
Law

The *Workplace Safety and Insurance Act* provides:

s.118(1)

The WSIB has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise.

s.119(1)

The WSIB shall make its decision based on the merits and justice of a case and it is not bound by legal precedent.

s.119(2)

If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for and against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

s.131(1)

The WSIB shall determine its own practice and procedure in relation to applications, proceedings and mediation. With the approval of the Lieutenant Governor in Council, the WSIB may make rules governing its practice and procedure.

Policy

The WSIB

- determines a worker's entitlement to benefits,
- determines classification and premium calculation issues, and
- communicates decisions to the relevant parties.

NOTE

In this document, references to workers also include survivors.

Principles

The Act sets out several principles the WSIB must follow when making decisions.

The WSIB is not required to follow legal precedent in making decisions, but makes its decisions based on the merits and justice of a case. See 11-01-03, Merits and Justice. As an inquiry system (rather than an adversarial system), the WSIB gathers relevant information, weighs evidence, and makes decisions. The WSIB's decisions and practices must be consistent with the provisions of the Act and the rules of natural justice. When the facts for and against a worker's claim are evenly balanced, the worker must be given the benefit of

doubt. See 11-01-13, Benefit of Doubt. If general policy and guidelines do not reasonably apply to the facts of a case, decision-makers consider the provisions of the Act.

Guidelines

Information required to make decisions

Under the Act, workers, employers, and health care practitioners must provide the WSIB with information for the purpose of determining entitlement to benefits. Employers must also provide information to the WSIB for the purpose of determining classifications and premium calculations. The WSIB may utilize other external sources to assist in determining classification and premium calculations.

If the information requested is not received, the WSIB makes a decision based on available evidence, and notifies the relevant parties.

Entitlement decisions

In the absence of

- information from the **worker**, the WSIB makes an entitlement decision using information from the employer, and clinical information. If the information is insufficient to make a decision, the WSIB contacts the worker requesting more information. If there is no response, the WSIB makes a decision that the worker has abandoned the claim (see 15-01-03, Worker's Requirement to Claim and Consent)
- information from the **employer**, the WSIB makes an entitlement decision using worker and clinical information (see 15-01-02, Employers' Initial Accident-Reporting Obligations)
- information from the **health care practitioner**, an entitlement decision is made using information from the worker and employer, with advice from WSIB medical consultants (see 17-02-02, Health Care Practitioner's Reports)
- information from the **worker and employer**, an entitlement decision cannot be made
- information from the **employer and health care practitioner**, an entitlement decision can be made using the worker information with advice from WSIB medical consultants, or
- any **other** requested information, a decision to allow, deny, or abandon the issue can be made with available evidence on file.

Classification and premium decisions

In the absence of any new information from the employer, a decision can only be made if there is sufficient information already on file. If there is insufficient information, no decision can be made and the employer may be subject to penalties under the Act. See 22-01-08, Offences and Penalties - Employer.

Communicating decisions

For loss of earnings claims, the decision-maker communicates the decision either by issuing a form letter or by writing a decision letter. In either case letters sent to a worker are copied to the employer, and vice versa.

A decision letter

- states the decision
- explains the rationale, including any applicable policies
- outlines the information used to make the decision, and
- advises both parties of their right to object to the decision.

For claims involving no loss of earnings, decision-makers use form letters to communicate decisions.

Decision-makers communicate classification and premium obligations in various written forms, such as letters or statement of accounts. In general, routine account transactions are not communicated by a decision letter.

Objecting to decisions

Operating area

The WSIB urges workers and employers who disagree with a decision to call the decision-maker and discuss their concerns. This should clear up any misunderstandings that may exist, and avoid unnecessary objections. Discussing a decision may result in a reconsideration of the decision. (See 11-01-14, Reconsiderations of Decisions.)

Workers and employers may object to any decision made by a decision-maker. If the decision-maker does not change the decision, the worker or employer may wish to formally appeal. The objection is then referred to the Appeals Branch.

Regulatory Services

When a decision-maker in Regulatory Services proposes to make a final decision on entitlement, the relevant parties are invited to participate in a reconsideration process. Participants may obtain access, provide submissions and give sworn testimony at a Reconsideration Hearing. The decision-maker considers the response(s) received, if any, and confirms, amends or revokes entitlement.

The time for resolution will depend upon the complexity and circumstances of each case. Whatever the outcome, the decision is considered the WSIB's final decision. Objections must be directed to the Workplace Safety and Insurance Appeals Tribunal (WSIAT.)

**Operational
Policy**

Section
Adjudication Principles

Subject
Decision-Making

Reversed decisions

If a denial of entitlement is reversed, benefits are paid to the worker with interest, see 18-01-08, Interest Payments. Alternatively, if a worker has received benefits and the decision-maker subsequently denies the claim, a benefit-related debt is created. (See 18-01-04, Recovery of Benefit-Related Debts.)

If a claim is reversed because it is determined that benefits were obtained through deception, the WSIB aggressively pursues recovery of the benefit payments. (See 22-01-07, Offences and Penalties - Worker.)

If a classification or premium is changed, the employer's account may either be credited or debited. In addition, interest may either be credited or debited. See 14-03-10, Statement of Account.

Application date

This policy applies to all decisions made on or after December 1, 2001, for all accidents.

Document History

This document replaces 11-01-02, dated December 14, 2001.

This document was previously published as:

01-01-05, dated August 27, 1997.

References**Legislative Authority**

Workplace Safety and Insurance Act, as amended
Sections 118(1), (2), 119(1), (2), 131(1)

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 4(4), 69(1), (2), 72(1), (2), 73

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