

Section Title: Board and Corporate Administration - Board Administration
Subject: Disclosure of File Information - Employer Access
Effective Date: July 1, 2000

A. PURPOSE

This policy establishes criteria for disclosure of claim file information to employers prior to a formal reconsideration or appeal, and access to claim file documents for purposes of reconsideration or appeal.

The WCB recognizes that employers play an active role in the WCB programs and appeal processes. Often personal information about workers is required in order to participate meaningfully in the rehabilitation of an injured worker. However, before a formal appeal process has been commenced, restrictions are placed on the disclosure of personal information by *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*. The WCB must ensure that there is a very good reason before an individual's personal information is disclosed, and that only the minimum amount of information necessary to achieve the purpose is disclosed.

B. POLICY

I. DEFINITIONS

- **Access:** when a person or organization requests copies of records from the WCB.
- **Disclosure:** where the WCB wishes to provide personal information to an employer under its own service initiatives, policy or procedures.
- **Employer:** for purposes of this policy, "employer" refers to the worker's employer at the time of the accident as determined by the WCB and includes the employer's representative designated in the form prescribed by the WCB. In addition, an employer who is entitled to be a party in a reconsideration or appeal due to a prior transfer of costs decision, or the sale of a business, may be considered an employer for purposes of this policy.
- **Relevant:** formally, the definition is information that has a "bearing on or reference to the matter at hand". In the WCB context, information is relevant if it is required to determine entitlement to, or the amount of, compensation benefits or services.
- **Reconsideration:** the first level of appeal about claims related matters at the WCB.
- **Worker:** for purposes of this policy, "worker" includes dependants of a deceased worker or the worker's authorized representative. The Worker Advisor's Office is also considered to be a representative of the worker for the purposes of this policy.

II. SCOPE OF THIS POLICY

This policy relates only to documentation received by the WCB after January 1, 1992. Documentation received prior to that date will be provided according to the existing policy on disclosure of file information, as amended up to and including Board Order 24/91, in section 21.50.10 of the Policy Manual

III. REQUIREMENTS FOR AUTHORIZING EMPLOYER REPRESENTATIVES

1. The individual requesting or receiving claim file information must be the employer or an authorized representative of the employer as designated in the form prescribed by the WCB. Authorizations must be in writing and will remain in effect until revoked by the employer or up to a maximum of two years. Where the WCB determines that the authorization is invalid, disclosure or access to information will be refused until a valid authorization in the form prescribed by the WCB is received from the employer.
2. Where the employer representative is a former WCB employee previously involved in the worker's file, the WCB will refuse disclosure or access to claim file information until an alternate representative is appointed or the employer requests the information be provided directly to the employer.
3. An initial adjudication decision must be made on the claim prior to disclosing or giving access to claim file information.

IV. DISCLOSURE OF INFORMATION PRIOR TO FILING AN APPEAL

4. Before a formal reconsideration is filed at the Review Office, the WCB may disclose limited information to the employer only when the WCB is satisfied that the employer needs the information for a WCB program purpose.
5. To apply this test, the WCB must consider the information and the employer's need for the information in the context of the goals of the compensation program. When requested, the WCB may disclose claim file information that an employer reasonably needs to know in light of the WCB's program purpose. However, the WCB will only disclose the minimum amount of information necessary to accomplish the purpose.
6. For the purposes of disclosure of claim file information, the WCB considers its program purpose as the administration of a statutory insurance program for persons injured as the result of a work-related accident, and their dependants.
7. The program is comprised of several aspects that address workplace accidents. The WCB is involved in promoting health and safety of workplaces with a view to preventing and reducing workplace injuries and occupational diseases. When accidents do occur, however, the WCB provides benefits and services to aid the worker's recovery. Part of case management at the WCB is to facilitate return to work situations with the accident employer whenever possible and without further risk of injury to the worker or co-workers. In certain cases, the WCB facilitates the worker's retraining and re-entry into the labour market. In the compensation program, the WCB rather than the employer provides case management services.
8. Copies of medical reports will not be disclosed to the employer before a reconsideration or appeal has been filed. Limited medical information may, however, be summarized and disclosed where the WCB is satisfied that the employer needs the medical information for a WCB program purpose. Only the minimum amount of information required to fulfil the purpose can be disclosed.
9. Examples of the disclosure of claim file information are provided in the guidelines to this policy.

V. ACCESS TO INFORMATION FOR APPEAL PURPOSES

1. GENERAL:

- a) After a formal reconsideration or appeal has been filed by either the worker or employer, the employer will be provided, on request but subject to the objection processes in this policy, claim file documents that are relevant to the particular issue under reconsideration or appeal.
- b) The request for access must identify a specific issue (or issues) which is subject to reconsideration or appeal.

2. WORKER'S RIGHT TO OBJECT TO EMPLOYER ACCESS

- a) Workers will be informed of an employer's request to access claim file information. The worker has the right to review the claim file contents and may object to the release of any information received by the Board after January 1, 1992.
- b) The worker may review the claim file contents in person, or request a copy of the contents of that file.
- c) Sufficient time will be provided to the worker to permit review of the claim file's content (see "Time Constraints" below).
- d) Objections to release of information must be specific; a general refusal will not be considered sufficient. The worker must identify the specific documents or the portions of a document that he/she does not want released.
- e) The worker must provide reasons for the objection in writing. To obtain help with writing their objections, the worker may request assistance from WCB staff, or arrange assistance by contacting a Worker Advisor or a private advocate.
- f) The worker will be given the opportunity to review all information received after January 1, 1992 prior to its release, regardless of whether or not any previous information was released.

3. RELEVANT INFORMATION

- a) As a general principle, information used in the compensation issue under reconsideration or appeal will be considered relevant. Only relevant documents will be released.
- b) Different sections of the claim file may be considered relevant depending upon the issue under consideration. When the worker raises an objection to employer access or where the WCB has a reasonable belief that the worker is not competent to give an informed consent to employer access, the WCB will determine relevance on a document by document basis.
- c) A table of examples of issues and the claim file sections that could be provided is contained in Appendix A.

4. DOCUMENTATION NOT PROVIDED

- a) Medical reports (excluding WCB medical summaries) received by the Board prior to January 2, 1992 will not be provided to the employer. Correspondence received by the Board on or before January 1, 1992, including WCB medical summaries, will, however, be made available to the employer, upon request, as provided for in Board Order 140/84 (as amended by Board Orders 92/89, 10/90 and 24/91).

- b) Correspondence relating to third party privileged information will not be provided to either the employer or the worker. Examples of such privileged information are:
- Workplace Health and Safety Reports;
 - Provincial Ombudsman correspondence; and
 - Legal opinions which involve solicitor/client privilege of the WCB and WCB solicitors.
- c) Correspondence from Canada Revenue Agency regarding income will not be provided to the employer unless it is relevant to the issue in dispute.

5. TIME CONSTRAINTS

- a) The worker will have 10 business days to provide consent or written objections to release of information to the employer. If the worker fails to reply within 10 business days, the Board may release relevant information. Reasonable effort will be made to contact the worker prior to such release.
- b) The employer will have 10 business days to provide written objections to the WCB's decision not to release of information to the employer. If the employer fails to reply within 10 business days, the WCB will withhold the information. Reasonable effort will be made to contact the employer regarding the decision to withhold information.

6. FURTHER LEVEL OF APPEAL

Worker's Notice and Objections:

- a) The worker will be notified of the WCB's decision to release the information, and simultaneously, of his/her right to object and appeal to the Chief Appeal Commissioner (CAC).
- b) If the worker files an objection, the WCB may not release the information until a decision has been made by the CAC regarding the objection. If the worker does not file an objection within 10 business days after the WCB notifies the worker, the WCB may release the information. Reasonable effort will be made to contact the worker before releasing the information.
- c) The worker may add additional arguments to his/her objection in the documents that file a reconsideration or appeal.

Employer's Notice and Objections:

If the employer objects to WCB withholding claim file information, the employer may appeal to the Chief Appeal Commissioner (CAC), in writing, indicating the issue under appeal or reconsideration, and requesting access to relevant claim file information. The CAC will rule on the request and provide instructions to the WCB regarding the employer's access to the information.

7. APPEAL PANEL RULINGS ON RELEVANCE

Situations may arise when information has been received on a file after an access request has been processed and prior to, or during, an Appeal Panel hearing but the information was not provided to all parties to the appeal. In these situations, the Appeal Panel may rule on the relevance of the information and decide whether or not to provide the information.

VI. PENALTIES

1. Sub-section 101(1.2) of the *Act* specifically requires employers not to use information provided by the WCB for any purpose other than for a reconsideration or appeal, except with the approval of the WCB.
2. When there is an allegation of unauthorized use of personal information, the WCB will investigate the alleged incident in accordance with sections 101(1), 101(1.2) and 101(7) of the *Act*. In appropriate circumstances, the WCB may proceed to prosecuting the offence.

VII. FEE FOR COPIES OF FILES

1. The employer will be provided, upon request and subject to the provisions of this policy, one copy of claim file documents that are relevant to the particular issue under reconsideration or appeal at no charge, including copies of videotaped material.
2. To create another copy of file documents previously provided, the WCB will charge \$50 per hour with a minimum charge of \$25 per file and a minimum charge of \$5.00 for each update. The cost for copies of videotape material will be \$30 per cassette.
3. All charges are payable prior to release of any material.

C. REFERENCES

The Workers Compensation Act, sections 101(1.2) through 101(1.7) and 101(7) (After January 1, 1992)

The Freedom of Information and Protection of Privacy Act

The Personal Health Information Act. S.M. 1997

History:

1. Policy 21.50.40, *Disclosure of Information - Employer Access*, established by Board Order 8/92, effective January 1, 1992.
2. Policy clarified and amended effective November 1, 1996. Approved by Board Order 1/97, on January 27, 1997. Former policy re-issued as 21.50.40.01.
3. Policy clarified and amended effective July 1, 2000. Approved by Board Order 13/00, on April 27, 2000. Former policies re-issued as 21.50.40.01 and 21.50.40.02.
4. Guidelines have been revised. Also minor grammar, punctuation and reference changes have been made to this policy – March 2003.
5. Updated July 1, 2005 – Bill 41 effective July 6, 2001, redefined “spouse” and added a separate definition of “common-law partner”. The change in the policy adds the phrase “or common-law partner” after “spouse”.
6. Minor formatting and grammatical changes were made to the policy and titles were updated, June 27, 2012.
7. Minor formatting changes were made to the policy, September 2020.

D. ATTACHMENTS

Appendix A – Examples of issues and claim file sections that could be provided under file access.

E. ADMINISTRATIVE GUIDELINES**Examples of Information That May Be Disclosed For WCB Program Purposes**

1. A worker participating in a return-to-work program with the employer has restrictions on physical ability. A WCB program purpose is to promote a return to work whenever possible. Accordingly, an employer who asks about the worker's particular medical restrictions has a legitimate need to know because it is necessary for the employer to have this information to succeed in developing a return to work situation for the worker.
2. A worker has a physical limitation that could constitute a workplace hazard. A WCB program purpose is to minimize the risk of injury and disease. Accordingly, the employer needs to know particular information necessary to manage the potential hazards for the worker and co-workers.
3. An employer asks for detailed medical and correspondence information from the file in order to decide whether to request a reconsideration or an appeal. Under this policy, copies of medical reports cannot be disclosed until a request for reconsideration or an appeal has been formally filed by the employer. However, limited summarized medical information may be provided. Where a particular matter is in dispute, the employer should be referred to the access to information provisions of this policy.
4. In a telephone call, the employer wishes to discuss the file to see "how's it going". Since the employer has not identified the specific information required nor the reasons for needing the information, the employer's needs relative to a WCB program purpose should be clarified before disclosing any personal information about the worker. In general, employers need to know the injury or disease for which the claim has been accepted, when the worker is expected back to work, and what the worker is capable of doing back at work.
5. During a meeting, an employer representative asks to examine the worker's file. As the employer representative is limited to the minimum amount of information necessary to further the purposes of the compensation program, disclosing the entire contents of a claim file would be improper. The WCB would require the representative to clarify the issue of concern as it relates to a WCB program purpose before deciding what information can be released.

F. FORMS

EMPLOYER REPRESENTATIVE DESIGNATION

TO: FILE ACCESS DEPARTMENT, WCB of MANITOBA:

This form gives the WCB permission to release any rehabilitation & compensation information to which the employer is entitled to the representative designated below.

This authorization will be effective for a period of up to two years. The employer may cancel this authorization by writing to the File Access Department at the WCB.

This authorization is limited to the following claim:

Workers' Last Name	First Name	Claim Number
_____	_____	_____

- This authorization is for ALL claims involving the employer.
- All previous Authorizations for other representatives are hereby REVOKED.

ALL ITEMS IN CAPS ARE REQUIRED:

	<u>REPRESENTATIVE</u>	<u>EMPLOYER</u>
NAME: (PRINT)	_____	_____
TITLE:	_____	_____
COMPANY NAME:	_____	_____
ADDRESS:	_____	_____
	_____	_____
PHONE:	_____	_____
FAX:	_____	_____
e-mail:	_____	_____

 EMPLOYER'S AUTHORIZING OFFICER

 PRINTED NAME AND TITLE

Date: _____, 20__.

APPENDIX A - Employer Access**Examples of claim file sections provided when certain issues are in dispute:**

Category of issue:	If the issue under dispute is...	then the employer is given access to...
Initial entitlement	<ul style="list-style-type: none"> ➤ Claimant is not a worker* ➤ There was no accident.* ➤ There was an accident, but the worker was not injured. 	➤ Correspondence section only*
	<ul style="list-style-type: none"> ➤ Condition did not result from the accident. ➤ Worker was not disabled beyond the date of the accident. 	➤ Correspondence & medical reports
Amount of entitlement	<ul style="list-style-type: none"> ➤ Gross average earnings calculation not correct ➤ Net average earnings calculation not accurate ➤ Worker should not receive temporary supplement. 	➤ Correspondence section only
	<ul style="list-style-type: none"> ➤ Worker's earning capacity not impaired by injury to degree accepted by the Board 	➤ Correspondence & medical reports
Second injury	<ul style="list-style-type: none"> ➤ Pre-existing condition exists 	➤ Correspondence & medical reports.
Continuing entitlement	<ul style="list-style-type: none"> ➤ Worker was not disabled beyond ____ (date). ➤ There was no permanent disability ➤ Lost time beyond ____ (date) was not work related. 	➤ Correspondence & medical reports
Dependency	<ul style="list-style-type: none"> ➤ Person claiming dependent's benefits is not a spouse or common-law partner or dependent 	➤ Correspondence section only

*** In exceptional circumstances, relevant portions of initial medical reports may be provided.**