

Decision of the Chair, Workers' Compensation Appeal Tribunal

Number: 24
Date: March 30, 2017
Subject: *Manual of Rules of Practice and Procedure (MRPP) Revisions*

1. Under section 234 of the *Workers Compensation Act* (WCA) the chair is responsible for the general operation of the Workers' Compensation Appeal Tribunal (WCAT).
2. The chair's authority includes responsibility, among other things, for:
 - establishing any rules, forms, practices and procedures required for the efficient and cost effective conduct of appeals to WCAT;
 - making accessible to the public any rules, forms, practices and procedures established by the chair; and,
 - establishing administrative practices and procedures for the effective operation of WCAT.
3. Under section 11 of the *Administrative Tribunals Act* (ATA), WCAT has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.
4. Under section 13 of the ATA, WCAT may issue practice directives consistent with the ATA, the WCA, their regulations and any rules of practice and procedure made by WCAT.
5. Pursuant to the chair's authority, the attached amendment (Appendix A) of item #6.6.7 (Participation by the Board) is approved as an amendment and replacement of item #6.6.7 in the MRPP which was effective April 26, 2016.
6. These rules of practice and procedure, dated March 30, 2017, remain in effect until their amendment, replacement or revocation by the chair.

Andrew Pendray
Chair, Workers' Compensation Appeal Tribunal

Signed at Richmond, British Columbia, this 30th day of March 2017

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6.6.7 Participation by the Board

As decision-maker, the Board is not a party to tribunal proceedings. The Board does not have standing to participate in an appeal except by WCAT's invitation. In certain appeals (primarily those involving prevention or assessment matters), WCAT may invite the Board to participate in an appeal under the general authority to request participation by "any person" [s. 246(2)(i)]. ~~Section 247(4) of the WCA prohibits WCAT from compelling the Board to give evidence respecting the development or adoption of the policies of the board of directors.~~

WCAT will determine the extent of the Board's participation in an appeal, and in making that determination WCAT may consider the submissions of the parties.

In appeals where the Board is invited to participate, the Board's general role will be to provide the panel with information within the knowledge and expertise of the Board, rather than to participate actively as a party. From time to time a Board legal officer may accompany a Board officer invited to attend an appeal hearing, in which case the panel may permit the Board officer and Board legal officer to listen to the testimony of the witnesses. The panel may then permit the Board legal officer to question the Board officer, in the manner of a direct examination, in order to elicit from the Board officer information respecting factual matters referred to by other witnesses, or other factual matters relevant to the issue or issues in the appeal. Regardless of whether the Board officer testifies in the manner of a direct examination, the panel may permit the parties to the appeal to cross-examine the Board officer.

Although subsection 246(2)(i) of the WCA provides that WCAT may request any person or representative group to participate in an appeal if the tribunal considers that this participation will assist the tribunal, WCAT to fully consider the merits of the appeal. Generally, WCAT will not generally require a Board decision-maker to participate in an appeal with respect to one of their decisions, although an expert who provided an opinion on a Board file may be required to give evidence. Section 247(4) prohibits WCAT from compelling the Board to give evidence respecting the development or adoption of the policies of the board of directors.

~~WCAT will determine the extent to which the Board may participate in an appeal. When making this determination, WCAT may consider the submissions of the parties. Generally, the role of the Board will be to provide the panel with information within the knowledge and expertise of the Board, rather than to participate actively as a party. From time to time a Board officer will attend with a Board legal officer, in which case the role of the Board legal officer is generally to observe.~~