

Brief

OECTA Submission to the 2012 WSIB Consultation: Modernization of the WSIB's Appeals Program

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October 2012

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The Ontario English Catholic Teachers' Association (OECTA) represents 45,000 professional women and men who teach all grades in publicly funded English Catholic schools in Ontario. OECTA is an advocate for the welfare of our members injured in the workplace and is affiliated with the Ontario Teachers' Federation, the Canadian Teachers' Federation, Education International, the Ontario Federation of Labour (OFL) and the Canadian Labour Congress (CLC).

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1. OVERVIEW

1.01 OECTA supports the review of the Workplace Safety and Insurance Board (WSIB) appeals system as it offers our organization an opportunity to assist in ensuring this aspect of WISB operations is consistent with the *Workplace Safety and Insurance Act* (WSIA). Operational consistency is key to securing fair outcomes for OECTA members in need of financial support.

1.02 Any changes to the WSIB appeals system must uphold the Meredith Principles:

- compensation for workplace injuries;
- an employer funded system;
- no right to sue for injuries sustained in the workplace;
- no fault insurance, and
- independent adjudication.

2. TIME LIMIT TO OBJECT

2.01 The Consultation document recommends the parties be required to adhere to the objection time limits set out in Section 120 of the Workplace Safety and Insurance Act (WSIA) to file their objection.

2.02 OECTA is opposed to strict adherence to the time limits prescribed in the Act. The appeal time limits were introduced in the late 1990's for political reasons – to disadvantage injured workers. Injured workers should not shoulder political scores. Six-month appeal time limits fail to take into consideration the time involved in preparing an appeal. The injured worker has to obtain a complete copy of their claim file from the WSIB Access Department. With their claim at appeal, most injured workers have to arrange for a representative. Additional medical information is frequently the basis to succeed at appeal and it is time consuming to obtain written documentation from treating physicians. It is not realistic to expect injured workers to be able to have their case ready for appeal six months from the date of a decision from the Operations Branch.

2.03 Recommendation: That the current practice of “notice of intent to appeal” be accepted as meeting the six month appeal time line.

3. OBJECTION FORM

3.01 The objection form will now require substantive submissions relating to the objection. In addition, should an oral hearing be requested the injured worker will also be required to provide a list of proposed witnesses along with a “will say” statement for each witness. The detailed submission required by a revised

objection form will mean an injured worker will have to have a representative at this point who has the expertise to provide such a detailed package with the Objection Form. It is not appropriate to prevent an appeal from going forward because a substantial package of information is not provided up front.

3.02 Recommendation: That the current practices around the Objection Form be maintained.

4. METHODS OF RESOLUTION

4.01 Section 119 of the Act sets out the provisions for conducting hearings orally, electronically, or in writing in order to resolve an objection. On more than one occasion, the Consultation Paper appears to be imposing limits on when injured workers will have access to an oral hearing. The Consultation Paper indicates that an oral hearing will not be held when the facts are not in dispute and/or oral testimony would not add to the information contained in the claim file. When deciding on whether an objection will be heard orally or be completed in writing, how will the Board know the value of viva voce evidence? OECTA wants an efficient resolution process for its members, the organization opposes unnecessary restrictions on oral hearings when this type of evidence can assist in the disclosure information relevant to the matter or provide necessary context to medical reports and other written evidence.

4.02 Recommendation: That injured workers be permitted to access oral hearings as provided for in WSIA.

5. APPEALS MANAGER – Determination of Method Resolution

5.01 The Consultation document indicates that if an objecting party or a participant requests an oral hearing, the file will be forwarded to an Appeals Manager to make an administrative decision on method of resolution and further states that this decision is not appealable to the Workplace Safety and Insurance Appeals Tribunal (WSIAT). The process contemplates the opportunity to make substantive submissions when an oral hearing is requested but it is determined that the case will be resolved through written submissions. The process does not permit the sharing of these submissions and no avenue for rebuttal.

5.02 The recommended processes around access to oral hearings substantially limit an injured worker's right to natural justice. The injured worker should know the case they are facing in order to be able to prepare an adequate defense.

5.03 Recommendation: Administrative decisions regarding the method of hearing an objection must be appealable to WSIAT.

6. DOWNSIDE RISK

- 6.01** The Consultation document outlines a scenario where an Appeals Resolution Officer identifies a defect in the front-line decision making process that require reconsideration. This could result in a reversal of the previously granted entitlement decision and is identified as the “downside risk.” The objecting party will not be given the opportunity to withdraw the objection in cases where a downside risk has been identified. Two proposed options around decisions are outlined and neither is acceptable.
- 6.02** The launch of an appeal should not leave each earlier decision in the claim open to possible reversal. This recommendation is an abuse of the reconsideration process prescribed in Section 121 of the Act and has never been an aspect of practice in the past. Why would any injured worker risk being in a position of having every historical decision in his/her claim by moving an Objection forward? An injured worker is vulnerable on many fronts due to the workplace injury and the “downside risk” is a significant intimidating factor that would prevent injured workers from moving objections forward. The implementation of this provision would only serve to discourage workers with legitimate claims from exercising their right to appeal, for fear of losing benefits that have already been granted. OECTA cannot accept anything less than the objection process being limited to one decision that is the source of the objection.
- 6.03 Recommendation: That the Appeals Resolution Officer not be empowered to overturn historical decisions of a claim beyond the decision that is the source of the objection.**

7. SUMMARY OF RECOMMENDATIONS

That the current practice of “notice of intent to appeal” be accepted as meeting the six month appeal time line.

That the current practices around the Objection Form be maintained.

That the injured workers be permitted to access oral hearings as provided for in WSIA.

Administrative decisions regarding the method of hearing an objection must be appealable to WSIAT.

That the Appeals Resolution Officer not be empowered to overturn historical decisions of a claim beyond the decision that it is the source of the objection.