

Appeals Involving Deceased Workers

1.0 This Practice Direction:

- explains how the Tribunal processes appeals when a worker dies, either before or after a Tribunal appeal is brought, and the worker's estate brings or continues an appeal for benefits to which the worker may have been entitled while alive; and
- explains how the Tribunal processes appeals when a worker dies and an appeal is brought by one or more survivors of the worker, on the basis that the worker's death was caused by his or her work.

2.0 Requirement to Give Notice

- 2.1** In all appeals, the Tribunal must give notice to the appropriate parties and must be certain that the parties participating in an appeal are properly authorized to do so.
- 2.2** The Tribunal has developed the following general guidelines to assist in processing appeals involving deceased workers. In an appeal involving a deceased worker, if Tribunal staff cannot resolve an issue pertaining to notice and/or authority to proceed, staff may refer the issue to a Tribunal Panel or Vice Chair.

3.0 Appeals Brought by the Worker's Estate Where There is a Will

- 3.1** Appeals brought by the worker's estate are for benefits to which the worker may have been entitled while alive. When the worker dies, the right to any such benefits goes to the worker's estate.
- 3.2** When an appeal is brought that involves a claim on behalf of the worker's estate, the Tribunal asks the party seeking to act on behalf of the worker's estate for a copy of the worker's will. The estate trustee (formerly known as executor) named in the will can generally act on behalf of the estate in proceedings before the Tribunal.
- 3.3** If the party seeking to act on behalf of the worker's estate is not the estate trustee, the Tribunal asks the party to obtain written consent from the estate trustee to act on behalf of the worker's estate in the Tribunal appeal.

- 3.4** The Tribunal inquires as to whether a *certificate of appointment of estate trustee with a will* (formerly know as letters probate) has been obtained. Although the Tribunal does not normally require the party to obtain one, there may be circumstances where it will do so; for example, if there appears to be an issue as to the validity of the will.
- 3.5** If the Tribunal is in any doubt as to the authority of the party to act on behalf of the estate, it can make such inquiries as it sees appropriate. For example, the Tribunal may itself contact the estate trustee to establish consent, where the party seeking to act on behalf of the estate is not the estate trustee.
- 3.6** As with all appeals before the Tribunal, if the party acting for the estate retains a representative to act in the Tribunal proceedings, written authorization must be provided. For example, if the estate trustee brings an appeal on behalf of the worker's estate, and the estate trustee hires a representative to act in the Tribunal proceedings, written authorization signed by the estate trustee must be provided to the Tribunal.
- 4.0 Appeals Brought by the Worker's Estate Where There is no Will**
- 4.1** As noted above, appeals brought by the worker's estate are for benefits to which the worker may have been entitled while alive. When the worker dies, the right to any such benefits goes to the worker's estate.
- 4.2** Where the worker dies without a will, the Tribunal inquires as to whether a *certificate of appointment of estate trustee without a will* (formerly letters of administration) has been obtained. These court documents appoint an administrator for an estate where there is no will. If a certificate of appointment has been obtained, the estate trustee named in that document can generally act on behalf of the worker's estate in Tribunal proceedings, and the process described under item 2.0 of this Practice Direction applies with any necessary modifications.
- 4.3** Where no certificate of appointment has been obtained, the Tribunal does not normally require the party seeking to act for the estate to obtain one. Instead, the Tribunal requests that the party contact all persons who appear to be the direct beneficiaries of the worker's estate, and obtain their consent to act on behalf of the estate in the Tribunal proceedings.
- 4.4** Usually, but not always, the direct beneficiaries are the worker's married spouse and all children. The Tribunal has regard to the intestacy provisions of the

Succession Law Reform Act in determining the persons who should provide their consent for the appellant to act on behalf of the estate in a Tribunal appeal.

- 4.5** Once the party seeking to act on the behalf of the estate provides consent in writing from these persons (usually by way of a consent form), the Tribunal is generally satisfied that the party can act on behalf of the estate in the Tribunal appeal proceedings.
- 4.6** The Tribunal may undertake further investigation even where a consent form has been submitted, if it seems appropriate to do so. For example, if the case materials suggest that there are other potential beneficiaries who have not been contacted, the Tribunal may make further inquiries.
- 4.7** In addition to the consent form, the party seeking to act on behalf of the estate should also submit a signed, dated and witnessed letter stating that he or she honestly believes that all the deceased worker's immediate beneficiaries have signed the consent form.
- 4.8** If it is not possible to obtain consent from all immediate beneficiaries, the Tribunal generally refers the matter as a preliminary issue to be determined by a Vice-Chair or Panel. The Vice-Chair or Panel decides on a case-by-case basis whether the party seeking to act on behalf of the worker's estate has sufficient authority to do so, and is guided by several considerations including the following:
- what attempts have been made to locate the beneficiaries and obtain their consent
 - if consent has been expressly withheld by a beneficiary, the circumstances surrounding that beneficiary's refusal
 - whether there are any examples of the party having legitimately acted on behalf of the estate in other contexts, including whether the party has been recognized by any other provincial or federal authorities as representing the estate
 - any prejudice that may result from allowing the party to proceed with the appeal.

5.0 Appeals Brought by a Survivor of the Deceased Worker

- 5.1** An appeal for survivor's benefits is brought by a family member of a deceased worker who claims that the worker's death results from an injury for which the worker would otherwise have been entitled to benefits. The applicable legislation lists potential survivors. Usually, the parties claiming survivor's benefits are the deceased worker's spouse and/or child(ren).
- 5.2** In all cases, the Tribunal undertakes reasonable efforts to inquire into the existence of potential survivors and provides notice of the appeal to those individuals.
- 5.3** In order to confirm a party's status as a survivor under the applicable legislation, and to assist the Tribunal in identifying potential survivors who should receive notice, the Tribunal may ask for any documentation it deems appropriate, including the following:
- a death certificate, any marriage/divorce certificates, and any court orders for child support or custody
 - bank or investment account statements, documents pertaining to property (such as real estate or vehicle) ownership, insurance policies, and pension documentation
 - medical documents, if they mention relevant information such as the existence of significant past or current relationships
 - an affidavit, to swear to the truth of facts that are otherwise undocumented.
- 5.4** If there remains an issue as to the party's right to proceed, including whether all potential survivors have been given notice; or where a party refuses to provide requested documentation, the matter may be referred to a Vice-Chair or Panel to determine the party's right to proceed with the appeal.

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