Consultation Feedback

Online consultation on the topic below was posted from December 12, 2023, to March 11, 2024. The verbatim comments received by WCB-Alberta during online consultation are reproduced below.

Reconsiderations, reviews and appeals (Policy 01-08)

Submitted by	*Category*	*Comments*
Action Roofing and Siding Ltd	Employer	Very transparent and reasonable !
City of Calgary	Employer	Thank you for the opportunity to provide feedback on the changes to Policy 01-08. I have only one comment and one question. I am particularly pleased with the addition of the term "factual and objective" to the list of new evidence requirements. Bravo! Do you have a list of what some examples of exceptional and justifiable reasons could be for a delay in obtaining the new information? I agree that we must set a limit on the timeframe for people providing new non-medical evidence as it becomes more difficult after one year. There are also collective agreement provisions that prevent the storage of a lot information beyond the one year timeframe (such as discipline and investigative information or reporting). Thank you,
TELUS Health	Employer	TELUS Health represents a significant number of employers in Alberta across many diverse sectors and industries. These employers contribute and pay a significant amount in WCB premiums each year and have a vested interest in the proposed changes to Policy 01-08. We have had the opportunity to review the proposed changes and appreciate the invitation to provide stakeholder feedback by March 11, 2024. By participating in this consultation, we hope to assist in guiding the approach to improve reconsideration processes so that the needs and expectations of workplace parties can be met. We have outlined our feedback in the following three parts. **I. Adjudicative and/or administrative errors and/or omissions should not be subject to the one-year time limit nor unreasonable delay.**

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		Although the proposed time limit for reconsiderations is one year from the date the information is discovered or becomes available, it is our position that this raises concerns over procedural fairness with respect to adjudicative and/or administrative errors. If the Board inadvertently failed to render a decision based on new evidence that was made available to it or render a new decision based on change in entitlement, we respectfully submit that it would be unfair and an undue burden for workplace parties to solely bear this responsibility. This reverse onus would contravene section 17(3) of the *Workers Compensation Act* which provides that "*The Board has authority to reconsider any matter that it has dealt with and to rescind or amend any decision or order previously made by it*". We would like to illustrate our concern with a hypothetical scenario: A worker sustained a workplace injury on January 1, 2017 and the Board allowed the claim for a concussion on January 12, 2017. The employer requested cost relief on January 2, 2019, which the Board denied a month later. On February 5, 2021, the Board extended entitlement to include an aggravation of pre- existing Major Depressive Disorder but the Board did not render a new decision regarding prolonged disablement due to an aggravation of a pre-existing condition. Due to an economic downturn resulting in mass layoffs, the employer does not request a reconsideration of cost relief until February 8, 2023. Under the proposed changes to policy no. 01-08, the employer would be denied a reconsideration as it did not meet the one-year time limit. However, it releases the responsibility of the Board to review entitlement and decisions throughout the life of the claim, which it failed to do two years prior. This example highlights that decisions would not be rendered based on the merits and justice of the case as required by section 17(4) of the Act and the inability to correct this omission by the Board would amount to declining jurisdiction. Therefore, we respectfully request that adjudicative and/or administrative errors and/or omissions not be subject to the one-year reconsideration time limit to maintain procedural fairness. II. New evidence should also include new decisions. In reviewing the examples of what may constitute new evidence, it is significant to note that new decisions were not included. Although new decisions would likely be based on new evidence, it is our position that without the inclusion of new decisions into the examples of new evidence, the interested party would be required to request a copy of

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		the claim file, decipher what new evidence was used (a grueling task particularly for an unrepresented party) and then request a reconsideration from the Board within one year. We contend that there may be delays in receiving the claim file, such as through administrative processes, *force majeure* (i.e. a pandemic), mailing errors or technical issues. We submit that a new decision confirms that the Board received new information and thus, a reconsideration based on a new decision should be permissible. **III. A one-year time limit and a requirement of unreasonable delay should not exist concurrently.** The proposed changes to policy 01-08 require an interested party to obtain information without unreasonable delay *and* submit same to the Board within one year from when the information was discovered or became available. It is our position that this concurrent requirement violates procedural fairness as it fetters adjudicative discretion. We respectfully submit that reasonableness cannot be captured by a number and to require a one-year time limit with a requirement for unreasonable delay implies that delay is only reasonable if it does not exceed one year. Therefore, we propose the following changes: 1. Implement a one-year time limit from discovery or availability of new evidence as the default standard. 2. If an interested party exceeds the one-year time limit, the standard becomes unreasonable delay, which allows for a decision to be made based on the merits and justice of the case. Thank you in advance for your consideration. We appreciate the opportunity to provide feedback for the proposed changes to policy 01-08 as it is imperative to consider the perspectives of stakeholders. Respectfully submitted,
ITF	Employer Association	We strongly support the addition of the term "factual and objective" to the list of new evidence requirements. We are also in agreement with the addition of the other proposed new criteria. Application 1 We propose adding a provision whereby if the Fair Process Review Center determines there was procedural unfairness in the handling of a claim this would automatically trigger an internal reconsideration by the appropriate level (DRDRB or claim owner). We agree with setting a one-year timeframe for individuals providing new non-medical evidence as it becomes more difficult to address after

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		one year. For example, there may be collective agreement provisions that prevent the storage of information beyond the one-year timeframe (e.g. discipline and investigative information or reporting) so the employer could be placed at a disadvantage in responding after more than one year. 5. Which WCB staff can reconsider and change decisions? - the draft policy indicates claim owners and supervisors can change decisions, however the WCB is increasingly relying on specialized triage teams to review claim files. Members of a triage team are not claim owners yet they are currently changing decisions. If this will continue their ability to change a decision should be clarified in policy.
Individual	Other	If there is any new evidence, it is not the responsibility of a worker or employer to gather the evidence. The gathering of evidence is the sole responsibility of the WCB in an Inquiry system that has been the legal standard since WCB was first established in 1908. Any missing or insufficient evidence is the fault of WCB who have not performed a thorough investigation as per their own policy. This was an issue *[removed the protect the identity of the individual]* brought before the courts on Judicial Review and appeal and WCB Legal Counsel and the Appeals Legal Counsel were informed of this by Justice Bruce Millar. Needless to say, WCB and the Appeals Commission were chastised by Justice Millar for not understanding the difference between an Inquiry model and an adversarial model with costs and disbursement awarded to me.
Individual	Other	When looking at new evidence, a decision-maker must realize that any new evidence is evidence that WCB, DRDRB, or the Appeals Commission should have had before they made a decision. The reason is that adjudication by WCB, DRDRB, and the Appeals Commission is based on an Inquiry system, not an Adversarial system, with the entire burden of proof being on WCB, with no burden of proof on a worker or an employer as was determined by the Court of Kings Bench on Judicial Review *[removed the protect the identity of the individual]* Courts. As well, Dr. Terence Ison who was Canada's leading expert on worker's compensation in Canada made this quite clear in his book titled Workers Compensation in Canada 2nd Edition. Also, the Supreme Court of Canada has determined that worker's compensation is based on common sense and logic, not scientific proof which would result in a higher legal standard than criminal law which is based on beyond a reasonable doubt.

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		In conclusion, any new evidence that becomes available after a decision is due to sloppy and inadequate investigations by WCB, DRDRB, and the Appeals Commission.
BCL Consulting	Other	Thank you for allowing us the opportunity to provide feedback regarding the consultation on proposed changes to Policy 01-08: Reconsiderations, reviews and appeals; in particular new evidence policy provisions. Through our work as employer representatives for Workers' Compensation, we are concerned with the resistance we receive with respect to relevant evidence and/or new evidence, which has clearly been available to a decision maker but not reviewed or considered during any of the decision-making processes on a claim. Over the last several years, we have seen a significant increase in inconsistent and incomplete decision information being provided in decision letters. These decision documents lack transparency, as they do not confirm specifically what information has and has not been considered in the decision- making process and specifically why the information has resulted in the decision made. Stakeholders are, rightfully, entitled to documented clarity on these matters. We appreciate that there are many factors that may influence the decision-making process including inexperience, time constraints, workload, being unfamiliar with policy, incorrect policy interpretation, frequent staff changes on files, layman understanding of medical documentation, or the like. However, this is not justification for standing behind poor decisions. Regardless of the cause, both workers and employers can be negatively impacted when decisions are made in circumstances where all relevant file information is not thoroughly reviewed each time a decision is rendered. Historically, we have requested that a reconsideration, review, or appeal be undertaken based on new evidence, when it is clear the decision maker did not consider relevant evidence on file during their initial or subsequent decision-making processes. We do not make these requests lightly or without merit. We are often denied the opportunity for reconsideration, review, or appeal citing that the evidence we have referenced is not new, however it is never communicated how or if the evidence was considered in their initial decision. As such, we are concerned that the criteria for new evidence is extremely subjective and not transparent.

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		If it is clear that the evidence was not reasonably considered by the decision maker when making a decision, then it should be considered new evidence and open to the reconsideration, review, or appeal processes. If, in fact, the evidence was taken into consideration, then the decision maker needs to clearly communicate why the evidence did not alter their decision. This allows for a proper and equitable challenge of questionable decisions. We are concerned that the new evidence policy provisions can easily be used to prohibit fair reconsideration, review, or appeal when a decision maker has obviously not considered and/or reviewed relevant information (new or otherwise) on the file. The result is a decision being rendered on a claim file without weighing all the relevant information available. In essence, we believe that the new evidence policy provision allows administrative errors, made by decision makers to go unchecked and removes any amenable avenues for reconsideration, review, or appeal to stakeholders. As a result, employers and workers can be negatively impacted by flawed decision-making processes at either the WCB, the DRDRB or the Appeals Commission. The proposed changes to the new evidence policy provisions will not, in our opinion, improve the Workers' Compensation system for stakeholders, where poor decisions are made based on incomplete review of claim file information during the decision- making process. Thank you for your kind attention to this correspondence.
WORK4UBYLINDA	Paid advocate	In my review of the jurisdictions throughout Canada that even reference New Evidence/Reconsideration, the WSIB Ontario, Saskatchewan WCB, Manitoba WCB, New Brunswick WCB and WCB PEI NS, and CNESST (Quebec WCB), Acts and policies place no time limits on New Evidence or Reconsideration. Worksafe BC however imposes a 75 day time limit at the Customer service level, however the WorkSafe Tribunal (Appeals Commission) has no time limits on Reconsideration applications. Many of the other WCB jurisdictions (with the exception of B.C.), take the same approach in terms of determining what constitutes New Evidence as noted in the PEI POL-160:

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		. It must be factual and objective. . The information must be new. Information is not new if it reiterates, reviews, or is an argument about information that is already on file. . It was not reasonably available at the time the decision was made. . The information must be relevant and substantive. This means that it must be credible information that is directly related to the decision and could have an impact on the outcome of the decision. Throughout my career with the WCB and my current position as an advocate, there has never been a "level playing field" between the WCB and the injured worker. This enormously skewered power dynamic, whether intentionally or by its practices, causes many injured workers to retreat following their experience, and while the time limits on appeals is not at issue here, the suggestion that there can be any time limits on New evidence is contrary to the basic tenets of the law and fairness. The WCB yields extraordinary power, and as such, it should follow similar civil laws throughout Canada. There are no time limits for New Evidence in the Alberta Court of Appeal, and that should be the same for the WCB Alberta. To do otherwise, suggests that the WCB is yielding power that falls outside the reasonableness in higher legal bodies. ISSUE #2 Wording Previous versions of 01-08, New Evidence have provided reasonable criteria, using the terms: material, factual and objective and substantive. Why are you now using PROBATIVE which is defined as: "providing proof or evidence (Collins Dictionary) or Substantive (Merriam-Webster). This seems to be over-kill on the part of the WCB, and completely unnecessary. Legal jargon has no place in the WCB policies, which are meant to be easily understood so the only rationale for its inclusion must be to intimidate a stakeholder. Ultimately, I see no value or merit in adding this term in the Policy and request that it not be included in the sufficient definitions already in place.
Individual	Worker	I welcome the new changes that will be made regarding decisions that are made our questions were not heard when asked why a decision was made that were not reasonably.

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Individual	Worker	They canceled my assessment for no reason for my shoulder after the two years after surgery and the person that canceled it didn't have the authority to do so but I can't get it reversed I now have a shoulder replacement that greatly affects what I can and can't do I recently had plates and screws removed from left elbow and two of the screws were broken during removal and now the arthritis is bad and it is being ignored
Individual	Worker	I was accessed on left elbow in 2017 by occupational therapist and what I did for a living was not taken into consideration I was working in a feedlot my elbow would not straighten so fell quite a few times because I couldn't grab ladder to get in and out of equipment still does not straighten I had plates and screws taken out because a screw had broken off and was wearing down the joint they left two screws in because they broke the arthritis is bad a d joint isn't good For some reason the shoulder replacement was never accessed and I was never given a reason
Individual	Worker	Thank you for doing this It is very frustrating to get something done after the fact when new information comes up Lots of injuries increase in damage as time and treatment goes on I find sometimes to get information as to what is going on is not forthcoming and it's like pulling teeth to get the information you need Right now I'm waiting on medical department to make a decision on my continuing with physio and can't find out what is going on The delay in fixing a totally broken arm was 6 months as they were busy trying to find me a job I could do one handed and recently it took 4 months to get a a screw removed from the elbow joint which resulted in a lot of damage to joint and they are trying to scale back treatment instead of dealing with what is needed
Individual	Worker	They refused to X-ray on the site. Inappropriate actions made by the doctors for a full examination. I was the youngest one in chronic pain clinic. I went once, it broke my heart I never went back. Due to mentality reasons
Individual	Worker	My worker did not provide adequate support or service to care for my injury. I had a major surgery and require an 18 post operation healing time. So far she has closed my file without my consent or my physicians recommendations. I have started rehab and physiotherapy for my injury and due to the severity I have to take things slow as I still have only 30% strength in my arm. This injury affects every aspect of my life and impedes my daily functions. I'm appealing my decision but until then my benefits and payments have no went through. I have not returned to work as it is not safe for someone with an injury

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		to be present in my line of work. I feel very stuck as my savings are depleting and I have no alertnative and do not qualify for EI
Individual	Worker	A portion of the changes proposed follows: APPLICATION 2: RECONSIDERATIONS (NEW EVIDENCE) Yellow shading highlights policy revisions. Blue text in the left margin links readers to existing sources. Issue Date: Part II App. 2 page 5 of 9 Supersedes: April 1, 2021 Application 1 Copyright 2023 All rights reserved 8. What is new evidence? Policy 01-08, Part I (1.0) New evidence is new information that may affect the outcome of a workers' compensation decision. To be considered new evidence, it must meet all of the following criteria: . the evidence is material - it is relevant to the issue in question; and . the evidence is new - information is new if it was not previously available to the decision-maker or if it provides information that is not already on file; and . the evidence was not reasonably available at the time the decision was made - it could not have been presented by the worker or employer at that time; and . the evidence is substantive - it gives new information that could affect the outcome of the decision; and . the evidence is probative - it is reasonably capable of proving (or disproving) a relevant fact at issue in the initial decision (i.e. alters the balance of probabilities to substantiate a relevant piece of information); and . the evidence is factual and objective Information is not new evidence if: . it consists of an opinion on evidence that was available to the original decision-maker; or . it reiterates, reviews, or is an argument about information that is already on file; or . it pertains to a different time period than the issue under reconsideration; or . it simply summarizes or reformats information that was considered by the decision-maker when the decision was made

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		Contentions: 1. Is the requirement for evidence used by the decision-maker also have to meet all the above-stated criteria? YES - Provide the details of the portion(S) of WCA Act/Regulation/Policy that supports your assertion NO- Your system of claims management is biased and unfair as you have created an environment wherein Customer Service does not have to adhere to such high standards for evidence used in the original decision-making process 2. For accountability and transparency please clearly define in the WCB policy the definitions of the following words in a manner that ALL parties (WCB members and agents, IME, employers, and workers) agree on as final interpretations . Reasonably . Factual . Objective . Opinion . Reiterates . Reviews . Argument . Original . Relevant . Scientific evidence- all examples 3. How can an employer or worker determine if information was previously available to the decision-maker or if evidence was already on file? . Please provide the specific WCB Act/Regulation/Policy that creates such a requirement of disclosure by the decision-maker/Customer Service . In my experience, my decision-maker made a highly significant decision without providing any evidence to support that decision in the posted claim letter. When asked to provide the evidence, before submitting a DRDRB hearing request, the decision-maker refused. So how is it that an employer or worker can submit new evidence that was not available to the original decision-maker when there is no policy requirement or interpretation thereof, that makes it mandatory for such a disclosure of evidence by the decision-maker to begin with? 4. . provides a new opinion but is not based on new scientific evidence

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		(e.g., new tests or examinations) as this would not provide any new information that was not available to the original decision-maker, or . This notation in Application 2: Reconsiderations does not take into account the reality of the speed of advancement of medical understanding of all the clinical factors of the human response to injury. The fact of the matter is that in today's world of AI and global cooperation (e.g. the development of the COVID 19 vaccines) new opinion based on new medical understanding of the interpretation of old tests and previous examinations can change dramatically in a matter of weeks to months. ALL tests and examinations come with subjective assumptions and understanding of the limitations of the tests themselves and of the medical practitioners knowledge base. 5. assesses a worker's current state as opposed to their state at the time of the issue under reconsideration (e.g., a functional capacity evaluation completed today is not new evidence regarding a worker's functional abilities from several years ago). As the information pertains to a different time period than the issue under reconsideration, it is not new evidence and does not apply retroactively to the previous assessment . This notation in Application 2: Reconsiderations is inconsistent with the current management standards of decision-makers. In my case, I reported significant cognitive difficulties on July 28 2021, yet due to WCB's archaic policies regarding cognitive testing for only brain injured workers, I was finally professionally assessed on *[date removed]* 2022 by an IME. Over 10 months elapsed, despite a CBI Health occupational therapist's medical opinion and diligence to set up a cognitive assessment on *[date removed]* 2021. Ultimately, it is very likely a timely assessment in October 2021 would have confirmed a work-related diagnosis rather than a likely association. What my experience undoubtedly exposes is the slow response to changes in medical understanding of injury and its sequelae by WCB (e.g. you still use ICD-9) can be a cause for the delay in medical reporting of new evidence. Therefore, for the above example to be valid, WCB must be accountable and transparent in the adoption of the most up-to-date standards of medical assessment by qualified IME. In my case, more than one physiatrist expressed opinions that their specialty's scope of practice best suited the management of my condition. not a general surgeon, a neurosurgeon or a neurologist. 6. The entire process of reconsiderations, reviews, and appeals could be minimized by allowing IME to do the following: . Report on any matter brought forward by a worker during an assessment that is relevant to their scope of practice, even if the

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		decision-maker or other WCB member or agent did not request it . Any decision made by a decision-maker based on an IME's medical reporting must be reviewed and accepted with amendments before being posted to a workers claim file Please note: Your response and my original comments will be forwarded to the Minister and to other outside sources of public opinion for consideration.