

Decision of the Appeal Division

Number: Decision No. 21
Date: April 23, 1997
Panel: Maureen S. Nicholls, Chief Appeal Commissioner
Subject: Practice Directive – Applications for Leave under the *Criminal Injury Compensation Act*

The chief appeal commissioner and the appeal division have authority under the *Criminal Injury Compensation Act* to review the decision of an officer of the Workers' Compensation Board, or the findings and report of an appeal committee. Section 22(3) of the *Act* states, in part:

22(3) By leave of . . . the chief appeal commissioner of the board, the appeal division may further review the decision, or the findings and report.

The *Criminal Injury Compensation Act* does not state the grounds upon which the chief appeal commissioner will exercise her discretion to grant leave for further review. So as to assist parties in making submissions to the chief appeal commissioner, this practice directive indicates in general terms the grounds for leave examined in past Appeal Division decisions. Reference to these grounds in applications for leave will assist in the timely consideration of applications. The grounds mentioned in this directive are not exhaustive and are not intended to limit applicants in presenting information they consider relevant to the application for leave.

The necessity to secure leave to obtain a further review of an appeal committee's findings and report suggests a legislative intent to provide a more narrow basis for further review than would be the case if a simple statutory appeal was provided. The Legislature's use of the word "review," rather than "appeal," supports this interpretation. Against this background, past Appeal Division decisions have indicated that leave may be granted if any of a number of factors appear to exist. These factors have been articulated as follows, with minor revisions for greater clarity:

1. substantial and material new evidence;
2. strong reasons to doubt the correctness of the findings, such as the presence of the following in the findings:
 - (a) an error of law on the face of the record;
 - (b) an error with respect to an important fact, which error is clear from the record;
 - (c) the absence of any evidence to support the findings; or
 - (d) an obvious oversight of some material evidence (as opposed to considering and rejecting such evidence - it is not intended that leave be granted simply for the purpose of reweighing the evidence considered by the appeal committee);
3. a breach of the rules of natural justice;
4. an issue concerning the interpretation of the *Act* or policy of significance beyond the particular case.

This list, although not exhaustive, describes situations in which there has been a serious flaw in the decision-making process, or a significant issue of statutory or policy interpretation has been raised, and where further review is warranted.

Pursuant to section 85(8) of the *Workers Compensation Act*, the chief appeal commissioner may delegate in writing any of her powers and duties to an appeal commissioner. By written delegation dated November 29, 1996 (Delegation by the chief appeal commissioner, Appeal Division Decision No. 20, *Workers' Compensation Reporter*, Vol. 12: p. 361), I delegated to all non-representational appeal commissioners of the appeal division, under section 22(3) of the *Criminal Injury Compensation Act*, the power to grant leave to obtain a further review of the decision of an officer of the board, or the findings and report of an appeal committee. If leave is granted, section 22(3) of the *Criminal Injury Compensation Act* contemplates that the further review of the decision, or findings and report, will be conducted by a panel of the appeal division.

All applications for leave, which must be in writing, should be addressed to the chief appeal commissioner.