

**Noteworthy Decision Summary****Decision:** WCAT-2005-03920**Panel:** Michelle Gelfand**Date:** July 25, 2005***Reviewable Decision – Communication of 75 Day Time Limit on Reconsideration – Section 96 of the Workers Compensation Act***

A letter confirming a prior decision and noting the new 75 day time limit on reconsiderations is not a reviewable decision. This is an example of how section 96 of the *Workers Compensation Act* prevents reconsideration of a decision even when that previous decision is contrary to Workers' Compensation Board (Board) policy.

The Board accepted a worker's claim and paid wage loss benefits directly to the employer. Later, the Board reconsidered and denied the claim and a case manager advised the worker that the money paid on the claim would be recovered from the employer. This letter was copied to the employer. The case manager also wrote a letter to the employer advising of the reconsideration and resulting overpayment.

The worker disputed the decision to reconsider and deny his claim. Both the Workers' Compensation Review Division (Review Division) and the Workers' Compensation Appeal Tribunal confirmed the Board's decision to deny the claim. The case manager later wrote another letter to the employer confirming the overpayment and requesting payment. In a previous log entry she admitted that the decision that there was a collectable overpayment was contrary to Board policy, but she was statute barred from reconsidering it. The Review Division rejected the employer's request for review of this confirmation letter on the basis that it did not contain a reviewable decision. This decision was confirmed by the panel on appeal for the reasons set out above.

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**Panel:** Michelle Gelfand, Vice Chair

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## **Introduction**

The employer appeals an August 17, 2004 decision of a review officer declining to review a June 4, 2004 letter from a case manager of the Workers' Compensation Board (Board). The June 4, 2004 letter advised the employer that the Board could not reconsider a prior decision as more than 75 days had elapsed since that decision was issued. The review officer concluded that no reviewable decision is made where a Board officer simply communicates a statutory time limit and the fact that the time limit has elapsed.

The employer is represented by a consultant. The worker is not participating in this appeal, although invited to do so.

This appeal has been conducted based on a review of the claim file and written submissions received on behalf of the employer. I am satisfied that the narrow issue arising on this appeal can be fairly determined without an oral hearing.

## **Issue(s)**

Does the case manager's June 4, 2004 letter contain a reviewable decision?

## **Jurisdiction**

Section 239(1) of the *Workers Compensation Act* (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, may be appealed to the Workers Compensation Appeal Tribunal (WCAT).

## **Background**

The Board initially accepted the worker's claim for a right knee injury of September 19, 2001 and paid wage loss benefits to the employer, who in turn paid the worker for his time loss. The Board then reconsidered and denied the claim. In a letter of May 13, 2003, the case manager advised the worker that money paid to the employer for a period of total disability would be recovered from the employer. That letter was copied to the employer.

In a letter of May 30, 2003, the case manager advised the employer that the reconsideration had led to an overpayment on the claim, and asked the employer to

contact the Board regarding repayment. Information regarding the employer's right to a review of the decision was included.

The worker disputed the May 13, 2003 letter denying his claim. Both the Review Division and WCAT upheld the Board's decision to deny the claim. In a log entry of June 2, 2004, the case manager noted that the May 2003 decision that there was a collectible overpayment on the claim was contrary to Board policy. However, she further noted that she was statute barred from reconsidering that decision.

In the June 4, 2004 letter which led to this appeal, the case manager confirmed that an overpayment had been declared and that the employer had to repay wage loss in the amount of \$3220.56. She characterized her letter as a "clarification notification" only, and stated that she was unable to reconsider the May 30, 2003 decision due to new provisions of the Act which came into effect on March 3, 2003. She noted that the employer was out of time to appeal the May 30, 2003 decision, but recommended that the employer consider seeking an extension of time to do so.

On August 4, 2004, the Review Division denied the employer's request for an extension of time to review the May 30, 2003 decision.

Both the employer and the worker sought reviews of the June 4, 2004 decision. The worker's request for review was rejected in a letter of July 14, 2004. The employer's request for review was rejected in the August 17, 2004 decision which is the subject of this appeal.

### **Analysis**

The issue before me is whether the June 4, 2004 letter contained a reviewable decision. I find that it did not. That letter contained a reiteration of the May 30, 2003 decision, and information about statutory provisions prohibiting reconsideration. The letter does not contain any new decisions. Nor is there any apparent dispute about the application of the statutory provision to the situation at hand.

The employer's initial submission on this appeal appears to be based on the misconception that the employer was not notified directly of the decision to collect the overpayment until June 4, 2004. The employer's representative states that it is unreasonable to characterize the indirect comment regarding overpayment in the May 13, 2003 letter as an appealable decision. The employer seems to be unaware of the May 30, 2003 letter which was sent directly to the employer, clearly addressed the overpayment, requested repayment, and provided appeal information.

The employer's later submission addresses the injustice of the Board seeking to collect an amount paid based on a decisional error, when the collection is contrary to policy.

Although I certainly understand the employer's position, I find that neither the review officer nor this panel have the authority to order the Board to reverse the prior decision, in the context of the instant review and appeal.

**Conclusion**

I confirm the review officer's refusal to review the case manager's June 4, 2004 letter.

Michelle Gelfand  
Vice Chair

MG/jd