

Section	Policy
20	21.10.10

Section Title: Board and Corporate Administration - Board Administration
Subject: Requests for Consideration under Section 60.9
Effective Date: May 1, 2020

A. POLICY PURPOSE

Section 60.9 of *The Workers Compensation Act* (the *Act*) provides the Board of Directors with the authority to stay an Appeal Commission decision if the decision is based on a misapplication of the *Act*, regulations or a policy of the Board.

The WCB recognizes that decisions of the Appeal Commission should be considered final. The Board of Directors will only exercise its authority to stay an Appeal Commission decision and direct a rehearing in extraordinary circumstances.

This policy identifies the conditions that must be met before the Board will consider a request to exercise its authority under section 60.9. It also explains the process for administering such requests.

B. POLICY

I. Conditions of Requests for Consideration under Section 60.9

The Board of Directors will only consider requests made under section 60.9 when:

- a) the request is received, in writing, within 90 days of the release of the Appeal Commission decision; or
- b) the request is the result of an application for judicial review; or
- c) the request is the result of a referral from the Chief Appeal Commissioner or Provincial Ombudsman.

If the above conditions are met, the requester must also clearly and specifically identify an error in the Appeal Commission's application of the *Act*, *Regulations* or Board policy.

II. Process for Administering Requests under Section 60.9

1. Evaluation by General Counsel and Corporate Secretary

Requests for consideration under section 60.9 are first referred to the General Counsel and Corporate Secretary (the General Counsel) for review. The General Counsel reviews the request to ensure that:

- a) it has been received within 90 days or meets the other conditions outlined above;
- b) a clear error in application of the *Act*, regulations or policy has been specifically identified; and
- c) the error identified is not a finding of fact (i.e. does not concern the weight given to evidence, the existence or lack of evidence, or the credibility of evidence or witnesses).

If the General Counsel determines that these conditions have been met, he or she will notify the requester in writing that the matter will be referred to the Board of Directors for consideration. If the General Counsel determines that the conditions have not been met, he or she will notify the requester in writing that the matter will not be considered by the Board of Directors and provide reasons for this decision.

The General Counsel may recommend that the Board of Directors waive the condition that the application be submitted within 90 days of the Appeal Commission's decision. The Board may do so if it is satisfied that applying the condition would result in an injustice.

2. Notification of Parties and Invitation to Make Submissions

Once a request for consideration under section 60.9 of the *Act* has been accepted and the requester notified in writing, the General Counsel will provide written notification to other parties with a direct interest in the matter that a request for consideration under section 60.9 of the *Act* has been received.

Parties will be invited to make written submissions to the Board of Directors respecting the alleged error within 30 days of being notified of the request.

Copies of all correspondence will be provided to the Chair of the Board for information.

3. Taking Advice and Scheduling the Hearing

After the 30-day time limit for written submissions has expired, the General Counsel will confirm the requester has received copies of all submissions made and still wishes to proceed with the matter.

If the requester wishes to proceed, the matter is referred to legal counsel to prepare a legal opinion. Legal advice given to the Board of Directors on issues pursuant to section 60.9 is privileged and will not be disclosed without Board approval.

4. Consideration by the Board of Directors

Matters considered under section 60.9 are discussed by the Board in private.

III. Board Decisions

Once the Board of Directors has reached a decision on the matter, the General Counsel will advise all parties of the Board's decision. If the Board decides to stay a decision of the Appeal Commission, the matter is referred back to the Appeal Commission for a new hearing. The new hearing must be conducted by a panel of three commissioners who did not participate in the original decision.

C. REFERENCES

The Workers Compensation Act, Section 60.9 and 60.10

History:

1. Policy 21.10.10 was established on February 25, 1994, by Board Order 9/94, effective January 22, 1994.
2. Administrative Guidelines added to incorporate additional direction of the Board of Directors as provided at its April 22, 1994, meeting.
3. Administrative Guidelines updated to reflect the May 26, 1994, direction of the Board regarding the 90-day time limit.
4. Policy amended by Board Order 41/94 to specify that requests which do not meet the criteria for consideration under section 60.9 will not be re-directed.
5. Minor changes have been made to the policy and guidelines – April 2003.

6. Amendments to Section B(1) to update the reference to Section 60.10 of *The Workers Compensation Act* rather than the former 60.91 effective January 1, 2006, updated May 1, 2006.
7. Minor formatting and grammatical changes were made to the policy, June 27, 2012.
8. Policy amended effective May 1, 2020, by Board Order 13/20 on April 17, 2020 to accommodate changes to the Act.
9. Minor formatting changes were made to the policy, September 2020.