DISCUSSION PAPER

1. TITLE

Notification of Decisions

2. ISSUES

WorkSafeBC ("WCB") makes countless claims decisions on a daily basis. Policy on notification of decisions guides how and when decisions are communicated to workers and employers, along with whether reasons for the decision will be provided.[1]

Policy review is required on the following issues with respect to compensation and rehabilitation matters:

- Does a decision have to be communicated to an affected party, and what form must that notification take before a decision can be considered to have been "made" for the purposes of the statutory time limitations for the reconsideration, review and appeal provisions found in the *Workers Compensation Act ("Act")*?

- If a claim is rejected, should notification of review and appeal rights be required?

3. BACKGROUND

3.1 Law and Policy

3.1.1 *When a Decision is Made*

The statutory time periods for the *Act's* reconsideration, review and appeal provisions all commence from the date that a decision is "made".[2]

The *Act* sets a 75-day time period for the WCB to reconsider a decision once it has been made.[3] Reconsiderations are only initiated by the WCB.

Pursuant to the *Act,* a request for a review must be filed within 90 days after a decision or order is made.[4] A request for an appeal must be filed within 30 days after a final decision is made by a review officer or 90 days after a decision is

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1 Policy item #99.20 *Notification of Decisions* of the *Rehabilitation Services & Claims Manual,* Volume II ("*RS&CM*").
2 Sections 96(5), 96.2(3) and 243 of the *Act.*
3 Section 96(5) of the *Act*.
4 Section 96.2(3) of the *Act*.

made if the decision is one that the Review Division does not have jurisdiction to hear.[5] The *Act* specifies the parties entitled to request a review or appeal.[6]

The *Act* does not define what constitutes a "decision" or when a decision is "made" with the exception of the definition of decision for the purpose of appeals to the WCAT which defines decision as "includes a determination, an order or other decision".[7]

There are no policies which define "decision" or when a decision is "made", only practice directives.[8] The Review Division's *Practices and Procedures Manual* defines decision as "a letter or other communication to the person affected that records the determination of a Board officer as to a person's entitlement to a benefit or benefits or a person's liability to perform an obligation or obligations under the *Act*".

For the limited purpose of determining the 75-day time period for reconsidering a decision, the Worker and Employer Services Division's compensation practice states that "a decision is made when it is communicated to the affected party, either verbally or in writing".[9]

With respect to compensation and rehabilitation issues, there is no general requirement under the *Act* for the WCB to communicate decisions to affected parties or provide reasons once a decision has been made. Policy does, however, address a number of business processes regarding decision-making and directs when notification will be provided.[10]

Policy requires the WCB to provide workers with written reasons when a decision is made that is adverse in interest, with notice of the decision provided to the employer.[11] Where a claim has been allowed with no protest from the employer, policy provides that the WCB simply sends the worker a cheque with no reasons for the decision.

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5 Section 243 of the *Act.*

6 Section 96.3 sets out the parties who may request a review of a decision. Section 241 of the *Act* sets out the parties who may appeal a decision to the Workers' Compensation Appeal Tribunal ("WCAT").

7 Section 245.1 of the *Act* sets out that the definitions in section 1 of the *Administrative Tribunals Act* apply to the WCAT.

8 The WCB issues published practice directives and guidelines for the guidance of staff as to the application of the *Act*, regulations and policy. They do not have the same status as published policy and are not binding on the WCAT.

9 Best Practices Information Sheet #5.

10 Policy items #99.10 *Disclosure of Issues Prior to Adjudication*, #99.20 *Notification of Decisions,* #99.21 *Notification of Rights of Review and Appeal*, #99.22 *Procedure for Handling Complaints or Inquiries About a Decision*, #99.23 *Unsolicited Information*, #99.24 *Notification of Permanent Disability Awards*, and Item C14-103.01 *Reconsiderations* of the *RS&CM*.

11 Policy item #99.20 *Notification of Decisions* of the *RS&CM*.

Policy also states that the WCB will not notify an employer of an accepted decision unless they have protested a claim. In that case, the WCB will telephone the employer to advise and provide reasons for the decision. The policy further provides that written decision letters will only be sent to an employer if they cannot be reached by telephone or are unsatisfied with the verbal decision and/or reasons.

This policy also sets out that the WCB will provide notice to employers when a decision has been made to reopen an existing claim.

3.1.2 *Notification of Review and Appeal Rights for Rejected Claims*

Although there is no statutory requirement for the WCB to notify a person affected by a decision of their rights of review and appeal, the WCB has adopted the policy of informing workers of these rights when an adverse decision is made.[12] The notification of rights of review and appeal policy does make an exception for claims that have been rejected, and states that notification of rights of review and appeal will not automatically be provided in these instances.

The notification of decisions policy distinguishes between the terms "reject" and "disallow".[13] While policy does not explicitly define the term "reject", through examples it suggests that a claim would be rejected if the applicant for compensation lacked standing under the *Act,* either because there is no jurisdiction or the claim was submitted in error. Policy does not define the term "disallow".

4. DISCUSSION

Both issues identified in this discussion paper concern the WCB's approach to communicating decisions. The first issue addresses whether a decision should be communicated and if so, what form that notice must take before a decision can be considered to have been "made". The second issue addresses whether the WCB should communicate rights of review and/or appeal for rejected claims.

4.1 Communication of Decisions

While there is no direction by statute, and only limited guidance by policy or practice for when a decision is made, the appellate bodies have concluded that for the purpose of determining statutory time limits for reviews and appeals, a decision is "made" when it is communicated to an affected party.[14] This includes final decisions resulting from the reconsideration process.[15] Underlying this approach are principles of procedural fairness which require that a decision be

12 Policy item #99.21 *Notification of Rights of Review and Appeal* of the *RS&CM.*
13 Policy item #99.20 *Notification of Decisions* of the *RS&CM*.
14 WCAT #2006-02121 and Review Division #25579.
15 WCAT #2008-00217.

communicated before a statutory time period commences. A party cannot initiate a review or appeal until they know that a decision has been made.

This issue also raises the question of what form the notification of decisions should take. The current policy provides some guidance. Depending upon the circumstances, notification may include: sending a cheque, telephone communication, form letters, or written decision letters, which may or may not set out reasons or provide notification of rights for review and/or appeal. In the instance of verbal communication, practice and claims management standards set out that any verbal communication to an interested party is to be documented on the claim file.[16]

In regards to the form that notification of a decision must take, the WCAT has found that verbal communication is sufficient, but dated decision letters are preferable.[17] A significant Review Division decision has stated that "there is no absolute requirement for written communication … [t]he desirability of written communications in the workers' compensation system must be balanced against other important considerations in achieving the overall objectives of the system".[18] The Review Division's internal practice for addressing any confusion that may arise from a verbal decision is to request written reasons from the WCB Division that made the decision.[19]

The obvious advantage to using written decision letters with reasons is that it removes ambiguity about what the decision was, the reasons for the decision and when the decision was communicated. The disadvantages, as highlighted in the above-referenced Review Division decision, are that, because of the huge volume of decisions made, it is impractical to provide formal written decisions in every case.[20] The WCB makes thousands of routine decisions on a daily basis regarding temporary disability benefits and health care accounts alone. Imposing a formal notification process for every decision would have far-reaching business process implications.

Although there are definite benefits to using written communication, these benefits must be balanced against other considerations in achieving the overall objectives of the system. Verbal communication provides an efficient means for notification and often contains more substantive information than written letters. It allows the worker or employer to ask questions, provides information and makes them feel that they are being heard. These benefits could be lost if the WCB decides to communicate primarily in writing.

While policy is silent on when a decision is "made", the appellate bodies treat the date that a decision is communicated as the date that it is "made" for the

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16 *Claims Management Standards for Case Managers*.
17 WCAT #2006-02121.
18 Review Division #R0063020 and #R0063022.
19 The Review Division's *Procedures and Practices Manual* at section B2.1.5.
20 Review Division #R0063020 and #R0063022.

purposes of the statutory time limitations for the review and appeal provisions found in the *Act*. This is also current practice for the WCB for the purposes of final decisions for reconsiderations. Accordingly, policy clarification on this point would be beneficial.

Along with providing direction on applying the statutory time periods for the reconsideration and review provisions in the *Act*, it would also be helpful to include a definition of "decision" in policy. Policy could also define the term "findings of fact" as there has been some confusion between the terms "findings of facts" and "decisions".[21]

Findings of fact are distinct from "decisions" in that a finding of fact is a conclusion about the evidence and is subject to change based on new information. Unlike decisions, findings of fact do not confer entitlement to benefits and there are no immediate consequences to a worker arising from these conclusions. They simply form the potential basis for a future entitlement decision.

4.2 If a claim is rejected, is notification of review and appeal rights required?

There is some uncertainty as to whether notification of review and appeal rights should be provided when a claim is rejected.

Although policy directs that the WCB provide notice of rights of review and appeal for workers in receipt of adverse decisions, it makes an exception for claims that have been rejected.[22] Policy directs that notice is not automatically provided in these situations.

Where a claim is rejected, notification of rights of review and appeal are not automatically conveyed for the same reason that the WCB decided to reject the claim: the applicant lacked standing under the *Act.* If an applicant is not covered by the *Act*, he or she would not be able to rely on the benefits afforded by it, such as the right to request a review or appeal of a decision.

However, this approach is problematic as it assumes that the initial decision is correct. The only way to ensure that all workers are aware of their rights of review and/or appeal is to provide notice for both disallowed and rejected claims. In practice, the WCB has been providing notice for both disallowed and rejected claims.

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[21] Confusion most often arises when a worker attempts to review or appeal a finding of fact. This confusion has been addressed in the WCAT Decision 2007-00430 and Review Division decision #R0028687, along with Best Practices Information Sheet #14 *Findings of Fact*.

[22] Policy item #99.21, *Notification of Rights of Review and Appeal,* of the *RS&CM.*

Furthermore, the Worker and Employer Services Division has indicated that the distinction between the two terms contained in the notification of decisions policy is confusing and has led to incorrect use.

Policy could be amended to clarify the distinction between the two terms and to require that notification of rights of review and appeal be provided to workers regardless if their claim was rejected or disallowed.

5. OTHER JURISDICTIONS

Of the twelve jurisdictions, nine provide verbal or written notification of decisions to both workers and employers.[23] The remaining three jurisdictions, British Columbia, Manitoba and Saskatchewan, each provide some form of modified notification. Manitoba will generally not notify workers or employers directly when "no time loss" claims are accepted while Saskatchewan will generally not notify workers and employers of accepted claims unless the claim is disputed or involves extensive development.

A factor that seems to be related to whether or not a decision is communicated is the rule surrounding reviews and appeals. Neither Manitoba nor Saskatchewan have time limits for reviewing or appealing decisions.[24] Of the jurisdictions that have time limits for reviewing or appealing decisions, the time periods all commence either from the date of the written decision or when it was received.[25]

Of the nine jurisdictions that provide notice of decisions, five include reasons for the decision with their notification.[26] Three jurisdictions only provide reasons upon request.[27] Nova Scotia, the remaining jurisdiction, has a system similar to British Columbia. Nova Scotia provides reasons for adverse decisions, at significant milestones in the claim process, or at an employer's request.

For the two jurisdictions that have a modified notification system, Manitoba provides reasons for decisions on request while Saskatchewan provides reasons for adverse decisions, decisions that are based on the benefit of doubt, or favourable decisions where an objection or protest has been raised.

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23 Alberta, New Brunswick, Newfoundland and Labrador, the Northwest Territories and Nunavut, Nova Scotia, Ontario, Prince Edward Island, Quebec, and the Yukon.

24 The Northwest Territories and Nunavut do not impose time limitations for review/appeal while the Yukon does not have time limits for compensation decisions but they do for assessment and occupational health and safety decisions. Ontario has no time limit for its internal reconsideration provisions but does for appeals.

25 Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, and the Yukon.

26 New Brunswick, Ontario, Prince Edward Island, Quebec, and the Yukon.

27 Alberta, Newfoundland and Labrador, and the Northwest Territories and Nunavut.

6. OPTIONS AND IMPLICATIONS

Option 1: Status quo

Under this option, no changes would be made to policy.

Implications

- The notification policy would remain silent on when a decision is considered to have been "made" for the purposes of determining the statutory time limits for the reconsideration, review and appeal processes.

- Confusion would remain concerning the distinction between the terms "reject" and "disallow", and whether notification of rights of review and appeal are required for rejected claims.

Option 2: Amend policy to clarify "general" notification requirements and to provide that notice is required for rejected claims

Under this option:

- Policy would be revised to clarify that decisions can be communicated either verbally or in writing, and that the date a decision is communicated would be treated as the start of the statutory time period for the purposes of the review provisions found in the *Act*.

- Policy would clarify when the statutory time period for the reconsideration provisions found in the *Act* commence, and that final decisions resulting from the reconsideration process are recorded in the claim file and communicated within the statutory time period.

- Policy would also clarify that notification of rights of review and appeal are required on rejected claims, and revise the distinction between the terms "disallow" and "reject".

Draft policy reflecting this option is set out in Appendix A.

Implications

- Policy would clarify the WCB's notification responsibilities for decisions.

- For the purpose of the reconsideration and rights of review and appeal provisions, ambiguity surrounding when a decision is considered to be "made" would be resolved by having policy reflect current practice.

- Notification of rights of review and appeal would be required for rejected claims, and the confusion that exists between the use of the terms "reject" and "disallow" would be resolved.

7. CONSULTATION

Stakeholders are invited to provide feedback on the discussion paper, options, draft policy, and any additional comments that may be relevant to the issue.

Stakeholder comments will be accepted until **August 29, 2008**. When responding, please provide your name, organization, and address. Comments may be sent by mail, fax or e-mail to:

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WorkSafeBC's governing body, the Board of Directors, will consider the options expressed by stakeholders before it adopts any amendments to the current policies.

Please note that all comments become part of the Policy and Research Division's database and may be published, including the identity of organizations and those participating on behalf of organizations. The identity of those who have participated on their own behalf will be kept confidential according to the provisions of the *Freedom of Information and Protection of Privacy Act*.

APPENDIX A

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II
DRAFT POLICIES

Additions in Bold, Deletions Struckthrough

#99.20 Notification of Decisions

A decision is a conclusion reached as to a person's entitlement to a benefit or benefits or a person's liability to perform an obligation or obligations under any section of the *Act*.

A decision is distinct from a finding of fact which is a conclusion on the evidence as to the factual circumstances that form the basis for a decision. An example is a determination about a worker's medical restrictions and physical limitations. Accordingly, findings of fact are subject to change based on new information, and, unlike decisions, are not subject to the statutory restrictions on reconsiderations.

The Board treats the commencement of the statutory time limitation for the reconsideration provisions in the *Act* from the date a decision is recorded in the claim file. Final decisions resulting from the reconsideration process are recorded in the claim file and communicated within the statutory time limitation.

The Board treats the commencement of the statutory time limitation for the review provisions in the *Act* as the date a decision is communicated.

Notification of decisions may occur through written or verbal communication. In the latter case, documentation on the claim file is considered sufficient evidence that verbal communication has occurred.

Communication regarding a straightforward, uncontested decision that is in favour of the party making the request or claim, need not contain an explanation of the reasons for the decision, unless the party had requested reasons or requests them when notified of the decision.

For example w~~W~~here a claim is allowed and there has been no protest from the employer, **the Board does** no**t provide** reasons **for the decision**~~are given~~. **Rather, t**~~T~~he Board simply sends the cheque**, which notifies the worker that the claim has been accepted**. ~~Notification of such action will only be disclosed to advocates and representatives where proper written authorization is in place.~~

When **the Board makes** a decision ~~is made~~ to allow a claim that has been protested by an employer, the employer will be notified of the decision ~~and~~**with** reasons~~, where possible by telephone~~.

~~Only personal information which is relevant to the claim and the issues involved, and that the employer has a need to know, will be disclosed. A letter explaining~~

~~the decision and reasons will be sent in any case where the employer cannot be contacted by telephone, or where in the course of the telephone conversation the employer indicates that in spite of the explanation there is dissatisfaction with the decision. The letter is sent to the employer, with a copy to the worker.~~ The guidelines outlined in the following paragraph, with regard to **communicating reasons**~~letters sent to workers~~, should be followed to the extent that they apply. ~~Employer advocates are notified in the same manner as workers' representatives.~~

Where a decision is made adverse to a worker, the **Board communicates its decision with** reasons ~~are stated in a letter to the worker~~. The **decision includes, where appropriate, the following elements**~~guidelines set out below apply in writing these letters. The Board officer will, where appropriate~~:

1. ~~Specify clearly~~**a summary of the decision and** the matter being adjudicated~~.~~**;**

~~2. Describe investigations carried out, including interviews conducted~~.

2~~3~~. **an o**~~O~~utline **of** the evidence **that was** considered~~.~~**;**

3~~4~~. **an e**~~E~~xplai~~n~~**ation** ~~how the evidence was evaluated (specify its reliability; analyze conflicting evidence; give reasons for~~**of** the weight apportioned to the evidence **and the reasons for the weighting**~~).~~**;**

~~5. Review contact with the worker where the relevant issues were discussed and detail the worker's response.~~

~~6. List the various conclusions possible from the evidence.~~

~~7. In support of the conclusion reached, explain:~~

~~a) what evidence was considered favourable, with reasons, and~~

~~b) what evidence was considered unfavourable, or discounted, with reasons.~~

4~~8~~. **a reference to any sections of the *Act* or Board policy that had a specific bearing on the matter**~~Point out statutory, policy or discretionary factors involved.~~**; and**

~~9. Discuss the question of evenly weighted evidence.~~

~~10. Summarize the formal decision.~~

~~11. Explain what the decision entails regarding non-payment of wage loss compensation, medical accounts, other benefits, etc.~~

5~~12~~. ~~Include~~ an explanation of the relevant rights of review and/or appeal.

The Board provides n~~N~~otice of ~~the~~ decision**s** ~~will be sent to the employer and~~ to **a worker or employer's**~~any~~ advocate**s** or representative**s** ~~designated by the worker or employer by~~**where proper** written authorization **is in place**.

Before a review or appeal is initiated, the type of information from a worker's claim file that can be disclosed to the employer and/or authorized advocates and representatives is limited. Employers are only entitled to disclosure of personal information on a need to know basis, as required for the adjudication and administration of the claim. The same approach applies for notification of decisions to health care providers, such as physicians and pharmacists.

The term "reject" ~~in decision letters~~ is different than a "disallow"**. A claim is rejected where the applicant is not covered under the *Act,* and accordingly falls outside of the jurisdiction of the *Act*. An example would be a claim from an independent operator who has no personal optional protection, or a worker employed by an employer who is not covered under the *Act*. The Board disallows claims that are within its jurisdiction but where it determines that the worker is not entitled to compensation in respect of the injury, occupational disease or mental stress.**~~and refers to a claim where:~~

~~1. a self-employed worker has no personal optional protection;~~

~~2. the worker was employed by an employer not covered under the *Act*;~~

~~3. a report was submitted in error. Normally, this occurs when a physician, on the basis of a misunderstanding, submits a report in error.~~

When**n**~~re a claim has been reopened~~ **the Board reopens a claim,** the **worker,** employer**(s)** and/or authorized advocates and representatives will be notified of the decision.

APPENDIX A

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II
DRAFT POLICIES

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EFFECTIVE DATE:	**New Effective Date.** ~~March 3, 2003 (as to references to evenly weighted evidence and the rights of review and/or appeal)~~
CROSS REFERENCES:	**Policy Item #99.10, *Disclosure of Issues Prior to Adjudication;* Policy Item #99.21, *Notification of Rights of Review and Appeal*; Item C14-102.01, *Changing Previous Decisions – Reopenings*; and Item C14-103.01, *Changing Previous Decisions - Reconsiderations* of the *Rehabilitation Services and Claims Manual,* Volume II.**
HISTORY:	**Housekeeping amendments effective** January 1, 2005**,** ~~– Housekeeping amendment~~ to require written authorization for disclosure, and to clarify appropriate disclosure principles. **Amendments effective March 3, 2003, as to references to evenly weighted evidence and the rights of review and/or appeal.**
APPLICATION:	To all adjudicative decisions on or after the effective date.

APPENDIX A

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II
DRAFT POLICIES

Additions in Bold, Deletions Struckthrough

#99.21 Notification of Rights of Review and Appeal

In any case where an adverse decision that is reviewable and/or appealable is made with regard to a worker, the **Board informs the** worker ~~will be informed~~ of rights of review and/or appeal **regardless if the claim was rejected or disallowed**.

The **Board informs** employer**s** ~~will be informed~~ of rights of review and/or appeal where a claim that he or she protested is accepted, where a request for relief of costs is denied or where a request to limit compensation entitlement is denied. In all other cases where an employer makes it known that he or she disagrees with a decision, information about the review and appeal process **is**~~will be~~ made available to the employer. ~~If a claim is rejected on the basis that it did not involve an employer covered under the *Act* or there was no personal optional protection in force, notification of the review and/or appeal procedures is not automatically conveyed to the injured person.~~

In occupational disease claims, where there are a number of different employers identified, but none of the employers are responsible for 20% of the exposure, or more, decision letters and review and/or appeal information are sent to the employers' association that best represents the appropriate sector and rate group of industry.

EFFECTIVE DATE:	**New Effective Date.** ~~March 3, 2003 (as to references to review and appeal)~~
CROSS REFERENCES:	**Policy Item #99.20, *Notification of Decisions* of the *Rehabilitation Services and Claims Manual,* Volume II.**
HISTORY:	**Amendments effective March 3, 2003, as to references to review and appeal.**
APPLICATION:	To all adjudicative decisions on or after the effective date.