

 Yukon Workers' Compensation Health and Safety Board	Part:	Appeals		
	Board Approval:	Original signed by chair	Effective Date:	January 1, 2014
	Number:	AP-03	Last Revised:	
	Board Order:		Review Date:	

[NEW EVIDENCE AT REVIEWS AND APPEALS](#)

GENERAL INFORMATION

The *Workers' Compensation Act* S.Y. 2008 (the "Act") allows a worker, a dependent of a deceased worker or an employer to request a review of a decision concerning a claim for compensation to a hearing officer, and, if still unsatisfied with the decision to appeal it to the Workers' Compensation Appeal Tribunal (Tribunal).

PURPOSE

This policy addresses the process for dealing with new evidence within the review and appeal process from the date a review or appeal is filed. Examples are given in this policy to provide a clear understanding as to when new information is or is not considered new evidence. When new evidence is presented during a review or appeal process, the evidence will be referred back to the previous decision-maker for reconsideration.

DEFINITIONS

1. **Decision-Maker:** A Yukon Workers' Compensation Health and Safety Board (YWCHSB) staff member who makes a decision on a claim for compensation.
2. **Relevant Information:** relates directly to an issue or fact under review or appeal, or has a tendency to prove or disprove an issue or fact.
3. **New (or Additional) Evidence:** Information that meets three basic criteria:
 - a) the evidence is relevant to the decision under review or appeal;
 - b) the evidence is substantive – it gives new information that was not previously available to the decision-maker and could affect the outcome of the decision; and
 - c) the evidence does not simply summarize or reformat existing information that has already been considered.

PREVENTION

Each worker and employer has the responsibility to take all reasonable precautions to reduce or eliminate workplace injury. Early diagnosis and intervention will mitigate the effects of workplace injuries. Providing pertinent and complete information or evidence to the YWCHSB in a timely manner will facilitate the resolution of claims decisions.

POLICY STATEMENT

The principles of fairness and natural justice require that YWCHSB decision-makers consider all relevant evidence, new or otherwise, when reviewing a decision. The YWCHSB expects that interested parties will make all reasonable efforts to provide all relevant information before the initial decision is made.

If new information is presented at the review or appeal level, the hearing officer or the Tribunal must determine whether the new information is new evidence, in accordance with the definition of new (or additional) evidence.

In the case of the hearing officer review, if the hearing officer determines the information is new evidence, then the hearing officer provides the new evidence to the previous decision-maker for reconsideration.

- If the decision-maker determines that the new evidence would change the original decision, a new decision letter is written and the hearing officer review may be cancelled if the worker's review has been resolved by the revised decision.
- If the decision-maker determines that the new evidence would not change his/her original decision, the evidence is returned to the hearing officer and the review resumes.

In an appeal at the Tribunal level, if the information is determined to be new evidence, then the Tribunal provides the new evidence to the hearing officer for reconsideration.

- If the hearing officer determines that the new evidence would change his/her decision, a new decision is written and the appeal hearing may be cancelled if the worker's appeal has been resolved by the revised decision.
- If the hearing officer determines that the new evidence would not change his/her decision, the evidence is returned to the Tribunal and the appeal hearing resumes.

Once it has been determined that the information is new evidence and has been referred back to the previous decision-maker, the hearing officer or Tribunal will

disclose the new evidence to any person participating in the review or appeal who may be affected. The person will be given an opportunity to respond, either in writing or by telephone.

1. New Evidence includes but is not limited to:

a) Health information

Example - a worker sees a second doctor whose diagnosis differs from the initial diagnosis provided by the first doctor.

b) Evidence on the work-relatedness of an injury

Example - the RCMP investigates a car collision scene involving an injured worker and reports that alcohol was not a factor (even though initial reports indicated that it may have been).

c) Fitness to work information

Example – the worker’s doctor determines that the medical rehabilitation process for the worker is taking longer than expected.

d) Administrative review findings that reveal previous errors or omissions

Example – a legal opinion comes to light that was not available during the original decision-making process.

e) Earnings information

Example – a worker provides a pay cheque stub showing salary bonus information that was not initially available.

f) Various other relevant facts

Example – a worker provides quantitative research on an issue in the decision under appeal.

g) Proof of employment

Example – an employer provides copies of an employment contract or time sheets showing a worker was not in the course of employment when the injury occurred.

2. Examples Where Information is Not New Evidence:

a) Policy changes do not constitute grounds to accept a request to reconsider a decision. A policy that is amended or adopted after a decision is made is not retroactive, unless otherwise stated.

b) A doctor provides a report of the worker’s medical record, relating to the worker’s injury, summarizing reports already considered by the decision-maker.

c) A worker provides information relating to a decision not under review or appeal.

3. Testimony at Hearings

Workers, employers and medical practitioners are obligated by the *Act* to provide the YWCHSB with any and all oral or written information relevant to a claim for compensation. Workers are specifically obligated by subsection 14(1)(e) of the *Act* to notify the YWCHSB immediately of a change in circumstances that affects or may affect the worker's initial or continuing entitlement to compensation.

Notwithstanding these requirements, there are occasions when relevant information is disclosed in a review or appeal hearing in the form of oral testimony. The hearing officer or Tribunal may deal with any testimonial evidence rather than having it returned to the previous decision-maker.

4. Request for independent medical examination or clarification of health information

Under section 60 and subsection 14(1)(c) of the *Act*, the Tribunal or hearing officer may require a worker to submit to an independent medical examination or may request an independent medical opinion on any matter affecting a worker's or dependent's entitlement to compensation. In such cases, the findings of the independent medical examination or the independent medical opinion would be dealt with at the appeal or review hearing and would not be returned to the original decision-maker.

Similarly, when the hearing officer or appeal committee contacts a health practitioner to clarify understanding of health information currently before the hearing officer or appeal committee, the clarifying information would be dealt with during the hearing officer review or appeal hearing and would not be returned to the original decision-maker.

The requirements of EN-02, "Merits and Justice of the Case", is applicable to all decision-makers including decision-makers at the review and appeal level. Section 3(c) of EN-02 requires decision-makers to forward all relevant information to the service provider providing the opinion.

5. New Issues

In contrast to new evidence, which leads to a reconsideration of an existing decision, the presentation of new issues will result in a new review or appeal.

APPLICATION

This policy applies to the Board of Directors, President/CEO and staff of the YWCHSB; to the Workers' Compensation Appeal Tribunal; and to employers and workers covered by the *Act*. This policy applies to any decision made (whether at the YWCHSB decision-maker, hearing officer or Tribunal level) or any new information provided on or after July 1, 2008.

EXCEPTIONAL CIRCUMSTANCES

In situations where the individual circumstances of a case are such that the provisions of this policy cannot be applied or to do so would result in an unfair or an unintended result, the YWCHSB will decide the case based on its individual merits and justice in accordance with YWCHSB's Policy EN-02, "Merits and Justice of the Case". Such a decision will be considered for that specific case only and will not be precedent setting.

APPEALS

Decisions made by the YWCHSB under this policy can be appealed directly in writing to the hearing officer of the YWCHSB in accordance with subsection 53(1) of the *Act*.

Decisions made by the YWCHSB under this policy can be appealed directly in writing to the Appeal Tribunal of the YWCHSB in accordance with subsection 54(1) of the *Act*. Notice of the appeal must be filed within 24 months of the date of the decision by the YWCHSB, in accordance with section 52 of the *Act*.

ACT REFERENCES

Sections 14, 52, 53, 54 and 60

POLICY REFERENCES

EN-02, "Merits and Justice of the Case"

HISTORY

AP-03, "New Evidence at Reviews & Appeals", effective July 1, 2008, revoked January 1, 2014.