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FILED IN ...

A. Sims' Recommendations - Progress Update

Appeals Commission



Prepared:

April 15, 1996

Rules of Procedure

Recommendation #1

That the Appeals Commission immediately develop, adopt and publish Rules of Procedure for the conduct of its business. It should retain counsel to review its procedures and help draft an appropriate set of Rules of Procedure. It should consult with stakeholders in this process.

Status:

Following stakeholder input, the Appeals Commission "Rules of Procedure" were approved on December 15, 1995. The "Rules of Procedure" became effective on February 15, 1996.

Policy and Procedure Manual

Recommendation #2

That the policy and procedures manual be updated immediately to reflect current policies. A senior staff member should be assigned responsibility for ensuring the policy and procedures manual remains current.

Recommendation #3

The Commission should develop and adhere to a routine policy development process. Suggestions for change should be sought out regularly from staff and stakeholders. Proposals should be considered, adopted or rejected, and then documented. All staff should be advised clearly and promptly of policy or procedure changes and expected to implement them in practice.

Status:

Updating the policy and procedure manual is in process. This task has been assigned to the Manager - Administration of the Appeals Commission.

Information Sheets

Recommendation #4

That the Appeals Commission review its present "Rules of Procedure Sheets" and re-issue them in a more appropriate form as "Procedural Guides". It should update these sheets to accord with the new Regulations, any new Rules of Procedure and any new procedures adopted as a result of the WOSP project, the Court decision in Michetti, or this report, should the Commission choose to act upon it.

Status:

Completed February 15, 1996 and distributed to interested stakeholders.

How the Commission Operates

Recommendation #5

Commissioners - The categories of Appeals Commission members should be updated to reflect the current reality, with Vice-Chair members (without a stated representative designation), regular members representative of employers and workers, and temporary members representative of employers and workers.

Status:

This action has been completed as recommended.

The Selection of Commissioners

Recommendation #6

That the recruitment to future Appeal Commissioner vacancies be filed by a similar process to that used in 1994, including the use of a search committee and advertising for suitable applicants.

Recommendation #7

That appointments for Appeals Commissioners be for a one year term only for their first appointment, and thereafter for three year terms and that appointments be staggered to avoid large-scale turnover.

Status:

(First paragraph) - The recruitment process adopted by the Appeals Commission in filling commissioner vacancies and endorsed by A. Sims will continue.

(Second paragraph) - The Appeals Commission endorses this position, however, the authority to implement this process does not rest with the Appeals Commission.

The Role of the Chief Appeals Commissioner

Recommendation #8

That the Chief Appeals Commissioner personally chair selected cases, hearing important policy matters and sitting, over time, with each of the Commissioners.

Status:

This aspect of the duties by the Chief Appeals Commissioner have been endorsed and reflected in the recent job posting.

Throughout and backlog issues

Recommendation #9

The Appeals Commission should immediately introduce procedural changes and adopt a hearing schedule that will allow it to reduce its backlog of cases to at least half of its present level over the next 12 months.

Status:

The Appeals Commission has increased hearing capacity by 11%. With a 5% increase in appeal volume, the backlog of cases will be reduced in half by the end of 1996.

Time Taken in Filing Appeals

Recommendation #10

That the Act impose a 3 month time limit for launching appeals to the Appeals Commission except in cases when a full-time Appeals Commissioner is satisfied that there are good grounds for the appeal and that there is a reasonable explanation for the delay.

Status:

Legislation effective July 1, 1995 imposes a one year time limit except when the Chief Appeals Commissioner or his designate is satisfied there are reasonable grounds for the delay.

Case Processing Procedures - Appeal Form

Recommendation #11

Appeals Commission develop a plain language, user friendly, optional Appeal Form with explanatory notes seeking all information required by the new regulation 9 and any other preliminary information need to process an appeal.

Status:

The Appeals Commission has approved an Appeals Form. Printing and distribution will be completed in April, 1996.

Substantial Issue Limit

Recommendation #12

The Appeals Commission, by Rules or a statutory amendment, adopt a summary hearing process for claims involving less than \$1,000 in total compensation.

Status:

Disagree with this recommendation. Appeals of \$1,000 or less are just as important to the parties as an appeal resulting in \$100,000 in entitlement.

Cases Delayed in WCB

Recommendation #13

That the legislature consider giving the Appeals Commission a power to speed up cases before the CSRC and ARC where the case has been delayed unduly or where the case may impact another matter already appealed to the Appeals Commission.

Status:

Under current legislation, the Appeals Commission has no power to direct the Claims Services Review Committee or the Assessment Review Committee to "speed up cases" where the case has been delayed unduly. However, we have reached an agreement with the Claims Services Review Committee and Assessment Review Committee that ensures expedient documentary reviews, where possible, of any issue requiring additional input, subject to the restraints of General Regulations 9.

Case Preparation and Scheduling

Recommendation #14

That the Appeals Commission adopt a more flexible more managed appeal scheduling system in place of its present 2 hearing per day slot system and that dates be set even if case preparation is not complete. This system should allow priority booking and standby arrangements.

Status:

The above recommended method has been tried without success. We emphasize quality ahead of quantity. This is the last level of appeal.

Setting the Hearing Date

Recommendation #15

That the letters confirming the hearing date include the registrar's description of the issues on the appeal, or else the whole of the registrar's case summary.

Recommendation #16

Notices of hearing should plainly specify any deadlines for filing submissions or giving notice of any intent to call witnesses. Any such deadlines should be based on a suitable rule.

Status:

All interested parties have received confirmation of the registrar's description of issues on the appeal prior to the hearing date. The "Rules of Procedure" provide discretion by the Commission to specify deadlines for filing submissions and set dates to call witnesses.

Managing files that Need More Information

Recommendation #17

That the Appeals Commission and the WCB meet to agree on an appropriate way to clarify and then expedite and monitor Appeals Commission requests for information either before or after a hearing. This protocol, once established, should be incorporated into a WCB policy and Appeals Commission Rules of Procedure.

Status:

Information requested from the Workers' Compensation Board is expedited by the WCB personnel. Any concerns are immediately taken to WCB senior staff and/or the Chief Executive Officer.

Hearings

Ability to Call Witnesses

Recommendation #18

That the Appeals Commission put in place a policy for issuing notices to attend at the request of any proper party to a proceeding in any situation where the person's evidence might reasonable bear on the question before the Appeals Commission. A suitable Rule should cover this policy.

Status:

The provision for the Commission to issue notices to attend is detailed in the "Rules of Procedure". A party may make an application to the Commission for an order to issue a notice.

Medical and Other Outside Advisors

Recommendation #19

That the Appeals Commission immediately begin broadly based public consultations on how best to receive evidence about, and decide cases which turn primarily on, medical opinion. Failing a solution through consultation, the legislature should assess the desirability of providing a medical review panel, either separate from or attached to the Appeals Commission that would provide a decision in cases of an essentially medical nature.

Status:

The Appeals Commission has expanded the prior Appeals Commission utilization of independent medical opinion. An independent medical specialist provides medical opinion or coordinates the provision of medical opinion/actions from other medical specialists.

Appeals Commission Practices and WOSP Recommendations

Recommendation #20

That the Appeals Commission immediately revise its policies and its practices to ensure that the persons sitting on a panel, and only those persons, decide the cases before them. This requires a change to the description of the registrar's role and a complete revision to policies dealing with the role of the Chief Appeals Commissioner when panels disagree.

Status:

The Appeals Commission has reviewed its policies and practices to ensure commissioners on the hearing panel make decisions on appeals before them. The Chief Appeals Commissioner cannot rule on an issue before a panel of commissioners.

Decisions

Recommendation #21

The Appeals Commission should develop a policy that encourages panels to render oral decisions in all appropriate cases. Those chairing panels should receive training in how to deliver effective oral decisions.

Status:

Disagree - rendering an oral decision which is adverse to an appellant is dangerous. The Commission and its staff would be compromised if negative oral decisions were made.

Decision Content and Style

Recommendation #22

The Appeals Commission consult with officials of the Workers' Compensation Board to determine if the decisions of the Appeals Commission are sufficiently clear to enable the Board to implement that decision without delay, and to administer the worker's file in accordance with the Appeals Commission decision.

Recommendation #23

That the Appeals Commission depart from its decision format in cases where it is appropriate to do so. This might be done to give broader direction about its interpretation of the Act or the policies of the WCB. It might be done where giving a "benchmark" decision would contribute to consistent decision making within the Appeals Commission and the WCB.

Status:

The Appeals Commission consults with senior WCB staff on an ongoing basis. Any concerns regarding decision clarity or implementation delays are immediately addressed. Appeals Commission panels are authorized to depart from a standard decision format where required.

Review, Approval and Signing Procedures

Recommendation #24

That the Appeals Commission consider passing a Rule of Practice to authorize the presiding Commissioner to sign any decision on behalf of a panel once the members confirm their agreement.

Status:

The Appeals Commission "Rules of Procedure" authorizes the hearing chair to sign on behalf of the panel; or in that person's absence by any commissioner who participated in the hearing.

Publication - Public or Private Decisions

Recommendation #25

That the Appeals publish a newsletter or similar publication outlining important decisions from the Appeals Commission as well as other significant new information. The format for such a publication should be decided after consultation with affected stakeholders.

Status:

The Appeals Commission is proceeding with implementation of publishing of important decisions of the Commission. Initial publication is targeted for June, 1996.

Court Challenges

Recommendation #26

That the Appeals Commission's communications be modified to make it clear to parties that, while the opportunity for judicial review is limited, it is nonetheless available in certain circumstances.

Recommendation #27

That the legislature consider enacting a statutory 30 or 60 day time limit on when parties may apply to the courts to review any WCB or Appeals Commission decision. That time limit should be written to confirm, but not expand, the basis on which judicial review is presently available.

Status:

The Appeals Commission publication will include advice on processing appeals. The area of judicial review application will be included.

The Courts in Alberta recognize a six month time limit to apply for Judicial Review.

Reconsideration

Information Sheet

Recommendation #28

That the Appeals Commission's Reconsideration Requests Rule Sheet be updated and republished as an information sheet.

Recommendation #29

That the Appeals Commission's procedures for receiving and reviewing applications for reconsideration be set out in new Rules of Procedure.

Status:

The "Rules of Procedure" set out the rules on addressing reconsiderations.

Any parties requesting additional reconsideration information are provided with specific responses to their enquiry.

Chief Appeals Commissioner's Authority

Recommendation #30

Starting immediately, all requests for reconsideration should be heard by a panel of two or more Appeals Commissioners. The practice of the Chief Appeals Commissioner deciding these matters on his own should stop.

Status:

All reconsiderations are heard by a panel of two commissioners.

Timeframes

Recommendation #31

In future the time-frames for requests for reconsideration be tracked and reported separately from ordinary appeals. Those cases where the request is granted and a hearing held should be tracked and reported separately from those where the initial request is refused.

Recommendation #32

The target time-frame for deciding whether to grant or refuse a request for reconsideration of an earlier decision be not greater than 30 days.

Status:

Reconsideration requests are identified and tracked.

Decisions on the matter of granting reconsiderations are provided within 30 days.

Administrative Arrangements

Financial Matters

Recommendation #33

That the Appeals Commission include in an annual report its financial data including the wage and benefit data required for all publicly funded institutions. This financial data should be reported consistently from year-to-year and any changes in accounting noted in the report.

Recommendation #34

That administrative or legislative steps be taken to formalize the process for allocating the Appeals Commission's annual budget. Decisions taken about these matters should consider what administrative services can be supplied directly by the WCB and how the costs of such services can be allocated and reported upon.

Status:

The 1994 Annual Report provided the required information as identified.

The process for allocating the Appeals Commission annual budget is in place. The cost of services are allocated and reported upon.

Reporting

Recommendation #35

The Appeals Commission should return to issuing an annual report in its own name. This could be produced mostly in-house with presently available resources.

Recommendation #36

The Appeals Commission's annual report should contain statistical reports describing the volume and nature of the Board's caseload, the results of appeals and the time-frames within which cases are concluded. The reports thus published should be summaries of a more detailed statistical analysis conducted regularly as part of the Board's internal management processes.

Status:

The Appeals Commission now issues an annual budget in its own name. The annual report contains the information identified as required in the Sims' Report.

Publications

Recommendation #37

That pamphlet style guides to the overall WCB appeals process be prepared to workers and for employers modelled on similar guides now published in British Columbia.

Status:

All publications are being reviewed. The pamphlet "A Guide to the Appeals Commission" has been revised in accordance with the Appeals Commission "Rules of Procedure".

Systems Management and Support

Recommendation #38

The Appeals Commission should give a senior manager responsibility for developing and implementing office automation. This person should ensure that the systems in use integrate efficiently with the case processing procedures, and yield accurate statistical analysis and reports.

Recommendation #39

That the Appeals Commission assign a staff person to take over greater responsibility for systems administration and that it reduce its reliance on external resources for day-to-day systems matters. The person assigned will need to be provided with suitable training for this task, or else a person with suitable experience will have to be hired.

Recommendation #40

That systems maintenance and development contracts for the ATS or any subsequent replacement system be put through a competitive bidding system.

Status:

The Appeals Commission created the position of Manager - Administration. This individual is responsible for developing, implementing and administering improved office and reporting systems.

All changes to the system or equipment are subject to WCB consultant negotiations.

Legal Representation

Recommendation #41

That provision be made for the Appeals Commission to have a source of legal advice other than through the office of the WCB's solicitors.

Status:

Independent legal counsel has been obtained.

Systems

ATS Statistical Reporting

Recommendation #42

That the Appeals Commission explore the possibility of incorporating an ad hoc report writer into their database system and providing a senior staff person with the training necessary to develop ad hoc reports and to analyze the data currently with the database.

Recommendation #43

That the Appeals Commission decide precisely what statistics it wishes to monitor and report on. It should then modify the ATS system to produce that information directly without the need for further manual recalculation.

Recommendation #44

That the ATS have added it to a facility to run ad-hoc or routine reports during off hours.

Status:

The Appeals Commission has identified the statistics required to monitor. Ad-hoc and routine reports are to be run outside of regular work hours. An ad-hoc report is being developed to eliminate the need for further manual recalculation.

Linkages with other WCB Agencies

Recommendation #45

Any redesign of the ATS should include an ability to monitor the volume, type and time-lines for appeals for the whole appeal system.

Status:

Should a redesign of the ATS be carried out, the Appeals Commission will address this concern with the Workers' Compensation Board.

Word Processing

Recommendation #46

That the Appeals Commission adopt a Windows based word processing system once it is networked and that it develop standard letter and form templates for all its major correspondence and forms.

Recommendation #47

That all staff be given word processing and E-mail software on their work stations and the training necessary to use that software.

Status:

The Appeals Commission is adopting a Windows based wordprocessing system. Standard letter and form templates are in place or being developed. Wordprocessing is provided to staff as required. An internal E-Mail system is in place with Appeals Commission staff and the WCB.

Documentation and Imaging System

Recommendation #48

That the Appeals Commission immediately equip all registrars with appropriate work stations. These need high resolution screens capable of reading image files, and must be equipped to run Windows database, word processing and E-mail software.

Status:

All registrars have been equipped with work stations as required.

The WCB - Appeals Commission Relationship

Implementation of Appeals Commission Decisions

Recommendation #49

That, by rule or order, the Appeals Commission require the WCB to report back, within a fixed time-frame, on how it has implemented the Appeals Commission decision, reserving jurisdiction to clarify, finalize or revise its direction, as necessary, to ensure timely compliance.

Status:

The WCB is required by policy to implement decisions within 10 days. Any delays are immediately escalated to the appellant, and a WCB director.

The Appeals Commission also monitors compliance independent of the WCB.

Board of Directors Request for Reconsideration

Recommendation #50

That if officers of the WCB are to have the power to seek reconsideration on policy grounds other than through s. 8(7), then that practice should be authorized by legislation or regulation.

Status:

The Appeals Commission enforces the provisions of Section 8(7) and continues to emphasize the need for the WCB to respect this section of the legislation.

Case Management During Appeals

Recommendation #51

Claimants should not have their ongoing claims administration delayed just because their file is in use before the Appeals Commission nor should appeals be delayed because the worker's files has to be returned to the WCB for case administration.

Status:

Claims from July, 1992 are on the WCB Image System. As information is obtained from the terminal, delays do not occur when files are in appeal.

The pre 1992 paper files still present some problems, however, every effort is made to avoid administrative delays.