

Access to Workers' Information When the Issue in Dispute is at the Board

1.0 This Practice Direction:

- describes the legislation and principles governing access appeals when the issue in dispute is at the Board
- describes the process that occurs for objecting to access.

2.0 Legislation and Principles Governing Access

2.1 The Act and Policy allow both workers and employers to have access to the information in a worker's claim file when there is an issue in dispute.¹

2.2 This Practice Direction incorporates the principles on access found in the Act and Policy. In particular, the Tribunal recognizes that both parties need access to relevant information in order to have a fair hearing.

3.0 Process for Objecting to Access

3.1 When there is an issue in dispute at the Board, the employer is entitled to access to a worker's claim file. A worker may object to the release of health care information found in his/her claim file to the employer.

3.2 If a worker objects, the Board makes a decision on whether the information should be released to the employer.

3.3 If either party is not satisfied with the Board's decision on the objection, they can appeal to the Tribunal within 21 days of the Board decision.

3.4 Prior to sending an access appeal to a Vice-Chair for a decision, the Tribunal may contact the parties to see if the access issue can be resolved through mediation (see *Practice Direction: Mediation*).

3.5 When the Tribunal receives an objection to the release of documents, both the worker and the employer are asked to provide their submissions to the Tribunal about why access should or should not be granted. The submissions are in written form.

¹ See sections 57 to 59 of the *Workplace Safety and Insurance Act* and see *Board Operational Policy Manual*, Document No. 21-02-02 "Disclosure of Claim File Information (Issue in Dispute)."

- 3.6** The Tribunal only decides if the employer does or does not have access to the information. The Tribunal does not decide the issue in dispute. Parties can make submissions on the issue of whether the information is:
- relevant to an issue in dispute or
 - prejudicial to the worker and if so in what way.
- 3.7** If the worker does not provide written submissions, the issue of whether the worker's objection has been abandoned will be referred to a Vice-Chair.
- 3.7.1** Where the Vice-Chair finds that the objection has been abandoned (see *Practice Direction: Closing Appeals by the Tribunal*), a letter signed by the Vice-Chair will be sent to the parties to confirm the decision. The information is sent back to the Board, who will release the information 15 days after the date of the letter.
- 3.8** If the parties provide written submissions, the access appeal is referred to a Vice-Chair for a decision.
- 3.9** Most access appeals are decided by a Vice-Chair by a written process based on the written submissions and review of the documents in question (see *Practice Direction: Written Appeals*). Where an appeal raises unusual or extraordinary issues, the Tribunal may decide an oral hearing is needed.
- 3.10** The Vice-Chair will decide if access to the information should or should not be granted to the employer. In exceptional circumstances, the Vice-Chair may impose conditions on access. A written decision will be sent to the parties.
- 3.11** Once a decision is made, the matter is sent back to the Board to decide the issue in dispute. If access is granted to the employer, the information is released by the Board 15 days after the Tribunal decision is released.

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal