Noteworthy Decision Summary

Decision: WCAT-2004-06708 **Panel**: Jane MacFadgen **Decision Date:** December 20, 2004

Meaning of "Decision" in section 96(4) and (5) of the Workers Compensation Act (Act) – Meaning of the "Decision" in the Review Division Practices and Procedures Manual – Jurisdiction of Review Division - Interpretation of 75-day time limit on the Workers' Compensation Board's (Board) reconsideration authority – Written notification of decisions to claimants – Resolution 2004/06/22-03 – Former Provisions - Reviewable decisions under section 96.2(1)(a) and (b) of the Act – Decisions to reopen on the Board's "own initiative" or "on application" under section 96(2) – Practice Directive #58.

When the Workers' Compensation Board (Board) fails to communicate a Board decision to a party, it is not a "decision" for the purposes of section 96(4) of the *Workers Compensation Act* (Act)or the Review Division *Practices and Procedures Manual*. Therefore the Board has the authority to reconsider the decision at the request of the party, even where the 75 day time limit set out in the Act has passed. Also, communication from a worker does not constitute a request for the reopening of the worker's claim unless it specifically refers to the criteria set out in section 96(2) of the Act.

In 1980 the worker suffered a back injury. At that time a Board disability awards officer decided not to assess the worker for a permanent partial disability, and made a note of this decision in the worker's file (the "Disability Decision"). The Disability Decision was never communicated to the worker, either verbally or in writing, as the worker had not been expecting a decision regarding a disability award (this Board practice has recently been changed – see policy item #96.30 of both volumes of the *Rehabilitation Services and Claims Manual*).

In March of 2003, the worker requested that the Board perform a permanent partial disability assessment. The Board advised the worker that it could not consider the worker's request because more than 75 days had passed since the Disability Decision had been made (section 96(5) of the Act) (the "Board Decision"). The Review Division determined that it did not have the jurisdiction to review the Board Decision as it was not "a Board decision respecting a compensation or rehabilitation matter" but merely a communication advising the worker of the statutory time limits related to the claim (section 96.2(1)(a) or (b) of the Act).

On appeal, the WCAT panel found that the Disability Decision was not a "decision" for the purposes of section 96(4) of the Act because it was not communicated to the worker. For that same reason the Disability Decision was not a "decision" as the term is defined in the Review Division *Practices and Procedures Manual*. The WCAT panel therefore found that the Review Division erred. The Board Decision was a reviewable decision. To decide otherwise would deny the party's appeal rights under the Act and violate the basic rules of fundamental fairness and natural justice. The WCAT panel returned the matter to the Review Division for a review on the merits.

The Review Division had also determined it had no jurisdiction to review the Board Decision on the basis that the worker's request for an assessment also amounted to a request for a reopening of the worker's claim under section 96(2) of the Act, and thus must be appealed directly to WCAT (section 96.2(2) (g) and section 250(2) of the Act).

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On this issue, the WCAT panel relied on Practice Directive #58 and previous decisions, and found that the worker's letter was not a formal reopening request as it did not refer to at least one of the criteria listed under section 96(2) of the Act. The panel found that in making the Board Decision, the Board had considered reopening the worker's claim on its own initiative. The Review Division therefore had jurisdiction to review the Board Decision.

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WCAT Decision Number: WCAT-2004-06708
WCAT Decision Date: December 20, 2004
Panel: Jane MacFadgen, Vice Chair

Introduction

In March 2003, the worker asked the Workers' Compensation Board (Board) to assess him for permanent partial disability related to his 1980 back claim.

The case manager's April 14, 2003 letter advised that, because a disability awards officer had made a decision in March 1981 not to assess the worker for permanent disability, the 1981 decision could not be reconsidered as over 75 days had elapsed since that decision was made. Section 96(4) of the *Workers Compensation Act* (Act) precluded a reconsideration outside this time frame. The case manager was also unable to consider a reopening of the worker's 1980 claim as the last medical information on file was from 1981. She required updated medical information in order to determine if the worker met the criteria for a reopening under section 96(2) of the Act.

The June 5, 2003 decision of the Review Division declined to conduct a review of the April 14, 2003 letter, related to the reconsideration issue, because it was not a reviewable decision. No reviewable decision was made for the purposes of sections 96.2(1)(a) and (b) of the Act where a Board officer simply communicated the statutory time limit on the Board's authority and the fact that the time had elapsed. The review officer noted that the worker would need to apply to the Chief Review Officer for an extension of time to file a request for review, if he wished to seek a review of the March 1981 decision. The review officer further advised the worker that the Review Division could not review the case manager's decision on the reopening issue, but that decision could be appealed directly to the Workers' Compensation Appeal Tribunal (WCAT).

The worker now appeals the Review Division decision. Relying on the analysis in *WCAT Decision #2003-04322*[1], he submits that the Review Division has the jurisdiction to hear his appeal on the reopening issue, and that it should be directed to do so.

The worker's request for an oral hearing of the appeal was denied on a preliminary basis. I am satisfied that an oral hearing is not required to consider fully the jurisdictional issue before me in this appeal as the underlying facts are not in dispute. The injury employer is no longer registered with the Board. WCAT invited the industry association to participate in the appeal, but it has not done so.

Issue(s)

[1] Found at http://www.wcat.bc.ca/research/decision/pdf/2003/12/2003-04322.pdf

Did the Review Division err in rejecting the worker's request for review on the basis that there was no reviewable decision and that it lacked jurisdiction to consider the reopening issue? Does the 75-day time limit on the Board's authority to reconsider a decision apply where no decision had previously been communicated to the worker?

Jurisdiction

Section 239(1) of the Act provides that a final decision made by a review officer in a review under section 96.2, including a decision declining to conduct a review under that section, may be appealed to WCAT.

Background and Evidence

The Board accepted the worker's July 1980 claim for a low back sprain, and paid him temporary disability benefits until his return to work as a woodworker in October 1980. Medical reports documented the worker's ongoing complaints of back pain and tenderness after his return to work. His attending physician advised him to avoid lifting.

A Board medical advisor examined the worker in December 1980 and wrote that the worker was currently working with a partial disability, diagnosed as a low back strain and possible degenerative disc disease at L5-S1. His pain was half of its previous level, but his back still hurt to lift and it became sore after several hours. The Board medical advisor thought that the worker could do the finishing carpentry, but he cautioned that the heavy lifting was more than he could handle and would put him out of commission again. He suggested that consideration be given to slightly modified work.

A vocational rehabilitation consultant subsequently spoke with the employer, who advised that the shop work was really not heavy, involving only occasional lifting of weights of 50 pounds.

The attending physician reported on January 8, 1981 that the worker still complained of lower lumbosacral pain with heavy lifting, and he had advised him to avoid heavy lifting and work with a lumbar support belt. The doctor indicated that a permanent partial disability would result, which he described as degenerative L5-S1 osteoarthritis with chronic low back strain.

The disability awards officer's January 1981 memo to file, in response to this report, noted that it was too early to assess the worker for any permanent disability, if any. He planned to review the matter again in two months.

The disability awards officer's March 26, 1981 file memo noted that there had been no new medical reports since January 8. He concluded that no further action by Disability Awards was required as it did not appear the worker currently had any permanent disability which would warrant an award. Because the worker was not expecting a decision regarding an award, the disability awards officer did not consider it necessary

to inform him of this. He had therefore reviewed the file "for internal purposes only." He noted that if medical reports were received indicating ongoing back problems related to this injury, Disability Awards could consider the matter further.

The next activity on the claim file was the March 17, 2003 letter from the worker's representative asking Disability Awards to assess the worker for a permanent partial disability award. In response to this request, the case manager issued the April 14, 2003 letter advising the worker that she could not reconsider the disability awards officer's March 26, 1981 decision, because section 96(4) of the Act precluded her from doing so once over 75 days had passed since the decision was made.

The worker requested a review of this decision by the Review Division. The June 5, 2003 Review Division decision denied the worker's request for review of the April 14, 2003 letter on the reconsideration issue on the basis that it was not a reviewable decision. The Board officer had simply communicated the statutory time limit on the Board's authority and the fact that the time had elapsed. Further, under section 96.2(2) of the Act, the Review Division did not have jurisdiction to review a decision not to reopen a matter on an application under section 96(2). Such a decision had to be appealed to WCAT.

A July 8, 2003 letter from the director of the Board's Rehabilitation and Compensation Services Divisions advised the worker's representative as follows:

> The Division has taken the position that Section 96(5) applies to all decisions made by the Board, regardless of whether or not they are accompanied by a decision letter. In the event that a worker or employer wishes to appeal an old decision that was not communicated by a decision letter, our practice is to have a Board Officer provide the details of the old decision. This has been done by the case manager in the April 14, 2003 letter. The party would have to request an extension of time from the Review Division for a review of the decision.
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> I have consulted with the Director of Disability Awards and we have given careful consideration to whether the memorandum of March 26, 1981, constitutes a decision. In our opinion, Bill 63 was intended to bring finality to the decision-making process. We believe that the memorandum must be read within that context and be considered a decision. Therefore, it cannot be reconsidered but could be reviewed if an extension of time is granted by the Review Division. The decision can be reopened.

The worker has appealed the Review Division's decision declining to conduct a review of the April 14, 2003 decision. He submits that the Board erred in stating that there had been a previous decision, as no decision had been previously made or communicated to him regarding his entitlement to a permanent partial disability award. There was medical information on file indicating that the worker likely had a permanent impairment, but the Board had failed to carry out the appropriate inquiries and adjudicate whether

the worker had a permanent impairment that would entitle him to a pension award. The worker was requesting that this determination be made.

The worker did not make a submission on the merits of the reopening issue, but submitted that the Review Division had the jurisdiction to address his request for review of the reopening issue, based on the analysis in *WCAT Decision #2003-04322*. He asked that his appeal on the reopening issue be referred back to the Review Division to be considered on its merits.

Reasons and Findings

Section 96(2) of the former Act gave the Board a broad discretion to "reopen, rehear and redetermine any matter" that had been previously dealt with by the Board (apart from a decision of the Appeal Division). As a result of the changes effected by the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63), the Board's authority to reopen and reconsider prior decisions and matters was changed significantly as of March 3, 2003. The current provisions of the Act regarding the Board's authority to reopen or reconsider a prior decision or matter are outlined below.

The current section 96(2) provides that the Board may reopen a matter that has been previously decided by the Board if, since the decision was made in that matter, there has been a significant change in a worker's medical condition that the Board has previously decided was compensable, or there has been a recurrence of the worker's injury. Section 96(3) states that if the Board determines that the circumstances in section 96(2) justify a change in a previous decision respecting compensation or rehabilitation, the Board may make a new decision that varies the previous decision.

Section 96(4) permits the Board, on its own initiative, to reconsider a decision or order that the Board (or officer/employee of the Board) has made, subject to the restrictions set out in section 96(5). Section 96(5) states that the Board may not reconsider a decision or order if over 75 days have elapsed since that decision or order was made, or if a review or appeal has been requested or filed with the Review Division or WCAT.

Section 1 of the Act defines the term "reconsider" as "to make a new decision in a matter previously decided where the new decision confirms, varies or cancels the previous decision or order." The Act does not define "decision."

Sections 96.2(1)(a) and 96.3(1)(a) of the Act allow a worker who is directly affected by a Board decision respecting a compensation matter to request a review of that decision by the Review Division. Under section 96.2(3), a request for a review to the Review Division must be filed within 90 days after the Board's decision was made. Section 96.2(4) gives the chief review officer the discretion to extend the time to file a request for a review after the time to file has expired where the chief review officer is satisfied that special circumstances existed which precluded the filing of a request for review within that 90 day time period, and that an injustice would otherwise result.

Section 96.2(2)(g) states that a review may not be requested for a decision to reopen or not to reopen a matter on an application under section 96(2). Sections 240(2) and 241(5) of the Act provide that a worker who is directly affected by a decision to reopen or not to reopen a matter on application under section 96(2), may appeal that decision to WCAT.

Rehabilitation Services and Claims Manual, Volume II (RSCM II) policies #C14-102.01 and #C14-103.01 distinguish between a reopening of a claim and a reconsideration of a previous decision. The policies state that a reopening of a previous decision does not affect the application of the decision to the period prior to the significant change in the worker's medical condition or the recurrence of the worker's injury. Rather, it allows compensation to be varied subsequent to, and as a result of, the significant medical change or recurrence. A reopening involves the adjudication of new matters.

A "significant change" means a change in the worker's physical or psychological condition (not a change in the Board's knowledge about the worker's medical condition) that would, on its face, warrant consideration of a change in compensation benefits. A "recurrence" of the original compensable injury occurs without an intervening second compensable injury.

A reconsideration occurs when the Board considers the matters addressed in a previous decision anew to determine whether the conclusions reached were valid. Where the reconsideration varies or cancels the prior decision, it constitutes a re-determination of those matters. The Board may not reconsider a decision more than 75 days after the decision was made. The policy states that the limitations on the Board's reconsideration authority under sections 96(4) and (5) are intended to promote finality and certainty within the workers' compensation system.

RSCM I and II policy C14-103.01 states that parties to a decision or order will be advised in writing, at the time the decision or order is made, of the right to request a review of the decision or order under section 96.2. A party who approaches the Board to have the decision or order reconsidered will be reminded of their right to request a review under section 96.2.

Although policy #C14-103.01 appears to contemplate that a decision involves a written communication to the affected party(ies), the Board's policies do not specifically define what constitutes a "decision" for the purposes of the reconsideration provisions in sections 96(4) and (5) of the Act, except in the context of a preliminary determination. RSCM I and II policy #96.21 provides guidelines for a Board officer to make a preliminary determination on a claim in order to provide temporary financial relief to a disabled worker, until the Board receives the necessary information to make a decision on the validity of the claim. The following paragraph was added to policy #96.21, effective March 3, 2003, to clarify that a preliminary determination was not a "decision" for the purposes of the new reconsideration provisions:

> A preliminary determination made in accordance with this policy is not a "decision" for the purposes of section 96(5). Rather, it is a Board administrative action that is intended to provide temporary financial relief to the worker until the Board receives the information required in order to make a decision on the validity of a claim. However, once the Board receives the required information and makes a decision, that decision is subject to the provisions of section 96(5).

The Board's Practice Directive #59 on *Reconsiderations*[2] states, under the heading "Defining Terms," that the date of a "decision" normally refers to the date of the decision letter. The Practice Directive states as follows:

> The purpose of the Bill 63 amendments is to promote finality and certainty within the workers' compensation system. Given the limited availability for reconsideration, it is important that all relevant evidence be submitted or obtained expeditiously and that Board officers apply law and policy in well-reasoned decisions in the first instance.
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> …
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> In some circumstances, where a Board officer has not yet been able to gather sufficient information to make a decision, it may be appropriate to issue a "preliminary determination". A preliminary determination is not a decision. Rater, it is an interim determination which requires a final decision at a later point in time.
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> RSCM Vol. I & II, Policy item #96.21, "Preliminary Determinations", provides details regarding the conditions under which a preliminary determination on the validity of a claim may be made.
> As a preliminary determination does not constitute a decision, the limitations on reconsideration described above are not applicable. However, they become applicable once a decision is ultimately made.

On May 21, 2004 the Board's Policy and Research Division published a discussion paper, *Clarification of the Reconsideration and Reopening Policies*[3]. The paper identified areas of uncertainty in the new legislation and policies on reconsiderations and reopenings, and discussed the application of the reconsideration provisions to new decisions on matters not previously decided as follows, at pages 5-6:

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[2] found on the Board's website http://www.worksafebc.com/law_and_policy/practice_directives/rehabilitation_and_compensation/default.asp

[3] published at http://www.worksafebc.com/law_and_policy/policy_consultation/default.asp

New decisions on matters not previously adjudicated

The need to adjudicate new matters not previously decided and make decisions on these matters may occur at various points over the course of a claim or an employer's account. The limits in the legislation on reconsideration were not intended to restrict the WCB's ability to make new decisions in accordance with the *Act* and policy that do not question prior decisions.

In adjudicating a claim, the WCB must apply the applicable legislative and policy provisions. In so doing, a Board officer may consider a new matter that arises as a result of new information that is provided or a change in circumstances. New matters that arise based on new information or changing circumstances, which do not question a prior decision, may result in a new decision.

For example, decisions on a worker's entitlement to health care benefits under section 21 may be required at several points of time during a claim as the worker's medical condition improves or worsens and different health care treatment is required to aid in the worker's recovery and return to work. These new decisions would not constitute a reconsideration of the original entitlement decision. Another example would be the adjudication of further injury or occupational disease that arises as a consequence of a work injury.

…

Finally, a new matter may arise when it has not been specifically addressed in a decision letter. When deciding on a matter, the WCB need only determine what is necessary in order to take the action required. If the original decision omitted the adjudication of a matter from the original decision, a new decision may be rendered on a new matter that does not result in a reconsideration of the original decision.

I have quoted the above analysis at length because I concur with its interpretation of the statutory limits on the Board's power to reconsider decisions. In my view, sections 96(4) and (5) do not restrict the Board's ability to make a new decision on a matter not previously adjudicated. Such a decision does not fall within the section 1 definition of a reconsideration, i.e. to make a new decision in a matter previously decided.

I note that *Resolution 2004/11/16-04* of the Board's board of directors essentially adopts the discussion paper's analysis on this point. The resolution amends both volumes of the RSCM, effective January 1, 2005, to clarify the types of decisions that do not

constitute a reconsideration or a reopening of a previous decision. The resolution adds, in part, the following language to RSCM I and II policy #C14-101.01:

> This policy clarifies the types of decisions that do not constitute a reconsideration or a reopening of a previous decision.
>
> (a) New matters not previously decided
>
> The need to adjudicate new matters not previously decided and make decisions on these matters may occur at various points during the adjudication of a claim. The limits in the *Act* on the Board's ability to change previous decisions through a reconsideration or a reopening are not intended to restrict the Board's ability to make new decisions in accordance with the *Act* and policy that do not question previous decisions.
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> Situations in which the Board may make a new decision on a matter not previously decided may generally include, but are not limited to the following:
>
> - Initial entitlement to temporary or permanent disability benefits;
>
> …

Neither the current nor the amended policies specifically address or define what constitutes a "decision" for the purposes of sections 96(4) and (5).

The Board and the Review Division both concluded that the disability awards officer's internal file memo of March 26, 1981 constituted a "decision" not to proceed with a permanent partial disability assessment, which precluded further consideration of this issue because of the 75-day limit on the Board's reconsideration authority under sections 96(4) and (5). There is no dispute that the decision in question (i.e. a decision that the worker appeared not to have any permanent disability which would warrant an award) was not communicated to the worker, either verbally or in writing.

The effect of adopting the Board's interpretation of "decision" in the context of sections 96(4) and (5) would be to deprive the worker of his appeal rights under the Act as the worker was never provided with an original decision concerning his entitlement to a permanent partial disability award, or declining to assess him for permanent disability. Although the worker has the option of requesting the chief review officer to exercise his or her discretion under section 96.2(4) to extend the time to file a request for a review of the disability awards officer's March 1981 memo, that is significantly different than an appeal as of right under the Act.

The disability awards officer's March 26, 1981 memo reflected the Board's practice, which was ultimately incorporated in RSCM I policy #96.30. Until very recently RSCM I

and ll policy #96.30 stated that where a disability awards officer concluded from the information on file that no compensable permanent disability had resulted from an injury, the officer did not need to inform the worker of this conclusion unless it was evident the worker had enquired about entitlement or expressed some expectation of receiving an award.

As a result of the board of directors' *Resolution 2004/06/22-03*, that statement was deleted from RSCM ll policy #96.30, effective July 2, 2004. As well, policy #96.20 was amended to provide that the Board officer determines when temporary disability benefits are concluded, and whether an actual or potential permanent disability is accepted on the claim. The new policy states that the officer provides a decision to the worker, setting out whether an actual or potential permanent disability is accepted on the claim. If the Board officer determines that there is no actual or potential permanent disability, the worker may request a review of the decision. If the Board officer decides to accept an actual or potential disability on a claim, the officer will refer the file to Disability Awards for assessment.

The amended policies thus require the Board officer to communicate a decision to the worker (presumably in writing) as to whether an actual or potential disability is accepted under the claim, thus giving rise to a right to request a review of that decision under section 96.2 of the Act. This is consistent with the policy requirement for written notification of a decision adverse to a worker in RSCM l and ll policy #99.20.

The Review Division's *Practices and Procedures Manual*[4] defines "decision" as a letter or other communication to the person affected that records the determination of a Board officer as to a person's entitlement to a benefit or benefits …."
The Disability Awards officer's March 26, 1981 internal memo clearly does not meet the Review Division's definition of a "decision" as it was not communicated, either orally or in writing, to the person affected (the worker). It remained an internal memo to file which the worker only became aware of when he obtained disclosure of his file in 2003.

The panel in *WCAT Decision #2004*-03907[5] considered the effect of the 75-day limit on the Board's reconsideration authority where an issue had not been adjudicated or, if it had been adjudicated, no decision had been communicated to the affected party. I agree with and adopt the following reasoning from that decision:

> While a literal interpretation of subsections 96(4) and (5), read in isolation, would lead to a conclusion that the Board cannot reconsider any matter which had been previously addressed by the Board more than 75 days

[4] found at http://www.worksafebc.com/review_and_appeals/review_division/assets/pdf/RD_Practices_and_Procedures.pdf
[5] found at http://www.wcat.bc.ca/research/decisions/pdf/2004/07/2004-03907.pdf

> earlier, these provisions must be read in the context of the Act as a whole. A purposive interpretation of subsections 96(4) and (5) is required, which takes into effect the requirement for service of a decision and the statutory time periods for appealing a decision. I find … that an internal determination on the Board's file which was not communicated cannot be effective as a decision for the purpose of triggering the 75-day time limit on the Board's reconsideration authority. To find otherwise would violate basic principles of procedural fairness and natural justice. I do not consider that the legislature, in placing a 75-day time limit on the Board's reconsideration authority, intended this to apply to situations in which the "decision" had never been communicated so as to deprive the parties of their rights of review or appeal under the Act.
>
> Accordingly, I do not consider that section 96(4) and (5) operate so as to limit the Board from reconsidering a matter, where the earlier file determination or "decision" had not been communicated. Where the determination has not been communicated, it may, at least in some circumstances, remain tentative or provisional in nature, and subject to revision.

I find that, properly characterized, the Disability Awards officer's March 26, 1981 memo was not a "decision" within the meaning of sections 96(4) or (5), but rather in the nature of an administrative action or an interim or preliminary determination or conclusion.

I therefore find that the April 14, 2003 letter was a reviewable decision concerning whether the 75-day time limit applies to limit the Board's authority to address the worker's request to be assessed for permanent partial disability. It was not simply an information letter communicating information about the 75-day time limit on the Board's reconsideration authority. Accordingly, I allow the worker's appeal on this issue and return this matter to the Review Division for review on the merits. My decision is limited to determining that the worker's request for review concerned a decision within the jurisdiction of the Review Division to review.

Section 96(2) of the Act allows the Board to reopen a previously decided matter under certain circumstances, either "on its own initiative, or on application." If the Board has considered the reopening "on its own initiative," then the decision is reviewable by the Review Division (section 96.2(1)(a)). If, however, the Board has considered the reopening "on application," then the decision is appealable directly to WCAT (section 240(2)), and no review may be requested by the Review Division (section 96.2(2)(g)).

At the time of the April 14, 2003 decision, there was a lot of confusion both within and outside the Board with respect to what constituted an "application" for reopening for the purposes of section 96(2) of the Act. Because of this confusion, the Board subsequently issued an amended Practice Directive #58 on July 1, 2003, which clarified that a reopening request would only be considered "on application" where a worker or

employer had made a formal reopening request which referred to at least one of the criteria listed under s. 96(2). This interpretation of "on application" was adopted in *Review Division Decision No. 2523* and *WCAT Decision 2003-04322*, and was incorporated in the recent amendments to RSCM I and II policy #C14-102.01 which come into effect on January 1, 2005 as a result of Resolution 2004/11/16-04.

Applying the analysis in *Review Division Decision No. 2523* and *WCAT Decision 2003-04322* to the March 17, 2003 letter from the worker's representative, I find that the April 14, 2003 letter did not constitute a decision to reopen or not to reopen a matter "on application" under section 96(2). As a result I find that the review officer erred in concluding that she lacked jurisdiction to review the April 14, 2003 letter on the basis that it was a decision not to reopen a matter on an application under section 96(2). I find that the Board considered the reopening of the worker's claim "on its own initiative," such that the decision was reviewable by the Review Division under section 96.2(1)(a).

I note in passing that it is not clear that the case manager in fact rendered a decision on reopening of the claim as her April 14, 2003 letter stated: "I am not able to consider your reopening request at this time. I note that the last medical information on file was from 1981. Therefore, prior to considering whether the worker's updated medical meets the reopening criteria, as set out in S. 96(2) of the Act, updated medical is required." Although she then went on to state that the request for reconsideration/reopening of the worker's claim was denied, her earlier statements appeared to indicate that she required updated medical information before she could decide if the worker met the threshold criteria in section 96(2) for a reopening.

I also query, without deciding this issue, whether the worker's request in 2003 to be assessed for a permanent disability award can be characterized as "a matter that has been previously decided by the Board" for the purposes of section 96(2). It is questionable whether the disability awards officer's March 1981 review of the file "for internal purposes only," and his conclusion that no further action by Disability Awards was required, constituted a decision on the matter of the worker's entitlement to a permanent partial disability award.

Conclusion

The June 5, 2003 Review Division decision, which rejected the worker's request for review, is varied. I find that the Review Division has the jurisdiction to address the matters set out in the case manager's April 14, 2003 letter, and I return the worker's request for review to the Review Division for consideration on the merits.

Jane MacFadgen
Vice Chair

JM/lc

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