

REVIEW DIVISION

PRACTICES AND PROCEDURES SUMMARY OF UPDATES

Effective Date: May 1, 2008

Item	Title	Update
A2.6	Parties to the Review	<p>Clarify that failure to return the Notice to Participate within the specified time does not bar a party from future participation in the review. The party may still participate, at the Review Division's discretion. In exercising this discretion, the Review Division considers factors such as the party's explanation for not returning the Notice to Participate on time, as well as the time remaining on the review. A ground for refusing could arise where a party frequently makes late requests to participate in reviews. Once the party is added as a respondent to the review, disclosure will be granted.</p>
A2.8	Withdrawal / Abandonment of a Review	<p>The existing practice is to treat requests to reinstate withdrawn reviews as new applications for review. If 90 days have elapsed since the decision in question, the applicant must request an extension of time under section 96.2(4) of the <i>Act</i>. This has been changed so that decisions to allow a withdrawal are treated in the same way as other preliminary decisions. The Review Division considers that it has discretion to change these types of decisions at any time. Exercise of the discretion would involve considering the reasons for the withdrawal and request for reinstatement, whether there was undue delay in seeking reinstatement and any other relevant factors.</p> <p>Refer to section 96.4(3)(b) of the <i>Act</i> and clarify that a "submission" may also include a party's response to a request by the Review Division on other matters. For instance it may include a representative authorization or a statutory declaration, will, Letters Probate or Letters of Administration relating to the status of a worker's estate.</p>

Item	Title	Update
A5.4	Publication of decisions	<p>Insert a new item stating that Review Division decisions are generally published. However, in writing their decisions, Review Officers will avoid including identifying details that are unnecessary to explain the issue being decided or the reasons for their decision.</p> <p>In exceptional cases, the information provided in the decision may create a risk that the parties could be identified. In these cases, even if the names of the persons involved are omitted, the overall circumstances of the case are unique and can be readily identified. As a result, the Review Division will not publish its decisions in these circumstances.</p>
B2.1.1	Administrative or incidental decisions	<p>Include a reference to policy item #96.21 (<i>Preliminary Determinations</i>) to clarify that preliminary determinations are not reviewable decisions.</p>
B3.4.2	Process for making decision on oral hearing	<p>Delete reference to check box for requesting an oral hearing on Request for Review form. (This check box is no longer included on the form.)</p>
B3.4.3	Scheduling and postponements [of oral hearings]	<p>Clarify that in determining whether to agree to an alternative date suggested by a party for an oral hearing, the Review Officer considers factors such as the statutory deadline for completing the review and any potential prejudice to the parties caused by the suggested date. The sole consideration is not the length of time before a hearing can be held and, if necessary, the Review Officer may request an extension of time to complete a review to accommodate a hearing date. The preference is that there will be agreement on an alternative date for the hearing. However, if the Review Officer determines that a suggested date is not reasonable and an alternative date cannot be agreed upon, the Review Officer may choose not to proceed with the hearing and to continue the review by an alternative method.</p>

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B3.4.5	Witnesses [at oral hearings]	Insert a statement indicating that the parties do not have a right to formally cross-examine witnesses at an oral hearing. However, the Review Officer may allow an opposing party to question witnesses. When a party is permitted to question a witness, the Review Officer will supervise the process to ensure that questions are relevant and reasonable.
B3.4.6	Observers [at oral hearings]	Clarify that Board security may attend oral hearings without the parties' permission. Where practicable, parties will be notified in advance that security officers will be present at the hearing. The Review Officer will seek the parties' permission if other Board staff are attending the hearing as observers only. However, the parties' consent is not required where a Board staff member is attending the hearing to provide relevant information.
B3.4.8	Hearing process	<p>Clarify that the purpose of the hearing is to gather information to supplement that already on file in a thorough, fair and courteous manner.</p> <p>Include a statement that formal procedures related to the admission of evidence in court do not apply to an oral hearing. In addition, the scope of the hearing is limited to relevant evidence, as determined by the Review Officer.</p>
B3.5	Written submissions	Insert cross reference to section A2.8 respecting the broad interpretation of the term "submission" to include a party's response to a request by the Review Division for information.
B3.6.2	New issues	Clarify that a new review of another decision may be commenced if the submission containing the request was received within 90 days of the other decision. It may be sufficient that the original request for review was received within 90 days of the other decision if the other decision relates to the same issue as the decision

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		<p>already under review or it is otherwise reasonable to interpret the original request for review as covering the other decision.</p> <p>Clarify that a Review Officer's ability to deal with an issue not raised by the applicant is not dependent on the other party raising the issue. The Review Officer may address the issue on his or her own initiative. However, the Review Officer will give the participating parties notice that the issue will be addressed unless:</p> <ul style="list-style-type: none"> • the parties are already aware that the issue will be considered; or • the issue will be decided in the party's favour, in cases involving a single party.
B5.2	Reconsideration of Review Division Decisions	<p>Clarify that where there has been a significant breach of procedural fairness and the statutory reconsideration provisions do not apply, the Review Division may reconsider a decision on common law grounds unless an appeal to WCAT has been initiated.</p> <p>Clarify that the Review Division's limited reconsideration authority under section 96.5 of the <i>Act</i> applies only to final decisions on a valid review made under section 96.4(8). Therefore, the Review Division may reconsider a preliminary decision, such as a decision declining to conduct a review, without meeting the requirements of section 96.5.</p>
B5.2.1	Reconsideration at the Chief Review Officer's initiative	Clarify that where the decision may be appealed to WCAT, the Chief Review Officer may direct a reconsideration of the decision provided no actual appeal has been filed.