

PART 5: CLAIM CONCERNS

Injury claims range from the simple to the very complex. To reach a decision regarding a claim, the WCB must consider a lot of information from a variety of sources. With so many people involved and so many factors to consider, there may be times when you have claim concerns.

Claim decisions are only as good as the information they are based on. That's why it's important that you participate in all stages of the process, and ensure we have all the necessary information to make an appropriate claim decision and an effective Return-to-Work plan.

This section provides information about concerns related to the following topics:

1. Entitlement
2. New evidence
3. Appeals
4. Fraud

CONCERN #1 – ENTITLEMENT

If, after your internal incident investigation, you do not agree with certain details reported about the cause or occurrence of the workplace injury or incident, it's important that you indicate that when filling out the WCB Accident Report (Form 67).

The selection below is located on the first page of the WCB Accident Report and is provided so you can immediately indicate if you have any concerns about the information provided about the incident or injury. It is important to submit a separate page or letter describing your concern along with any additional evidence, eye witness reports, and incident investigation reports that support your concerns. A copy of this letter should also be sent to the injured worker.

Claim decisions can only be based on the information (evidence) the case worker receives from you, the worker and the health care providers. It should be noted that "evidence" is just that – evidence. Speculation, anecdotal information and hearsay are not considered evidence and cannot be used in the decision-making process.

DECLARATION AND CONSENT

THE WORKERS' COMPENSATION ACT REQUIRES THAT BOTH THE EMPLOYER AND THE WORKER SIGN THIS REPORT.

If the worker is not immediately available, the employer should sign and forward to the WCB without the worker's signature. It is unlawful to knowingly submit false or misleading information to the WCB.

____ I declare that all the information provided by me is true and correct to the best of my knowledge.

OR

____ I declare that I have reviewed the information provided by the worker, and I disagree on certain parts. I have attached a separate sheet with my comments and provided a copy to the worker.

EMPLOYER:

EMPLOYER'S SIGNATURE

TITLE

The case worker makes the decision based on the weight of the evidence. The more credible the evidence, the more weight it carries. If the evidence is balanced, the decision is made in favour of the worker as per legislative requirements.

Once a decision had been made by the WCB and if the claim has been accepted, your next step is to follow up with the case worker to discuss a plan for a safe and timely return to work.

Even if you do not agree that the injury was work-related, you should proceed with return-to-work steps to help the worker return to their job. At the very least, send the worker for a functional assessment and try to match their physical abilities with transitional duties.

CONCERN #2 – NEW EVIDENCE

You are required to submit claims to the WCB within eight days of being notified of a workplace injury. If this is not done, you may be fined. The WCB's target is to pay a claim within 15 days of injury to ease the economic burden on the worker due to injury.

As this timeline is tight, you may not be able to conduct an incident investigation as early or as thoroughly as possible following an injury. By the time an investigation is completed, the WCB may have accepted and paid the claim. Many employers feel the claim is then a done deal with no avenues open to them, but that is not the case.

If the WCB is aware that you are contesting the claim, and if evidence is submitted within a reasonable timeframe, we will wait to render the entitlement decision. However, time is of the essence and we must take care not to place undue financial hardship on the worker.

Speak with the case worker directly to discuss your position and the evidence you have available.

CONCERN #3 – APPEALS

APPEALING A CLAIM DECISION

If a claim is accepted and you disagree, you have two options:

- 1. Appeal:** If the claim has been accepted and you don't have a written decision, you can ask the case worker to provide one. Without a written decision, you cannot appeal. Once you receive the written decision, you have 30 days to file an appeal. During the appeal, you can provide new information and ask for the claim to be disallowed with all costs to date removed from your WCB cost experience history.

If you think the WCB made an error in the decision, it should be brought to the attention of the WCB case worker. When a case worker renders a decision, it is final if it's not appealed within 30 days. If appealed, it goes to the Hearing Officer, and their decision is also final if it's not appealed within 30 days.

- 2. Provide New Evidence:** If a decision on a claim is made, a written decision provided and the 30-day appeal period has passed, you can submit new evidence to the WCB citing Sections 185(2) of the *Workers' Compensation Act*. This should include a cover letter, the incident investigation report, witness report(s) and any other evidence.

The *Workers' Compensation Act* gives the WCB the authority to review new evidence after a final decision has been made. However, in this situation the new information must truly be new evidence. That means it must be evidence which is different from that which is already on file and cannot be a new argument based on the same evidence. It must also be evidence which could not have been presented by the worker or the employer at the time the final decision was made.

It is important to note that any benefits already paid to, or on behalf of, an injured worker with an overturned decision, or any incurred costs related to that decision will generally be removed from your experience rating and will not affect your future WCB premiums.

APPEALING AN ASSESSMENT DECISION

You may also appeal a WCB assessment decision with respect to your assessment rate, classification or any penalties. The procedure for appealing an assessment decision is the same as that outlined above on how to appeal a decision on a claim.

The same 30-day deadline for filing an appeal applies once the written decision is received (you must request it). A Hearing Officer will conduct either a paper review or an oral hearing and issue a decision. This decision is the final decision of the Workers' Compensation Board.

SUBMITTING THE NOTICE OF APPEAL FORM

The *Notice of Appeal to Hearing Officer* form should be sent to the WCB's Internal Appeals Department. A copy of the form can be found in *Part 7 – Samples and Forms* of this manual, or online from the WCB website, wcb.ns.ca. It should be mailed or faxed to the following address:

Internal Appeals Department
Workers' Compensation Board of Nova Scotia
PO Box 1150 Halifax, NS B3J 2Y2
Fax: 902-491-8801

THE WORKERS' COMPENSATION APPEALS TRIBUNAL (WCAT)

If you or the worker does not agree with a decision of a Hearing Officer, that decision may be appealed to the Workers' Compensation Appeals Tribunal (WCAT).

The WCAT is an independent agency that hears appeals of WCB final decisions. The Workers' Compensation Appeals Tribunal reports to the Minister of Justice, and is separate from the WCB although it is funded by employers' WCB premiums. An appeal to WCAT must be filed within 30 days of being notified of the Hearing Officer's decision.

For more information about the Workers' Compensation Appeals Tribunal, please contact their offices at 902-424-2250 in Halifax, or toll-free at 1-800-274-8281.

APPEAL OUTCOMES

At any level (i.e. WCB Internal Appeals, WCAT or Supreme Court of Canada), the outcome of the appeal may affect your claims costs and therefore your WCB assessment rate. If your appeal is successful, costs may be removed from your claim cost experience. If a worker's appeal is successful, costs may be added. Either way, this highlights the importance of your participation throughout the appeal process.

More information about the appeal process can be found on our website – wcb.ns.ca.

CONCERN #4 – FRAUD

Like all insurance systems, the WCB recognizes the potential for fraud through overstatement or misrepresentation of fact related to injury claims and assessment details.

The WCB system is in place to address only workplace injuries – those sustained through the course of employment. Injuries that occur outside the course of employment are not covered by the WCB, but by the public medical system. This emphasizes the importance of thorough incident investigation when determining the cause of the injury. An injury may only be considered **compensable** if it occurs out of and in the course of employment.

The WCB actively investigates suspected fraud and takes the matter very seriously. Consequences, for those found guilty, range from reprimand to criminal charges. Fraud takes resources away from those who legitimately require assistance during a workplace injury and adds to the cost of the compensation system, a cost that is covered entirely by the employers of Nova Scotia.

RED FLAGS

These "red flags" are only meant to alert you to the possibility of fraud. The presence of any one is not necessarily indicative of fraud; it is simply an indicator that further investigation may be considered.

Examples:

- Unexplained or excessive time off prior to claimed injury.
- The alleged injury occurs prior to, or just after, a strike, layoff, plant closure, job termination, completion of temporary work, or notice of employer relocation.
- The alleged injury immediately follows disciplinary action, notice of probation, demotion, or being passed over for promotion.
- There are no witnesses to the incident, or witness reports around the incident conflict with the worker's version or with one another.
- The worker fails to report the injury in a timely manner.
- The incident or type of injury is unusual for the worker's line of work.
- The worker's version of the incident has inconsistencies or changes over time.
- The worker refuses diagnostic procedures to confirm injury, or refuses to attend a scheduled health care exam.
- The worker's co-workers express opinion that the injury is not legitimate.

- The worker frequently changes physicians or health care providers, or does so after being released to return to work.
- The worker is a new hire who reports unexplained medical issues.
- Surveillance shows the worker's activities are inconsistent with physical limitations related in health care reports and deposition.

If you suspect someone is committing fraud, please report it to your case worker or contact the Investigations Unit of the WCB Legal Services department at 491-8917.