

Section Title: Board and Corporate Administration - Board Administration
Subject: Requests for Consideration under Section 60.9
Effective Date: January 22, 1994

POLICY PURPOSE

Section 60.9 of *The Workers Compensation Act* (the Act) provides the Board of Directors with the authority to set aside a decision of the Appeal Commission, when the Appeal Commission has not properly applied the Act, Regulations or policy of the Board.

Regulation 279/91 sets out the "Appeal Commission Rules of Procedure."

The Act contemplates that a decision of the Appeal Commission is final and that the Board will exercise its powers only in extraordinary circumstances.

The Board of Directors considers it prudent to establish policy that expresses when and how the Board considers requests to exercise its powers under Section 60.9 of the Act.

A. POLICY

1. The Board of Directors will only consider exercising its powers under Section 60.9 of the Act when:
 - a) i) a written request is received within 90 calendar days of the release of the appeal decision;
or
 - ii) the request is the result of an Application for Judicial Review, or a referral from the Chief Appeal Commissioner or Provincial Ombudsman;

AND

- b) the requesting party (the "Requester") clearly and specifically identifies an error in the Appeal Commission's application of the Act, Regulations or Policy of the Board.
2. The Board of Directors may delegate initial consideration of a reviewable matter to a Committee of the Board. The Committee would then present its recommendation to the Board of Directors, which will determine whether the appeal decision will be set aside.

REVIEW AND CONSIDERATION PROCESS

The Board of Directors has established the following process for administering requests that the Board exercise its powers under Section 60.9 of the Act:

1. A request for consideration is referred to the Office of the Corporate Secretary for review. If the requester does not specifically identify an alleged error, the Corporate Secretary Office informs the Requester that they have not identified a reviewable error, and that the matter is not being considered.

If the alleged error concerns matters of evidence or the request has not been received within the 90 calendar day time frame, the Corporate Secretary Office advises the Requester why the matter will not be considered.

Requests that do not meet the criteria for consideration by the Board will not be redirected by staff to the Chief Appeal Commissioner for re-consideration under Section 60.10(1), unless the Board of Directors specifically requests such a referral. In normal circumstances, the Requester must apply to the Chief Appeal Commissioner directly.

2. If an error has been identified which warrants further review, all parties with a direct interest in the matter are advised of the specific reviewable error.

The other parties with a direct interest (other than the Requester) are invited to make a written submission on the alleged error at law as identified by the Requester. They are given 30 calendar days to do so. They may be asked to provide a copy of their submission to the other parties directly.

Copies of this correspondence are provided to the Chairperson for information and to General Counsel as advance notice of a reviewable matter.

The Corporate Secretary schedules the matter for a future Board or Committee meeting, as appropriate.

3. Upon expiry of the 30 calendar day time limit, the Corporate Secretary Office confirms, verbally or otherwise, that the Requester has received a copy of all submissions made in the matter and whether the Requester still wishes to proceed with the matter.
4. Where the Requester declines further consideration, the Corporate Secretary Office will confirm this in writing with all the parties, and the process ceases.
5. Otherwise, the matter is referred to counsel to prepare a legal opinion. Counsel solely addresses the alleged error at law as it has been specified by the parties in their submissions. Counsel provides the legal opinion to the Corporate Secretary, who advises the parties when the matter is scheduled to be considered by the Board.
6. Matters under Section 60.9 are presented to the Board of Directors (or a Committee) at special meetings held four times a year, as required.

7. Legal advice to the Board of Directors on issues pursuant to Section 60.9 is privileged. Board discussions of these matters are conducted in-camera.
8. Once the Board of Directors has decided the matter, the Corporate Secretary Office will:
 - a) advise the parties of the Board's decision;
 - b) advise the Appeal Commission of any matter that requires a new hearing;
 - c) advise the Administration, when action is required.

B. REFERENCES

The Workers Compensation Act, section 60.9

Regulation 279/91 *Appeal Commission Rules of Procedure*

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.

C. ADMINISTRATIVE GUIDELINES

1. When legal concepts form the basis on which the matter is being brought forward to the Board of Directors, the material presented for consideration includes a comprehensive explanation of the legal concepts.
2. At each meeting of the Board of Directors designated for consideration of 60.9 matters, the Corporate Secretary reports any decisions made by the Appeal Commission on matters sent back for a re-hearing. This report includes background on the issue which gave rise to the previous appeal decision being set aside.
3. The 90 calendar day time limit under section A.1.(a) shall apply to all applications received 90 calendar days after the policy came into effect, ie., all applications received on or after May 26, 1994.