the Workers' Compensation Appeal Tribunal.

## DEFINITIONS

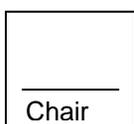
1. **Appeal:** a process for reconsideration of a decision made by a decision-maker.
2. **Appeal Panel:** a panel of the Board of Directors who hear appeals.
3. **Board of Directors:** individuals appointed by the Commissioner in Executive Council to collectively provide governance to the YWCHSB.
4. **Decision:** written findings of fact and conclusions based on the *Act* or previous *Acts*, policies and procedures.
5. **Hearing:** a process by which a hearing officer collects facts to make a determination by reviewing evidence, the *Act* and related policies, relating to a worker's compensation claim.
6. **Hearing Officer:** an official appointed by the President/CEO under paragraph 116(1)(d) of the *Act*.
7. **Review:** a re-examination of a decision made by a decision-maker.
8. **Workers' Compensation Appeal Tribunal ("Appeal Tribunal"):** a quasi-judicial body established under section 62 of the *Act* consisting of appointed members representative of both employers and workers.

## POLICY STATEMENT

YWCHSB's goal is to render fair and just decisions on appeals and reviews with as little delay as possible.

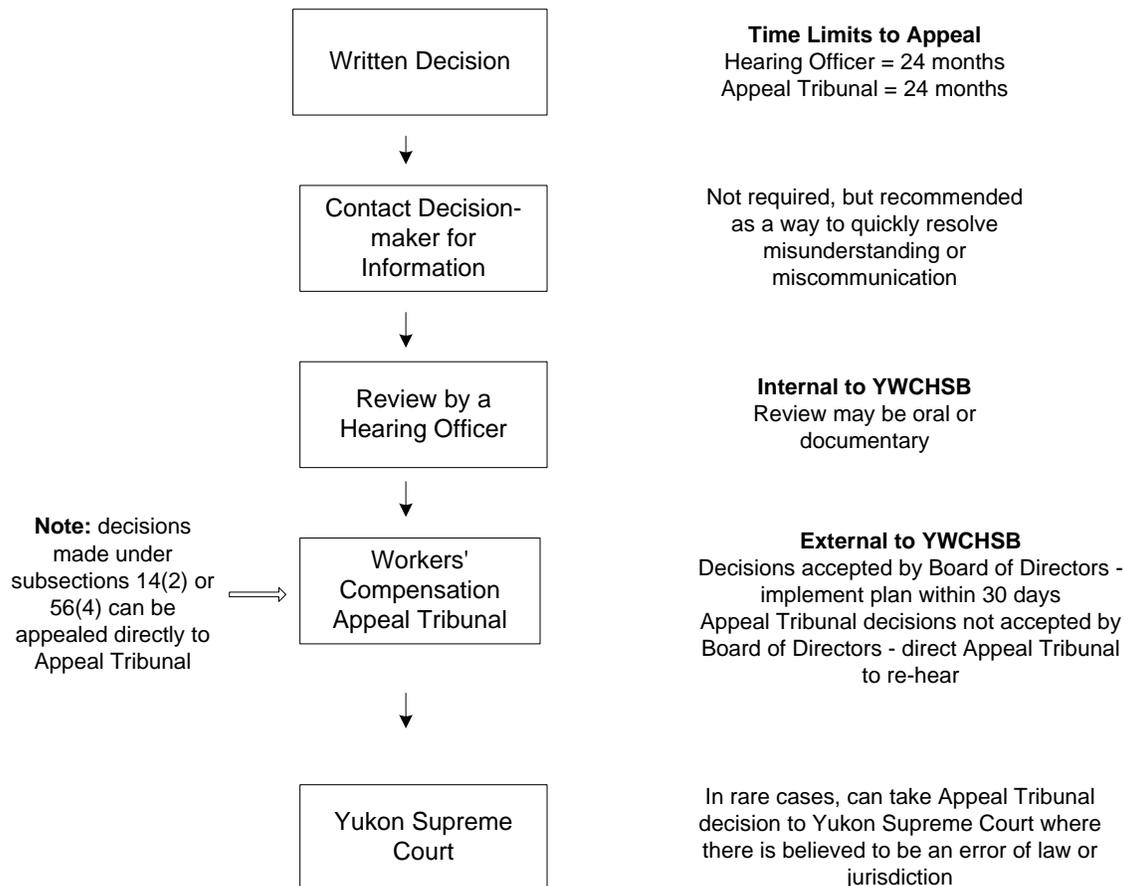
YWCHSB decision-makers are bound by the *Act*, the *OH&S Act* and Board of Directors' policies.

The Appeal Tribunal is bound by the *Act* and Board of Directors' policies (subject to section 63(b)) of the *Act*.

  
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## Appeal Processes

### 1. Appeals of Claims Decisions



Prior to initiating an appeal, a worker, dependent of a deceased worker or an employer may directly contact the YWCHSB staff member responsible for making the decision and/or his/her supervisor to make inquiries regarding the rationale and reasoning for the decision made.

This inquiry may resolve any misunderstandings or communication problems that may exist or it may resolve the issue entirely without the need for a formal review or appeal.

If the concern is not resolved, the matter moves into the Appeal process:

#### a) Review by a Hearing Officer

A worker, a dependent of a deceased worker, or an employer may appeal a compensation claim decision to a hearing officer.

The person appealing a decision must file a written request for a review which contains:

- the date of decision;
- the decision being appealed; and
- the reasons for the review.

The review can be an oral hearing or a documentary review.

A documentary review is when the hearing officer reviews written material on file about the decision, without having the individual or witnesses appearing in person.

The Hearing Officer will provide a written decision, with reasons for the decision after the review.

#### b) Appeal to the Appeal Tribunal

A decision of a hearing officer, a decision made under subsection 14(2) relating to duty to mitigate, or a decision of the President/CEO under subsection 56(4) relating to access to claims files may be appealed to the Appeal Tribunal.

For more information on Rules of Procedure for Proceedings before the Workers' Compensation Appeal Tribunal refer to their website at:  
<http://www.yukonwcat.com>

#### c) Review of Appeal Tribunal Decisions

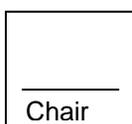
Once the Appeal Tribunal files their decision, it is reviewed by the Board of Directors to ensure it complies with the *Act* and policies. The Board of Directors may direct the Appeal Tribunal to re-hear an appeal. The Board of Directors may also put on-hold a decision of the Appeal Tribunal until the re-hearing.

#### d) Application to the Yukon Supreme Court

Decisions of the Appeal Tribunal are final and not open to question or review in any court; however, a worker, dependent of a deceased worker or an employer may make an application to the Yukon Supreme Court for a judicial review of a decision of the Appeal Tribunal where there is believed to be an error of law or jurisdiction (subsection 59(3) of the *Act*).

#### e) Access to Claim File

During a review or appeal, a worker or dependent of a deceased worker may examine and receive a copy of all information contained in their claim file.

  
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An employer who is involved in a review or appeal may examine and receive a copy of all information that the YWCHSB considers relevant to a claim review or appeal.

For information on employer access to claims information, refer to YWCHSB policy, "Release of Claims Information to Employers".

f) Representation for Workers

Workers may be represented by:

- themselves;
- a relative;
- a friend;
- a lawyer;
- a union representative; or
- the Workers' Advocate office, which provides support and advice to injured workers and is independent from the YWCHSB.

For more information on the Workers' Advocate's role, see the Yukon Government's Department of Justice website at:

<http://www.justice.gov.yk.ca/prog/ms/wad/index.html>.

g) Implementation of a Decision

YWCHSB must either:

- implement the decision of a Hearing Officer or Appeal Tribunal within 30 days; or
- within 30 days of the decision being made, develop a plan to implement the results of the decision.

h) Limitation Periods

All reviews and appeals to a hearing officer, the Appeal Tribunal or the Yukon Supreme Court must be made and filed within 24 months of the date that the decision being appealed was made.

For decisions that were made prior to July 1, 2008, a request for review or appeal must be filed before July 1, 2010.

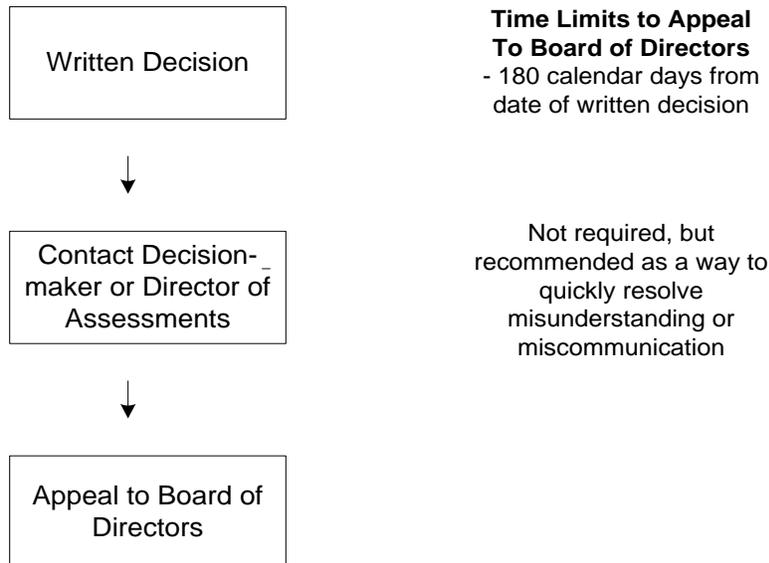
For more information on limitation periods for appeals, refer to YWCHSB policy, "Limitation Period for Claims Reviews & Appeals".

For more specific information regarding the forms required and procedures followed for reviews and appeals of claim's decisions, refer to the YWCHSB website at:

<http://www.wcb.yk.ca/EmployerInformation/Appeals/Default.aspx>

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## 2. Employer Assessment Appeals



An employer may appeal any written decision on their assessment account that pertains to but is not limited to:

- classification;
- rate of assessment;
- audit results;
- collection activities;
- non-payment penalties; or
- non-reporting penalties.

Prior to initiating an appeal, the employer is encouraged to directly contact the assessments staff member who made the decision, or the Director of Assessments to inquire about the rationale and reasoning for the decision on the employer's assessment account.

This inquiry may resolve any misunderstandings or communication problems and may resolve the issue without the need for a formal review or appeal.

### a) Appeal to the Board of Directors

An employer may appeal any decision relating to employer assessments made by the YWCHSB to the Board of Directors. The appeal will be heard by an Appeal Panel of the Board of Directors.

Decisions of the Board of Directors on any matter within its jurisdiction are final and conclusive and not open to question or review in any court.

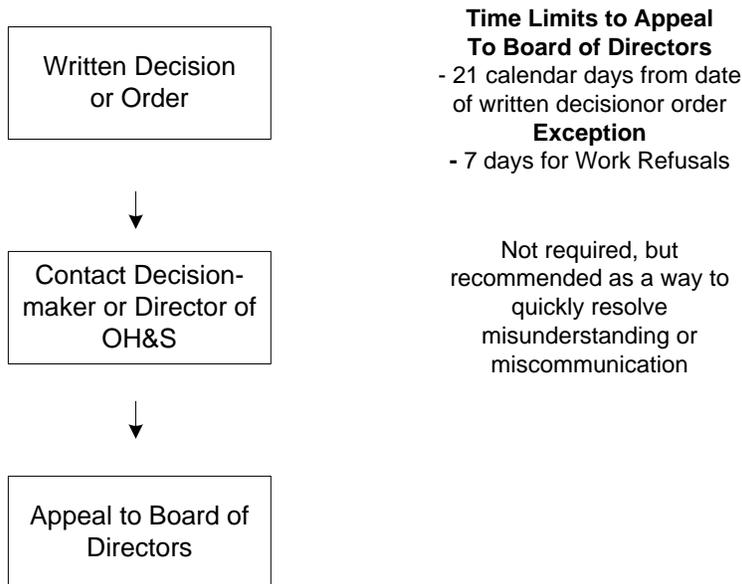
b) Limitation Period

All appeals relating to employer assessments must be made in writing to the Board of Directors within 180 days of the date of the decision.

For more information on employer assessment appeals, see the YWCHSB website at:  
<http://www.wcb.yk.ca/EmployerInformation/Appeals/EmployerAssessmentAppeals.aspx>.

For more information on appeals to the Board of Directors, see "Rules of Procedure for Proceedings before the Board of Directors" on the YWCHSB website at: <https://www.wcb.yk.ca/EmployerInformation/Appeals/>

### 3. Occupational Health and Safety Appeals



OH&S orders and decisions made under the *OH&S Act* can be issued by the Director of OH&S, a chief industrial safety officer, chief mines safety officer or a safety officer.

Prior to initiating an appeal, YWCHSB encourages employers, workers or a worker's representative to contact the OH&S staff member or the Director of OH&S to discuss the rationale and reasoning for the order or decision.

This process may resolve any misunderstanding or communication issues and could resolve the issue without the need for a formal review or appeal.

a) Appeal to the Board of Directors

If an employer, worker or trade union representing a worker does not agree with an OH&S order or decision it may be appealed to the Board of Directors. The appeal will be heard by an Appeal Panel of the Board of Directors.

b) Limitation Periods

- ii) An OH&S appeal to the Board of Directors, must be in writing, and delivered to the Director of OH&S within 21 calendar days after the date of the decision or order of the director, chief officer or safety officer.
  
- i) The only exception to the above timeline is Section 15 Hazardous work refusals appeals. For orders and decisions of safety officers under this section of the *OH&S Act*, an appeal must be in writing, and delivered to the Director of OH&S, within seven calendar days after the date of the decision or order of the safety officer.

Upon receipt of an appeal, the Director of OH&S must immediately forward it to the Board of Directors.

For more information on appeals to the Board of Directors, see "Rules of Procedure for Proceedings before the Board of Directors" on the YWCHSB website at:

<https://www.wcb.yk.ca/EmployerInformation/Appeals/>

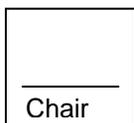
#### **4. Application to the Yukon Supreme Court to Determine Consistency of Board of Directors' Policy or a Decision of the Appeal Tribunal**

Either the Appeal Tribunal or the YWCHSB may apply to the Yukon Supreme Court for a determination of whether a Board of Directors' policy or Appeal Tribunal decision is consistent with the *Act* (section 59(1) of the *Act*).

#### **ROLES AND RESPONSIBILITIES**

YWCHSB decision-makers are responsible for notifying a worker, the dependents of a deceased worker, and the worker's employer of any decision affecting the claim for compensation as soon as is practicable, in accordance with section 16 of the *Act*. Decision-makers must also ensure that the principles of natural justice and procedural fairness are followed.

The Director of Assessments, as well as assessments staff are responsible for ensuring employers are registered in the appropriate industry group. The staff

  
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also explain the type of coverage required by the employer (eg. optional coverage, coverage for limited business, exemption etc.), as well as the benefits of registering with the YWCHSB (eg. employers pay into a central fund, workers have no legal rights to sue their employer, workers' compensation system is a no-fault system etc.). The assessments staff ensures that those who are registered with the YWCHSB comply with the *Act* and follow their contract agreements.

The OH&S Director, as well as the chief industrial safety officer, chief mines safety officer and safety officers, are responsible for providing information to advance safe, promote and ensure healthy and fair workplace practices that reduce the risk of injury. This is accomplished through consultative services, training, education, hazard evaluations, worksite inspections, incident investigations and certification services. The director and safety officers are responsible for providing written orders and decisions that are consistent with the *OH&S Act*.

## **APPLICATION**

This policy applies to the Board of Directors, President/CEO, staff of the Yukon YWCHSB, employers, workers and dependent's of workers and the Appeal Tribunal (subject to subsection 63(b) of the *Act*).

## **ACT REFERENCES**

Sections 14, 16, Part 9 Appeals (sections 52-61), Part 10 Appeal Tribunal (sections 62-65), 85, 116 and subsection 105(4) of the *Workers' Compensation Act*

Sections 15, 16, 17 and 26 of the *Occupational Health and Safety Act*

## **HISTORY**

New

## **POLICY REFERENCES**

AP-02, "Limitation Periods for Claims Reviews & Appeals"

AP-04, "Release of Claims Information to Employers"

Rules of Procedure for Proceedings before the Hearing Officer

Rules of Procedure for Proceedings before the Workers' Compensation Appeal Tribunal

Rules of Procedure for Proceedings before the Board of Directors

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