

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 allows both workers and employers to have access to the information in a workers 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 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

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)."

about why access should or should not be granted. The submissions are in written form.

- 3.5** 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.
- 3.6** Prior to sending an access appeal to a Vice-Chair or Panel for a decision, the Tribunal may contact the parties to see if the access issue can be resolved through mediation (see *Practice Direction: Mediation*).
- 3.7** Most access appeals are decided by a Vice-Chair or Panel by a written process based on the written submissions and review of the documents in question (see the *Practice Direction: Written Appeals*). Where an appeal raises unusual or extraordinary issues, the Tribunal may decide an oral hearing is needed.
- 3.8** The Vice-Chair or Panel will decide if access to the information should or should not be granted to the employer. In exceptional circumstances, the Vice-Chair or Panel may impose conditions on access. A written decision will be sent to the parties.
- 3.9** 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 fifteen days after the Tribunal decision is released.

Dated at Toronto, Ontario this first day of October, 2007
Workplace Safety and Insurance Appeals Tribunal
I.J. Strachan, Tribunal Chair