

Purpose

Timely decision-making is a fundamental component of the Workplace Safety and Insurance Board's (WSIB) commitment to providing excellent customer service. To achieve this, decision makers are responsible for gathering relevant information, weighing evidence and making decisions within a prescribed timeframe. The decision is then communicated to the workplace parties (WPP) who, in turn, have the right to object to the decision.

The WSIB may reconsider any decision, and confirm, amend, or reverse it. This process begins at the adjudication level with the original decision-maker. Operational Policy 11-01-14 Reconsiderations of Decisions provides direction on who can reconsider decisions. The focus of this document is the adjudicator's review of a decision.

Ensuring the timely handling of the reconsideration process is integral in maintaining quality customer service and ensuring appropriate benefits and services are provided to the workers of Ontario.

This document will serve as a refresher on the reconsideration process at the adjudication level.

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Reconsidering Decisions

Principles

- There is a valuable opportunity for the decision-maker to reconsider their decision after a completed Objection Form is submitted.
- Where no new information or argument is provided either in the Objection Form or accompanying the Objection Form, the claim should be referred promptly to the Appeals Branch so that the Appeals Resolution Officer review process can commence
- Where new information or argument is submitted and causes the decision-maker to seek additional information, it is generally expected that this process will be completed within 30 days of receiving the Objection Form.
- If the scope of the additional enquiries require the reconsideration process to continue for longer than 30 days, it is important that the decision-maker communicate the reason for the delay, and the nature of the further inquiries being made, to the party who filed the Objection Form.
- This process supports an ongoing dialogue between the objecting party and the decision-maker. The information exchanged during these discussions should be documented on the file and reviewed as part of the reconsideration process.
- Once a reconsideration decision is made, it should be communicated in writing to the workplace parties. The letter should explain the rationale, including applicable policies, and address the new information or argument provided by the objecting party.

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Setting Timelines – 30 Day Reconsideration

From the time a signed Objection Form is received by the decision-maker, there is an expectation that the decision be reconsidered within 30 days.

When no new information is submitted the decision-maker is responsible for:

- Completing an Appeals Branch Referral memo (if required ensuring it is reviewed and countersigned by their manager)
- Referring the file to Access and to the Appeals Branch
- Notifying the WPP that the file has been referred to the Appeals Branch

When new information is submitted the decision-maker is responsible for:

- Reviewing the submitted information and initiating any further enquiries required to reach a conclusion
- Rendering a reconsideration decision

The decision-maker communicates this information verbally and in writing to the WP.

Reminder...

*When a review/reconsideration does not change an outcome, **No** objection paragraph/time limit is included in the letter and the file is promptly referred to Access and the Appeals Branch.*

If the original decision is amended, the objection paragraph is included in the reconsideration letter. If the decision is reversed the notice letter to the opposite party must include the objection paragraph/time limit. If in either situation

the party wishes to pursue the appeal the matter should be expedited.

The WSIB has the authority to reconsider any decision “at any time as it considers advisable to do so”. This provides the ability to change a decision in appropriate circumstances after the expiry of the statutory appeal period. (Note the Appeal System Practice & Procedures - Appendix A on the website)

Identifying Types of New Information

The objecting party is asked to submit new information with their Objection Form so the adjudicator may reconsider the decision. This information may include:

1. **Medical Information.** The objecting party may submit medical information that existed prior to the original decision but was not part of the information on file –or- new medical information that has been obtained subsequent to the original decision. For information to consider when reviewing this new information, please see the Adjudication Best Approaches Guide “Weighing of Medical Evidence”.
2. **Missing Information.** Decision-makers are responsible for obtaining all of the information they feel is necessary to making a decision. There are situations, however, when numerous attempts have not resulted in obtaining all of the necessary information. If a decision has been rendered and further information submitted with the objection form, it is important to note and acknowledge this in any reconsideration review.

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3. **Presentation of New Issue.** The objecting party may include a request to consider entitlement to a new issue when submitting their information. For instance, the adjudicator has made a decision on the suitability of a job in reference to a compensable back injury and the worker is now claiming entitlement for the left knee. It is necessary to provide a decision on the new issue as part of the reconsideration process noting entitlement to the left knee will have an impact on the suitability of the job.
4. **Interpretation of Policy.** The decision-maker should ensure the parties understand the policy that was used in the decision making process. The objecting party may question the decision-maker's interpretation of the policy or may introduce another policy or decisions that they believe support their position. When weighing this information, the decision-maker can consider how the policy was applied, but the review should focus on how it could apply to the facts in their particular case. If clarification of the application of the Policy is needed, decision-makers can consult with their manager who may involve a Policy Analyst or contact an Adjudication Specialist in the Adjudication Branch.
5. **Clarified Statements.** Through the Access process, the objecting party receives a copy of the claim file. When documenting statements on file, the language used by the decision-maker should reflect the statement of the workplace party. When decision-makers paraphrase this information when documenting, it can sometimes impact the intent of the statement. When clarification is subsequently provided it should be carefully noted.
6. **Overlooked information.** Information that may already be on file but does not appear to have been considered in the rationale of the decision or may have been overlooked. The objecting party may highlight this information to ensure it is weighed in the reconsideration.

Reconsideration Checklist

Manager review / discussion is suggested in disputes where the party submits new information (i.e. Checklist #2) because these types of disputes are often more complex.

Checklist #1 No New Information

Objection Form received on Worklist

Adjudicator reviews form:

**Further dialogue NOT required
(expedite referral of case to Appeals
Branch, target within 1 week)**

1. Complete Appeals Branch Referral Memo (if required, have countersigned by manager)
2. Refer claim to Access and Appeals Branch
3. Notify the workplace parties (WPP) of the referral

Checklist #2 New Information

Objection Form received on Worklist

Adjudicator reviews form:

1. Set follow-up system less than 30 days from receipt of Objection Form (update ACCD with shadow code)
2. Review the submitted information to determine if further enquiries required:
 - 2a. If no enquiries, proceed to reconsideration review.
 - 2b. If making further enquiries, document planned activity and expected timelines and inform WPP.

Advise the objecting party if reconsideration expected to go beyond 30 days. Use system follow-up to ensure WPP are advised on a regular basis of the status.

3. Complete Reconsideration Memo
4. Communicate Decision to WPP
5. In cases where the decision is not altered refer claim(s) to Access and the Appeals Branch

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Putting It All Together

Scenario A: Sample Reconsideration Memo – Decision Altered

Issue in Dispute

The worker, W. Robert is objecting to the denial of loss of earnings benefits for July 7th and 8th 2005.

Information Submitted by Objecting Party

Objection form signed and dated September 30, 2005. W. Robert has submitted a medical note from a doctor at Eastside Clinic dated Sep 20, 2005 authorizing him off work July 7th and 8th 2005.

Review of Original Decision and New Information

On July 6, 2005 W. Robert a 41 year old warehouse worker sustained an 8cm laceration to his left palm when handling a greasy part. He was treated at Eastside Clinic and received 8 stitches and was given a prescription for pain and an antibiotic. A functional abilities form completed at the time of original treatment confirmed he was capable of returning to suitable employment consisting of no use of left hand for 7 days. The employer confirmed an offer of suitable employment in their office commencing July 7, 2005 that did not require use of his left hand. The worker accepted the offer in writing on July 6, 2005 however did not show up for work on July 7th or 8th.

When contacted, the worker stated that he was unable to work on the 7th and 8th due to hives. Loss of earnings benefits were denied for July 7th and 8th as there was no medical information on file to support any relationship between the hives and the work-related injury. The worker had been offered suitable employment within his functional capabilities, based on his medical examination of July 6, 2005.

The worker did submit a medical note dated Sept. 20, 2005 from Eastside Clinic. I contacted the clinic to clarify the worker's status at time of the examination. Dr. Etak confirmed that W. Robert had been given an antibiotic on July 6, 2005. When he presented to the clinic on July 8, 2005 he had hives over his face, arms and trunk. Dr. Etak stated that although the worker did not indicate any allergy to medications, this was the first time he was prescribed this particular antibiotic. It was likely the hives were a result of an allergic reaction to the antibiotic.

Conclusion

Based on this additional information, I accept Dr. Etak's findings that the hives were a direct result of the antibiotic provided to the worker in treating the work injury. As a result, the worker would not have been capable of returning to the suitable employment offered on July 7th or July 8th. Full loss of earnings are payable for these dates.

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Sample Letter Based on Scenario A – Notice to Opposite Party



200 Front Street West
Toronto ON M5V 3J1

200, rue Front Ouest
Toronto ON M5V 3J1

(416) 344-1000
1-800-387-0750
Fax: (416) 344-4684
TTY: 1-800-387-0050

(416) 344-1000
1-800-387-0750
Télécopieur: (416) 344-4684
ATS: 1-800-387-0050

October 3, 2005

ABC MANUFACTURING LTD
2000 AIRPORT WAY
ANYWHERE, ON L4G 2L8

ROBERT, W
Claim 23456781

When writing the WSIB please
quote the above file number.

Indiquez le numéro de dossier
dans toute correspondance
avec la CSPAAT.

Dear Sir or Madam:

Enclosed for your information and records is a copy of the correspondence addressed to Mr. W. Robert. I have changed the previous decision and granted benefits in this claim.

If you do not understand the reasons for the decision, or if you do not agree with the conclusions reached, please call me. I would be pleased to discuss your concerns.

I also wish to inform you that the *Workplace Safety and Insurance Act* imposes time limits on appeals. If you plan to appeal the decision, the *Act* requires that you notify me in writing by April 3, 2006.

Yours sincerely,

Adjudicator's Name
Adjudicator
Service Delivery Division

Phone Number

Enclosure

Sample Letter Based on Scenario A – Notice to Objecting Party



200 Front Street West
Toronto ON M5V 3J1

200, rue Front Ouest
Toronto ON M5V 3J1

(416) 344-1000
1-800-387-0750
Fax: (416) 344-4684
TTY: 1-800-387-0050

(416) 344-1000
1-800-387-0750
Télécopieur: (416) 344-4684
ATS: 1-800-387-0050

October 3, 2005

MR W ROBERT
456 EASTERN AVE
ANYWHERE, ON L4G 2L2

ROBERT, W
Claim 23456781

When writing the WSIB please
quote the above file number.

Indiquez le numéro de dossier
dans toute correspondance
avec la CSPAAT.

Dear Mr. Robert:

As we discussed today, I have reviewed your objection to the denial of loss of earnings benefits for July 7 and 8, 2005.

Benefits were originally denied for these days as you and your employer had arranged for your return to physically suitable work as of July 7, 2005. You stated you were unable to work those days due to hives but there was no medical information on file showing a relationship between the hives and your work-related injury.

You submitted an objection form dated September 30, 2005, along with a medical note dated September 20, 2005. I contacted your doctor for more details and he advised you were examined on July 8, 2005 and had hives over your face, arms and torso. He felt the hives were likely an allergic reaction to the antibiotic prescribed for your work-related injury, noting this was the first time you had taken that particular antibiotic.

When a worker has a new medical problem that occurs after the original date of injury, the new medical problem can be accepted if it is medically related to the original injury.

As the new information shows a direct relationship between your hives and the medication prescribed for the treatment of your work-related condition, I have allowed loss of earnings benefits for July 7 and 8, 2005.

Yours sincerely,

Adjudicator's Name
Adjudicator
Service Delivery Division

Phone Number

Copy: Employer
 Representative, if applicable

www.wsib.on.ca

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Scenario B: Reconsideration Memo – Additional Enquiries But Decision Not Altered

Background Information

A signed Objection Form was received on the work-list September 9, 2005. The worker is also claiming entitlement to right elbow problems as a result of his injury. The combination of his shoulder and elbow problems are contributing to his inability to work.

Summary Original Decision

On January 15, 2005, D. Renaud a 38-year-old assembly line worker was reaching overhead to grab a moving doorframe when the line jerked causing him to feel immediate pain in his right shoulder. The accepted diagnosis was rotator cuff tear and worker had a surgical repair done on April 30, 2005.

He commenced a 12-week course of physiotherapy subsequent to his surgery and was discharged with precautions of avoiding overhead activities with the right arm and no lifting greater than 20 lbs. A permanent impairment was identified and the worker was felt to be at maximum medical recovery.

The employer was able to identify a suitable job for this worker on a different line. The job consists of working at waist level and placing 4 parts into a metal cast. Each part weighs less than 2 lbs. Production is approximately 1000 parts per shift. The job was available commencing August 6, 2005 and is a regular job at their plant.

The worker did not return to the job as he felt totally disabled and not capable of performing the job offered. Noting the available information it was determined that the job was suitable and no further loss of earnings were payable effective August 6, 2005. This decision was made August 8, 2005.

Nature of Additional Enquiries

There is very limited information about the elbow condition on the file. In order to clarify whether there is a relationship to the work accident and any potential impact on the issue of job suitability a detailed medical report from the worker's physician was requested. Note the letter dated September 13, requesting information concerning the right elbow. Additional details about the onset and general work process were secured from the worker via telephone (note M# 25).

Conclusion

After reviewing all the information, I am unable to find that the worker's right elbow condition can be reasonably linked to the work accident or general work process. The problem had been noted initially after some home renovations in 2004. There has been no active treatment rendered for the condition in the last 12 months. The physician noted no permanent precautions associated with the right elbow. Noting this, entitlement for the right elbow condition is denied and the prior decision is confirmed. The workplace parties will be advised the matter will be forwarded to the Appeals Branch.

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Sample Letter Based on Scenario B – Confirmation of Original Decision



October 3, 2005

MR D. RENAUD
1234 WESTSIDE LANE
SOMEWHERE, ON M5N 3P3

200 Front Street West
Toronto ON M5V 3J1

(416) 344-1000
1-800-387-0750
Fax: (416) 344-4684
TTY: 1-800-387-0050

200, rue Front Ouest
Toronto ON M5V 3J1

(416) 344-1000
1-800-387-0750
Télécopieur: (416) 344-4684
ATS: 1-800-387-0050

RENAUD, First Name
Claim 12345678

When writing the WSIB please
quote the above file number.

Indiquez le numéro de dossier
dans toute correspondance
avec la CSPAAT.

Dear Mr. Renaud:

As we discussed today, I have reviewed your objection to the denial of further loss of earnings beyond August 6, 2005. The original basis for denying the loss of earnings beyond August 6, 2005 was that physically suitable work had been offered to you at no loss of earnings.

You submitted an Objection Form dated September 6, 2005. The information you provided indicated you are claiming to be totally disabled as a result of your right shoulder injury and a right elbow condition that you feel is a result of the accident.

In order to determine whether your right elbow condition was due to the accident or your work, I spoke with you about when you first noticed problems as well as the type of work that you do. In addition I requested a detailed medical report from your treating physician. This information was recently received and I have carefully considered whether benefits should be restored in your claim.

Additional medical conditions can be accepted if they resulted from the accident or if the work you performed caused or aggravated the injury.

You indicated to me that you were able to perform your regular work without apparent elbow discomfort until your accident. You did not notice any elbow problems until approximately June. The information from your treating physician indicates that you are not on any active treatment for the elbow and that you initially had difficulty with it in 2004 after some home activity. There is no indication of any complaint about discomfort in the elbow to your physician until August. The physiotherapy reports do not indicate there were any complaints of elbow problems while you were undergoing treatment for your right shoulder.

RENAUD, D
Claim 12345678
October 3, 2005
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Noting the fact the current elbow complaints are similar to the problems you experienced in 2004 and that they have only recently been noted by your treating health professionals, I am unable to link the condition to either the January 2005 accident or your work in general. Entitlement to the right elbow condition is denied.

In view of this, I find that based on your right shoulder precautions, you continue to be capable of performing the work as offered by your employer. Therefore, I am unable to allow entitlement to further loss of earnings benefits beyond August 6, 2005. Your file has been referred to the Appeals Branch to review your objection.

Yours sincerely,

Adjudicator's Name
Adjudicator
Service Delivery Division

Phone Number

Copy: Employer
 Representative, if applicable