

**SUBMISSION
TO
WORKSAFE BC**

**BUILDING TRADES PERSPECTIVES AND PROPOSALS
ON NOTIFICATION OF DECISIONS**

SUBMITTED AUGUST 29, 2008

British Columbia and Yukon Territory
Building and Construction Trades Council
#204 – 4333 Ledger Avenue, Burnaby, B.C. V5G 3T3
Tel: 604-291-9020 Fax: 604-291-9590
bcytbctc@bcbuildingtrades.org
www.bcbuildingtrades.org



INTRODUCTION

The B.C. & Yukon Territories Building and Construction Trades Council (BCYT) welcomes this opportunity to provide our views on whether decisions must be communicated to an affected party and, if so, how the decision should be communicated. That is, should the decision be communicated orally or verbally? We also wish to provide some comments on "the 75 day rule".

We shall address the issues and matters raised in the Board's Discussion Paper which particularly concern us.

COMMUNICATION OF DECISIONS

We believe that all adverse decisions should be communicated in writing even when, on the surface, they might not appear to be adverse. This is based on our experience over many years, but we will refer to two particular cases as examples of the problems which may be encountered. They are:

Example 1

A worker was seriously injured and his claim was accepted by the Board. The Board used his earnings with the injury employer in the one year prior to injury in setting the long term wage rate on his claim. Approximately one year later when his representative became aware of the injury, the representative questioned the worker on a number of issues. At that time it was discovered that the worker had not provided earnings with another employer in the one year period. This information was conveyed to the Board, however, the Case Manager said he could not change the decision because more than 75 days had elapsed.

That decision was appealed to the Review Division and an extension of time to appeal the decision was requested. The extension of time was denied. This resulted in the worker not being properly compensated for the loss of income resulting from the injury with respect to both wage loss benefits and the subsequent permanent functional impairment and loss of earnings awards granted.

Example 2

A worker sustained a shoulder injury and was off work for approximately nine months. Wage loss and health care benefits were paid. When he was able to return to work his doctor advised him that even though he continued to have problems with the shoulder, nothing more could be done, therefore, further appointments were not necessary.

The Board wrote to the worker and "congratulated him on his recovery" and advised that no further wage loss or health care benefits would be paid. The worker advises that he did not receive a copy of the letter, but did discuss the

matter with the Case Manager. He did not take issue with the termination of benefits as he did indeed return to work full time and did not have to see his doctor anymore. A copy of the decision was not sent to the worker's representative (who had submitted an Authorization for Representation to the Board with respect to an appeal of a decision regarding the long term wage rate).

Approximately six months later in a discussion regarding the wage rate, the worker advised the representative that he continued to be symptomatic and was having problems with his shoulder. The representative contacted the Case Manager and asked that the worker be referred for a permanent functional impairment assessment. The Case Manager said she could not do that as she had closed the case more than 75 days previously. The representative noted that the issue at that time had been termination of wage loss and health care benefits. The Case Manager disagreed, stating that she had said the worker had "recovered", which meant that he did not have any residual effect from the injury, therefore, he did not have a permanent functional impairment and was not entitled to assessment.

The Case Manager refused to provide a new written decision with respect to only permanent disability, reiterating that that was a component of her original decision.

The worker appealed the decision, however, the Review Division denied an extension of time on the basis that he must have received a copy of the decision and, in any event, he should have known that something was amiss when the Case Manager terminated wage loss and health care benefits.

SUBMISSION

We submit that the preceding two examples provide evidence as to why adverse decisions should be communicated in writing. Furthermore, not only should they be written decisions, they should be explicit as to the issues being decided so there is no ambiguity or confusion. As the Board states, underlying the approach that a decision is made when it is communicated to an affected party are the principles of procedural fairness, in that a party cannot initiate a review or appeal until they know that a decision has been made. In Example 2, even if the worker had received a copy of the decision, he would not have known that a decision had been made with respect to permanent impairment.

With respect to both examples, we take great umbrage with the Board's position that they could not change their decisions as 75 days had passed. In the first case there was significant new evidence and the worker had neglected to provide all the relevant information initially due to the nature and severity of his injury. In the second case, not even a person experienced in the machinations of the Board would have expected that the decision to terminate wage loss and medical aid because a worker had "recovered" was intended to include the decision that he did not have permanent functional impairment. One therefore questions how an

“unsophisticated” worker would be aware of the impact of that decision in the absence of a precise explanation as to what was being decided.

On another note, there is considerable anecdotal evidence of the Board reopening or reconsidering a claim more than 75 days after a decision was made, when the new decision is adverse to the worker.

We submit that although the Board has stated it is not practical to provide formal written decisions in every case due to the huge volume of decisions made, each and every decision made by the Board has the potential to have a significant impact on a worker’s life, including health and financial implications. Board officers consistently use form letters and “cut and paste” relevant individual information, therefore, the additional work should not be onerous. In many cases the written decision could be a brief confirmation of a “substantive” verbal communication.

We believe that the additional costs of providing a written decision in each and every case would not be onerous when compared to the potential impact on the individual worker.

OPTIONS AND IMPLICATIONS

Option 1: Status Quo

We do not accept Option 1 as being viable and it is apparent that the Board also recognizes the adverse implication of utilizing that option.

Option 2: Amendments

For the most part, we agree with the suggested policy changes. However, for the reasons previously stated, we believe that every adverse decision should be communicated in writing, even if the written decision is a brief confirmation of a substantive verbal communication, in recognition of the fact that decisions which may appear to have minor importance may in fact have a significant impact on future entitlement. While some written decisions might be brief, in every case the issues decided should be explicit.