

July 17, 2012

Ms. Caroline Berkey
Chair
Workers' Compensation Appeal Tribunal
150 - 4800 Jacombs Road
Richmond, BC V6V 3B1

Dear Ms. Berkey:

RE: WCAT Decisions # 2012-01017 and 2012-01018

On April 18, 2012, Ms. Jill Callan, the former Chair of the Workers' Compensation Appeal Tribunal ("WCAT"), issued a determination that policy item #50.00, *Interest*, of the *Rehabilitation Services & Claims Manual*, Volumes I and II ("*RS&CM*") is so patently unreasonable that it is not capable of being supported by the *Workers Compensation Act* ("*Act*") and its regulations. This determination was made under section 251 of the *Act*, which gives the WCAT discretion to refuse to apply a policy of the Board of Directors ("BOD") "*only if the policy is so patently unreasonable that it is not capable of being supported by the Act and its regulations*".

This determination was formally received by the BOD on April 19, 2012, and all appeal proceedings pending before the WCAT that were considered to be affected by the *Interest* policy were suspended. Under section 251(6) of the *Act*, the BOD is given 90 days to review the policy and determine whether the WCAT may refuse to apply it under section 251(1).

The BOD provided the parties whose proceedings had been suspended pending the BOD's determination with notice of their entitlement to make written submissions with respect to the former Chair's determination. The BOD considered the submissions received when making its determination.

The *Interest* policy recognizes the circumstances in which interest is payable under the *Act*. It also provides that interest may be payable where it is determined that there was a blatant Board error that necessitates a retroactive payment.

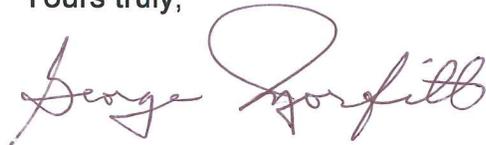
This letter is to advise you that on July 17, 2012, the BOD met to finalize their determination under section 251(6) of the *Act*. After careful deliberation the BOD has determined that the *Interest* policy is supported by the *Act* and is therefore not patently unreasonable.

It is the BOD's opinion that the blatant Board error test is rational when considered in light of the objectives and purposes of the *Act*, and is therefore neither arbitrary nor discriminatory.

Given the BOD's determination that policy item #50.00 is rationally supported by the legislation, it is the BOD's decision that the WCAT cannot refuse to apply the policy on the basis that it is patently unreasonable. As required under section 251(8) of the *Act*, this matter is referred back to the WCAT to apply the policy.

Please be advised that the BOD has directed the Policy and Regulation Division to commence a review of the Interest policy. A discussion paper for consultation will be released shortly.

Yours truly,

A handwritten signature in red ink that reads "George Morfitt". The signature is written in a cursive style with a large, prominent loop at the end of the last name.

George Morfitt, FCA
Chair, Board of Directors

Copies to: David Anderson, President and CEO
Ed Bates, General Counsel and Secretary to the Board
Roberta Ellis, Vice President, Policy and Regulation Division
Parties to Suspended Appeals