



Navigating the New WSIB Appeals System

*By Cézanne Charlebois**

On Friday March 1, 2013 the Workers' Compensation Section of the OBA hosted a very informative webinar which was attended by over 174 participants, to hear a panel of four experts help us understand some of the changes rolling out in the WSIB's Appeals System.

The panelists for this webinar were:

- Slavica Todorovic, Executive Director, WSIB Appeals Services Division
- Karen Wuori, Manager, WSIB Appeals Services Division
- Michael Zacks, Director, Office of the Employer Adviser
- Alec Farquhar, Director, Office of the Worker Adviser

Like many of the changes going on at the WSIB, the Appeals System is being revamped to provide better, more accountable and more efficient service to all stakeholders. The current Appeals model is over 15 years old and is no longer working proficiently as evidenced by the recent backlog of unassigned appeals in the 5,000 range.

Slavica Todorovic, Executive Director, WSIB Appeals Services Division

Strict Adherence to Statutory Time Limits in s. 120

Ms. Todorovic, cautioned that one of the first things that Appeals Services Division is going to do to control and limit the numbers is to focus on a renewed and strict adherence to the requirement to provide notice of the intent to appeal within the existing statutory guidelines of s. 120 of the Workplace Safety and Insurance Act ("WSIA"). This means that stakeholders have to bookmark their written intent to object within six months of the date of any decision and within 30 days of any Work Transition (formerly LMR) decision. These limits are not new. However, there will now be much less of a willingness to use their statutory discretion to allow objections to go forward if these deadlines have not been strictly followed¹.

¹ However, as a side note, it may be useful to remember that we can always use the very broad s. 121 of the WSIA which grants the Board with the "power to reconsider" any decision made by it, at any time, if it considers it advisable to do so. Also, I would suggest that you dismiss non-compliance with s.120 as the reason to exclude the

Once an appeal has been bookmarked within the statutory framework of s.120 there is still no time limit ever, for moving forward with the appeal. This is based on the belief by Appeals Services Division that people are generally motivated to obtain timely decisions and they will not proceed with an appeal with more than a 2-year delay without a very good reason. Because there was some consultation discussion on this topic suggesting a reasonable time limit to move forward with an Appeal might be two-years as in virtually every other administrative justice system so parties are not prejudiced by being dragged into a hearing years after the events have occurred, the Appeals Services Division will be monitoring this.

The Executive Director of the Appeals Services Division (“ASD”) indicated that changes were occurring, not just in their branch, but also with the Front Line Operations level decision makers. We should eventually be getting timelier information, better, well-written and reasoned decisions and re-considered decisions. At least, this is what they are hoping the new appeals model will do.

4 KEY FORMS

The four key forms in the new Appeals System were reviewed.

- **Intent to Object Form (IOF) (NEW)**

This new form is on the [WSIB website](#) and it replaces those previous letters that were sent in by the parties saying “I wish to object to the following decision dated...”. The form cannot be completed and submitted online at this time.

- Feedback last year (worker community) may not have access the internet for this form – if worker has any difficulty there is a 1-800 number to request a hard copy and get assistance to complete the form.
 - What specifically about the decision the objecting party is disagreeing with?
- **Participant Form** (not new, no changes) mailed to the opposing party.
 - **Appeal Readiness Form (ARF): (NEW)** most significant changes, expect more information than before (not on the website, is mailed by the Board and has worker or employer name and claim number on them) – Form goes to the new team (OIT). Signature was originally both the client **and** their representative – feedback in past few weeks from both sides saying that requiring two signatures was time consuming and problematic. So the Appeal Services Division has responded by now allowing just one signature from the authorized representative on the form.
 - **Respondent Form (also NEW) similar to the form used by WSIAT**
 - Sent out to the respondent if Objecting Party is expecting a Hearing in Writing
 - Another Form when the objecting party wants an oral hearing

use of s.121. That does not fit with the rules of statutory interpretation which clearly suggest that s.121 should stand on its own, giving very broad discretion to re-consider decisions anytime. The statutory discretion found in section 120 of the Act allows the Board the ability to allow an objection past the 6-month and 30-day limits “*within such longer period as the Board may permit*”. Certainly it is advisable to be safe and bookmark those intent to object forms promptly.

OIT: Operations Intake Team

This new team is comprised of 9-10 Case Managers and 2 Managers (one of whom is a former Appeals Services Division manager). This team is ideally designed to streamline the process by making sure that only “appeal ready” files are moved forward through ASD. Files should not be with the OIT for very long. It is hoped to be a quick review process which some of the following objectives:

1. An opportunity to highlight some issues where there may be a barrier to successful appeal process.
2. Make sure all the questions on ARF are answered completely.
3. Case Manager may call the objecting party who completed ARF to seek clarity.
4. Identifying: Significant New information cases or significant errors needing Operations to make a reconsideration.

It should be noted that only the 2 OIT Managers have the authority to re-consider decisions. The Case Managers in this department simply conduct a review of the file and identify information gaps. They have no re-consideration powers. If no new information is required, then the file will be referred to the Access Department at which time the Appeal Readiness Form (formerly known as the “Objection Form”) will be delivered with the Access file and the other party (usually the employer as 85% of all appeals are worker side) will obtain a copy of the Participant Form. The employer (or responding party) will not at that time receive a copy of the ACCESS file. Once the ARF is returned, then the other side will receive a copy of the ACCESS file and a Respondent Form for either a Hearing or No-Hearing type of appeal proceeding.

Hearings in Writing

Appeal Services Division is attempting to make the process more efficient by limiting “oral hearings on request”. There is now a detailed list on page 16 of the [Appeal Services Division Practice and Procedures](#) document outlining the kind of cases that will generally require an oral hearing (Table B) and the kind that are more suitable for a “hearing in writing” (Table A). Oral hearings are no longer immediately available upon request. The “Tables” are not rigidly adhered to and exceptions will be permitted if a party can demonstrate the need for an oral hearing based upon well-reasoned grounds, which, does not include that the matter falls under one list or the other. The Practice & Procedures manual lists in Table B those as generally requiring an “oral hearing”.

Table B. Oral Hearings:

- 1 Initial Entitlement (generally two party) –
chance event and disablements where there is contradictory information and/or testimony would add to the information already in the case material
2. Complex Occupational Disease
3. Complex Non – Organic Conditions
4. Traumatic Mental Stress

5. Job Suitability where there is contradictory information &/or testimony would add to the information already in the case material
6. Co-operation in Return to Work
7. Co-operation in Work Transition (Labour Market Re-entry)
8. Work Transition Plans
9. Re-employment (where the threshold for re-employment has been met)
10. LOE Lock-in (unless straight-forward and no factual dispute)
11. Recurrence more than 2 years from date of injury/illness
12. Survivor Benefits – complex determinations of who is a spouse/dependent

Downside Risk (DSR)

The concept of the “downside risk” was discussed extensively with the Consultation on Appeal System changes. The concept of the “downside” risk means that the Appeals Resolution Officer (“ARO”), when reviewing the claim file, could recognize an error in the adjudication of a “related issue” that is so significant it cannot be ignored. Under the new Appeal System, the ARO continues to have the right to identify a “downside” risk with proceeding to appeals on one decision, which then could open up the door for review and possible reversal of another decision relating to the issues that are being objected to, but not the subject of the current appeal. However, the “downside” risk identified will not be recorded in the claim file and parties will be given an opportunity to withdraw their appeal, proceed, or provide a submission (within 21 days) on the “downside risk” issue that had been identified by the ARO.

Karen Wuori, Manager of WSIB’s Appeal Services Division :

What is Appeal Ready?

Karen Wuori, Manager of WSIB’s Appeal Services Division cautioned us that when a matter is “appeal ready” there will now no longer be a tolerance for adding new issues or new documents at the last minute which unfortunately had been occurring.

Objecting Party:

- All issues have been considered by decision makers in operations
- All information (job descriptions, medical reports, etc)
- If there are gaps or inconsistencies in the case, explain why?
- ARF: what aspects of the decision letter being objected to (can’t add issues later)

Responding Party:

- Complete the Participant Form
- Will receive a copy of the ARF (lets you know if the case is moving forward)
- Will also get complete ACCESS to claim file and a Respondent Form with 30 Days to send it back to ASD – asking you for your position
- Appeals Manager (OIT) will be looking at ARF and Respondent Form when deciding if there is a need for an Oral Hearing
- Will not be able to submit a Respondent Form later in the process

Michael Zacks, Director, Office of the Employer Adviser

Points of interest from Mr. Zacks included:

- Very comprehensive changes.
- Recommends reading the new practice and procedures document, found at the following link: <http://www.wsib.on.ca/files/Content/AppealsAppealsPP/AppealsP&P.pdf>.
- Clock starts to run on the **date of the decision letter** (send in Intent to Object form and keep fax transmittal form for proof – Form has to be complete and Direction of Authorization has been sent in).
- No more Objection Letters now (must send in Intent to Object Form).
- More information from the Office of the Employer Adviser: <http://www.employeradviser.ca/en/Non-Construction-Employer/News-Resources/index.php>.

Alec Farquhar, Director, Office of the Worker Adviser

Points of interest from Mr. Farquhar included:

- New focus on written submissions = be thorough.
- Will-Say statement submitted – consider now, what happens if it turns into a written process?
- Downside Risk (DSR) same as the way it has been – if withdraw, no appeal to WSIAT.
- 14-Day Rule: If ARF/RRF submitted to ASD only have 14-days of Hearing date to submit new medical.
- Discuss issues with opponent if two sides at Appeals (agreed upon facts save time, policy issues not in dispute, then can focus written argument on what IS in dispute).
- Provided us with a professional responsibility reminder that all stakeholders should focus on the effective administration of justice.
- Consider batching cases if there is a large employer with multiple claims or a union with multiple similar cases, but do not sacrifice the rights of one client for another.

There were so many excellent questions after this presentation that the panelists ran out of time. It is strongly recommended that members review the video on the OBA site and click here to review and print the [handouts](#) for this excellent presentation.

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