Noteworthy Decision Summary

Decision: WCAT-2006-02784 **Panel**: Herb Morton **Decision Date:** July 6, 2006

Stay of Workers' Compensation Board decision – Administrative penalty – Claims cost levy – Sections 73(1) and 196 of the Workers Compensation Act – Policy item #D24-73-1 of the Prevention Manual – Item #5.40 of the WCAT Manual of Rules of Practice and Procedure

This decision is noteworthy as an example of the application of the criteria in the WCAT's *Manual of Rules of Practice and Procedure* (MRPP) for granting a stay of a decision of the Workers' Compensation Board (Board) with respect to a claims cost levy pending the outcome of an appeal to the WCAT.

The employer was a limited company. The owner was working in the vicinity of a second worker when a tree the owner cut fell on the second worker, killing him. The Board imposed an administrative penalty of $3,250.00 under section 196 of the *Workers Compensation Act* (Act) on the employer, and a claim costs levy of $45,485.92 under section 73(1) of the Act. The employer requested a review by the Review Division of the Workers' Compensation Board which upheld the Board decision. The employer appealed to WCAT and requested a stay with respect to the claims cost levy on the basis it was unable to pay.

The panel noted that under sections 244 and 259 of the Act, the employer was required to pay the above amounts to the Board despite commencing an appeal with WCAT. The panel noted that policy item #5.40 of the MRPP provides a non-exhaustive list of factors panels should consider in deciding whether to grant a stay.

The panel considered the first criterion under item #5.40 – whether the appeal, on its face, appeared to have merit. The panel noted there had been no prior WCAT decisions on section 73(1). Although there had been a number of decisions by the former Appeal Division on section 73(1), these predated the current section 250(2) of the Act, which requires WCAT to apply relevant Board policy. The panel noted that item #115.20 of the *Rehabilitation Services and Claims Manual, Volume II*, which was in effect at the time of the accident, was obsolete as it referred to the former section of the Act dealing with claims cost levies. Item #D24-73-1 of the *Prevention Manual* addressed the application of section 73(1).

The panel noted that item #D24-73-1 specifies the Board will charge the employer the costs incurred up to the time of the decision and any additional amounts that result from matters still under reconsideration. Thus, item #D24-73-1 appears to fetter the Board's discretion under section 73(1) to impose a levy of only a portion of the claims cost. In this case, the maximum claims cost levy of $45,485.92 was imposed. Although the review officer appeared to exercise discretion, he did not explain the basis for this under Board policy. The panel concluded the low threshold with respect to the first criterion had been met.

The panel then considered the second criterion – whether the employer would suffer serious irreparable harm if the stay were not granted. The panel noted the amount of the levy appeared to be greater than the value of the employer's assets. If the debt were enforced immediately, it might result in the loss of the company. The panel concluded the second criterion had been met.

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The panel considered the two remaining criteria listed under item #5.40. The panel first considered which party would suffer greater harm or prejudice from granting or denying a stay. The panel noted the employer was no longer involved in the logging industry. The panel concluded that as the denial of a stay would have a direct impact on the employer, and the granting of a stay would not directly impact another party, this criterion favoured granting a stay. For the same reasons, the panel concluded the fourth criterion – whether granting the stay would endanger safety in the workplace – also favoured granting the stay. Thus, the panel concluded the criteria for granting a stay were met.

The panel noted that motivation to other employers was an important factor where a preventable death has occurred in a high risk industry. However, the panel concluded that while motivation to other employers may be an important consideration, the employer in the present appeal needed to be treated fairly.

The panel granted the stay with respect to the claims cost levy only.

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An amendment has been issued for WCAT-2006-02784 and is attached to this document.

WCAT Decision Number: WCAT-2006-02784
WCAT Decision Date: July 06, 2006
Panel: Herb Morton, Vice Chair

This decision has been edited to remove identifying information. Changes are marked as [ ]*

Introduction

The employer requests a stay of *Review Decision #R0053011* dated December 9, 2005, pending the outcome of its appeal to WCAT. The Review Division decision confirmed the May 6, 2005 decision by the case officer, Compliance Section, Investigations Division, to:

- impose an administrative penalty of $3,250.00 under section 196 of the *Workers Compensation Act* (Act), based on a contravention of section 26.24 of the *Occupational Health and Safety Regulation*; and,
- impose a claim costs levy of $45,485.92 under section 73(1) of the Act.

The May 6, 2005 case officer's decision (referred to as the May 3, 2005 decision in the Review Division decision) stemmed from a fatal accident which occurred on July 25, 2003. The employer is a limited company. Its owner (the owner) was working in the vicinity of a second worker in falling trees. The owner and the second worker had both been hired by the principal contractor. The tree cut by the owner fell on the second worker causing his death.

The December 9, 2005 Review Division decision was amended on December 23, 2005, to correct three clerical errors in the decision (in which the term "first worker" was used when the review officer meant "second worker"). The corrected copy of the decision is accessible on the Review Division's website.

The employer's notice of appeal was received by WCAT on December 22, 2005. The employer indicated that it is "appealing the quantum of the levy". Subject to any clarification which may be provided by the employer, I infer that the employer is not appealing the administrative penalty of $3,250.00, and is also not appealing the decision to impose a claim costs levy. Rather, its appeal is concerned with the amount of this latter levy (of $45,485.92).

On the employer's notice of appeal, it marked the box at the bottom of page 1 to indicate it was requesting a stay. In an attached letter, the employer advised:

> This is my submission requesting a stay:
>
> [The employer]* at this point has no monetary ability to pay the fine.

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Stay applications are generally dealt with as a preliminary matter on the basis of written submissions. I find that this application can be properly considered on the basis of the employer's written submissions, without an oral hearing. (The employer's request for an oral hearing in relation to the merits of its appeal will be considered by the WCAT Registry).

A decision to levy claim costs under section 73(1) of the Act is reviewable by the Review Division under section 96.2(b) of the Act. Such a decision is only appealable under section 241(2) by an employer or an independent operator who is directly affected by the decision. Accordingly, there is no respondent to this appeal. I considered whether to invite the family of the deceased worker to participate in this stay application as an interested person. I note, however, that they were invited to participate by the Review Division and did not do so. As well, it is desirable that such a preliminary issue be addressed in an expeditious fashion, so as not to delay the handling of the appeal. Accordingly, I proceeded to address this preliminary issue without inviting comments from any interested person(s).

Issue(s)

Should the December 9, 2005 Review Division decision be stayed, pending the outcome of the employer's appeal to WCAT?

Jurisdiction

Section 244 of the Act provides:

> Unless the appeal tribunal orders otherwise, the filing of a notice of appeal under section 242 does not operate as a stay or affect the operation of the decision or order under appeal.

WCAT may consider all questions of fact, law and discretion arising in an appeal, but is not bound by legal precedent (sections 250(1) and 254 of the Act). WCAT must make its decision based on the merits and justice of the case, but in so doing must apply a published policy of the board of directors that is applicable (section 250(2) of the Act).

Reasons and Findings

Section 259 of the Act provides that the filing of an appeal to WCAT does not relieve an employer from paying an amount in respect of which the appeal has been commenced. However, if the appeal is successful, the amount to be returned to the employer must be accompanied by interest calculated in accordance with the policies of the board of directors. That will normally constitute the employer's remedy in the event of a successful appeal, apart from the exceptional situations where a stay is found to be warranted.

Item #5.40 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP), as amended December 3, 2004, provides:

> Unless WCAT orders otherwise, an appeal to WCAT does not operate as a stay or affect the operation of that decision or order [s. 244]. Panels will consider the following factors in determining whether to issue a stay:
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> (a) whether the appeal, on its face, appears to have merit;
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> (b) whether the applicant would suffer serious irreparable harm if the stay were not granted (for example, loss of a business);
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> (c) which party would suffer greater harm or prejudice from granting or denying a stay; and,
>
> (d) in the context of occupational health and safety, whether granting a stay would endanger worker safety.
>
> This list is not exhaustive, and other factors may be taken into account. An application for a stay will generally be dealt with as a preliminary matter on the basis of written submissions. If no particulars or reasons are provided with the request, the request for a stay will not be considered.

These four tests are similar to those set out in the decision of the Supreme Court of Canada in *RJR-Macdonald Inc. v. Canada (Attorney-General)*, [1994] 1 S.C.R. 311 (1994) 111 D.L.R. (4th) 385. Prior WCAT decisions regarding the application of these criteria to stay applications include: *WCAT Decisions #2005-02500, #2004-03561*, *#2004-03204*, *#2004-01951*, *#2004-01574*, *#2003-02804*, *#2003-02684*, *#2003-02653* (noteworthy), *#2003-00819*, *#2003-00697* (noteworthy) and *#2003-00053*.

The employer's December 21, 2005 submission in support of its stay application states simply that the employer has no monetary ability to pay the fine. This submission lacks particulars, with reference to the four tests set out in MRPP item #5.40. I note, however, that the employer previously provided a more detailed submission in support of an application for a stay by the chief review officer under section 96.2(5) of the Act. The review officer noted in his decision:

> Since I am now issuing a decision on the merits of this case, it is not administratively practical for the CRO to issue a decision on the employer's request for a stay.

As the review officer was in the process of issuing his decision, the stay application before the Review Division became moot.

By letter dated September 23, 2005, a review officer had provided the employer with a copy of item #B2.9.1 of the *Review Division – Practices and Procedures* which stated:

> The Chief Review Officer will only grant stays in exceptional cases. The factors considered for this purpose include:
>
> (a) an assessment of the merits of the review on the face of the record (i.e. is there a serious issue to be reviewed?);
> (b) whether the applicant faces serious irreparable harm or prejudice if the stay was not granted (for example, the loss of a business);
> (c) an evaluation of which party, the applicant or the respondent, would suffer greater prejudice or harm from granting or denying the stay; and
> (d) whether granting the stay would endanger safety in the workplace.
>
> The Chief Review Officer may consider any other relevant factors specific to a particular stay application.

These criteria are essentially the same as those set out in MRPP item #5.40. I consider it appropriate to include in my consideration the more detailed evidence and argument contained in the employer's prior stay application. I have considered the employer's application with reference to the four criteria outlined in MRPP item #5.40, as set out below.

(i) Whether the appeal, on its face, appears to have merit

Substantial changes were made to the Act in relation to prevention matters effective October 1, 1999, pursuant to the *Workers Compensation (Occupational Health and Safety) Amendment Act* (Bill 14). These changes resulted in the current section 73(1) of the Act. There do not appear to be any prior WCAT decisions concerning a levy of claim costs under section 73(1) of the Act. Accordingly, the application of the policies of the board of directors concerning section 73(1) of the Act does not appear to have been raised in a prior appeal to WCAT (in the context of the current section 250(2) of the Act, which states:

> The appeal tribunal must make its decision based on the merits and justice of the case, but in so doing the appeal tribunal must apply a policy of the board of directors that is applicable in that case.

Decisions of the former Appeal Division are accessible on the Board's website. There are several decisions of the former Appeal Division concerning claim costs levies under section 73(1) of the Act, concerning events which took place subsequent to the October 1, 1999 amendments to the Act. These include the following:

Appeal Division Decision	Claim Costs	Levy	Event	Appeal Outcome re Levy
#2001-1547	$38,255	$10,000	injury	denied
#2002-0589	> maximum	$3,500	death	denied
#2002-1540	$14,917	$5,905	injury	denied
#2002-1769/1770	> maximum	$41,634.88	death	denied
#2002-1796	> maximum	$40,508.62	injury	allowed/removed
#2002-2211	> maximum	$40,000	injury	denied

In *Appeal Division Decision #2002-0589* (which involved the death of a worker), the panel noted in paragraph 20:

> The reviewing officer decided, however, not to impose the maximum levy of $40,000.00 in this case. Due to the employer's small size, he found it appropriate to impose a claims cost levy of only $3,500.00, finding that this would have sufficient motivational impact on the employer.

In paragraph 27, the Appeal Division panel concluded:

> With respect to quantum, I see no error in the reviewing officer's decision to impose the $3,500.00 administrative penalty and the $3,500.00 claims cost levy. The reviewing officer was sensitive to the employer's size and made a reasonable decision to lower the proposed claims cost levy substantially.

In *Appeal Division Decision #2002-1540*, the panel noted in paragraph 74 (with reference to the grounds for appeal which applied to employers' appeals under the former section 96(6) of the Act):

> As to the quantum of the claims cost levy, the reviewing officer is correct that the published policy does not give much guidance on what the amount should be. The reviewing officer acknowledged that the worker could have used a ladder but chose not to. He imposed the costs shown in the notice letter [$5,905] rather than the amount at the date of his hearing [$14, 917.99]. I do not find an error of law, fact or contravention of published policy in this decision. In the absence of an error as specified in section 96(6) of the *Act,* it is not open to me to substitute my own judgement as to the quantum for that of the reviewing officer. Having found no error of fact, law or contravention of published policy by the reviewing officer, I uphold the quantum of the claims cost levy imposed by the reviewing officer.

Appeal Division Decision #2002-1769/1770 similarly concerned an administrative penalty and claim costs levy under section 73(1) of the Act. The Appeal Division decision concluded (at paragraph 42):

> In view of our conclusion that the policy at #115.20 is obsolete, based on its reference to the authority in s. 73(2) to impose a claim costs levy, a review of #115.20 is clearly required. The chief appeal commissioner will bring this concern to the attention of the panel of administrators. **It may well be desirable, in any review of #115.20, to provide additional policy guidance as to the general circumstances in which consideration will be given to levying the costs of a claim against an employer under section 73(1) of the *Act*, and concerning the situations in which the maximum amount under s. 73(1) should be levied.** This might include policy direction as to the meaning and application of the situations in section 73(1)(b) of the *Act*.
>
> [emphasis added]

At the time of the fatal accident on July 25, 2003, the "obsolete" policy #115.20 concerning section 73(2) of the Act remained in *Volumes I* and *II* of the *Rehabilitation Services and Claims Manual*. The policy at D24-73-1 concerning section 73(1) of the Act was contained in the *Prevention Manual*.

In the present case, the review officer noted that: "The policy does not indicate how much of the maximum levy should be imposed." The review officer confirmed the imposition of a levy of $45,485.92 (the statutory maximum levy in effect at the time of the 1995 decision, rather than at the time of the 1993 fatal accident).

Prior to the Bill 14 changes, the Act contained no maximum as to the amount of an administrative penalty which could be imposed. The Bill 14 changes included the introduction of a $500,000.00 maximum administrative penalty. The former board of governors embarked on a lengthy review and consultation regarding the effect of this statutory maximum. Consideration was given as to whether this was a statutory "cap", which did not necessarily impact the schedule of penalties, or whether it signalled a need to revise the penalty schedule to provide a range of penalties which incorporated this maximum. The highest amount in the former recommended schedule of sanctions was $30,000, for a "Type IV" violation by an employer with a payroll over $11,440,000. By resolution of September 21, 1999, the panel of administrators approved the extension of the former schedule while the policy was reviewed. The panel of administrators subsequently approved new policy effective May 1, 2000, with a range of penalties linked to the seriousness of the violation, the size of the employer's payroll, and a range of "variation factors". The new policy further provided that with the approval of the President or delegate, the Board could levy an administrative penalty up to $250,000 where the employer had committed a high risk violation wilfully or with reckless disregard, and a worker had died or suffered serious impairment as a result.

In the case of multiple fatalities or systemic disregard by the employer for worker safety, the statutory maximum penalty could be imposed.

Policy in the *Prevention Manual* at item D24-73-1 with respect to section 73(1) currently provides:

> This section may be applied if:
>
> - the grounds for an administrative penalty under Item D12-196-1 are met; and
> - a serious injury or disablement from occupational disease, or a death, results from a violation of the regulations.
>
> A claim may be reopened at any time in the future and further costs may be incurred after the decision under section 73(1). The Board will charge the employer:
>
> - the costs incurred up to the time of the decision; and
> - any additional amounts that result from matters still under consideration by the Compensation Services Division, the Review Division or the Workers' Compensation Appeal Tribunal.

This policy was initially approved by the former panel of administrators effective October 1, 1999, as part of the policy changes for implementing Bill 14. On its face, the policy appears to require that where the requirements for imposing a levy under section 73(1) are established, the Board will charge the employer the claim costs incurred up to the time of the decision and any additional amounts that result from matters still under consideration by the Compensation Services Division, the Review Division or WCAT. This wording does not appear to address the Board's discretion under section 73(1) of the Act to impose a levy of "all or part" of the amount of the compensation payable.

This language is subject to the following passage in the policy, which states:

> Where appropriate, the Board will apply the policies and practices set out in the following items to the charging of claim costs under section 73(1):
>
> D12-196-1, -2, -3, -4,
> D12-196-8;
> D12-196-10, -11; and
> D16-223-1.

These cited policies concern the following topics:

D12-196-1	Administrative Penalties – Criteria for Imposing
D12-196-2	Administrative Penalties – High Risk Violations
D12-196-3	Administrative Penalties – Prior Violations and Orders
D12-196-4	Administrative Penalties – Authority to Impose
D12-196-8	Administrative Penalties – Payment of Interest on Successful Appeal
D12-196-10	Administrative Penalties – Due Diligence
D12-196-11	Administrative Penalties – Warning Letters
D16-223-1	Collection by Assessment or Judgment

Policy item D12-196-6 concerning the amount of an administrative penalty includes a schedule based on the employer's payroll and a list of "variation factors" by which the basic amount of the penalty may be varied by up to 30%. However, item D12-196-6 is not one of the policies listed as relevant to a decision under section 73(1) of the Act. A question may arise as to whether the wording of the policy at item D24-73-1 of the *Prevention Manual* represents an unlawful fetter on the section 73(1) discretion to levy "all or part" of the compensation payable.

The review officer reasoned in part:

> Generally speaking, penalties are not imposed without regard to the size of the employer, hence the presence of the table calculations that are linked to the size of the employer's payroll. It follows that maximum levies of approximately $45,000.00 should not normally be imposed on an employer without regard to the size of that employer's payroll.
>
> On the other hand, a disregard to the fact that a worker was killed and the employer was grossly negligent in causing the worker's death would be inappropriate. Weighing between the two principles, I find that when the circumstances of the death are because of gross negligence by the employer, and the employer has a small payroll, the small payroll factor is given far less weight. Again, I point out that part of the reasons for imposing a penalty, or in this case, a levy, is to motivate other employers. It is difficult to imagine how other employers could be motivated by a reduced levy when the subject employer was grossly negligent in the death of worker.
>
> I find that the $45,485.92 levy is appropriate.

The reasoning expressed by the review officer appears to have involved an exercise of discretion. However, the review officer did not explain the basis for this with reference to the wording of the policy.

At the time the decisions of the former Appeal Division were issued, policy was treated as being in the nature of general guidelines (in view of the common law prohibition against fettering). Section 251(1) of the Act provides that WCAT may refuse to apply a policy of the board of directors only if the policy is so patently unreasonable that it is not capable of being supported by the Act and its regulations.

I consider that the threshold to be applied in connection with this test (as to whether the appeal, on its face, appears to have merit) is a low one, which does not involve more than a very limited assessment of the merits. I am satisfied that the employer's appeal raises a serious issue to be heard, regarding the factors to be considered in determining when a levy of claim costs should be based on the statutory maximum. This may require consideration as to whether the policy provides that where a claim costs levy is being imposed under section 73(1) of the Act, the full claim costs will be levied up to the statutory maximum (and if so, whether this would involve an illegal fettering of the discretion contained in section 73(1) of the Act).

(ii) Whether the applicant would suffer serious irreparable harm if the stay were not granted (for example, loss of a business);

The employer's stay submissions to the Review Division and to WCAT focus on this test. The employer asserts that it has no monetary ability to pay the levy. The concern for the purposes of a stay application is whether there is a risk of serious irreparable harm (i.e. which, in the event of a successful outcome of the appeal, would not be remedied by the Board's return of the amount to the employer with interest).

In *WCAT Decision #2003-02653* dated September 24, 2003 (flagged as a noteworthy decision on WCAT's internet site), the WCAT panel considered an argument that the denial of a stay would render the appellant insolvent. The panel reasoned (in relation to an assessment of $6,268.91):

> The next consideration is whether the appellant would suffer "serious irreparable harm" if the stay were not granted. In this regard, the MRPP gives the example of a loss of a business. This is precisely the scenario referred to by the appellant's legal counsel as the situation potentially facing the appellant. After reviewing the income tax returns submitted as evidence in this case, I am not persuaded that it would immediately and necessarily throw the appellant into bankruptcy if it were required to pay the several amounts owing to the Board. However, the evidence does persuade me that the appellant's financial circumstances are insecure. It might be difficult for the appellant to pay the amounts owing to the Board, which could impact on its ability to meet its employee payroll, for example.
>
> . . .

> After considering all the relevant criteria, I have decided not to grant the appellant's request for a stay. Although I recognize that the appellant's business is struggling, I am not persuaded that it would be unable to make the decisions necessary to find the funds to both pay the Board and its employee payroll. It might be able to obtain adequate operating credit or sell an asset in order to fulfill its legal obligations to the Board, for example. It is important for appellants to appreciate that the granting of a stay is an extraordinary remedy that requires proof of irreparable harm to an appellant if a stay is denied. In this case, the evidence falls short of establishing that situation.

WCAT Decision #2003-02653 illustrates the fact that the granting of a stay is an extraordinary remedy.

By submission of April 25, 2005, the employer stated that "if this levy goes forward, the company will go into bankruptcy." At that time, the employer's owner advised:

> …I am no longer in this industry and have no intentions of hiring any workers.

By submission of September 30, 2005, the employer advises:

> Since this tragedy of 2003, I have not been able to work as a faller as a result of the loss of my friend. I have quit the logging industry and am now doing mill work (construction and installations). This is clearly reflected in the attached accounting records which indicate the Logging Revenues as zero dollars.
>
> . . . .
>
> We as a company are struggling to get financially back on our feet as it took me some time to come to terms with the emotional difficulties I've experienced. We are currently working at getting our finances out of our overdraft and maintaining a steady work history in the mill work industry.

An attached letter from the employer's accountant explained:

> I've been asked to write this letter to clarify the issue of a bonus in the company's 2003 financial statements. Please note the bonus of $46,000 was recorded to clear taxable income in the company, and was payable as of the 2003 year. It was also the total salary recorded to the shareholder for that year. In the subsequent year, because the company didn't have the cash to pay the bonus out, the amount was credited to the shareholder's loan account. Also note, in subsequent year ends, no

> management salary is recorded in 2004, and only a salary of $7,500 on the 2005 year end. You will also note that as of April 2005, $18,960 of the bonus still remains to be paid to the shareholder.

The accountant prepared an unaudited balance sheet of the company as of April 30, 2005, based on information provided by the owner. The statement of loss and deficit showed a deficit of $95,576 at the end of 2005, and of $93,476 at the end of 2004. The balance sheet regarding the assets and liabilities of the company showed $37,533 remaining in assets at the end of 2005.

By letter dated September 19, 2005, the Compliance Section of the Board wrote to the employer stating the Board was seeking collection of the penalty amount, and that failure to remit payment may result in collection proceedings. The amount of the levy appears to exceed the value of the assets of the company. Were the debt to be enforced immediately, it might well result in the loss of the company. In the circumstances, I consider that this criterion is met.

(iii) Which party would suffer greater harm or prejudice from granting or denying a stay

It appears that the employer is no longer involved in the logging industry. The denial of a stay would have a direct impact on the employer. The granting of a stay would not directly impact another party. I consider that the application of this criterion favours the employer's stay application.

(iv) Whether granting the stay would endanger safety in the workplace

I find that the reasoning expressed above under (iii) applies to this criterion as well.

I have some concern regarding the granting of a stay in the context of the background facts involving the death of a worker. The May 6, 2005 decision of the case officer noted that "motivation to other employers" was an important factor, given the high risk factors of the industry and the circumstances of this case where a preventable death occurred on July 25, 2003. While motivation to other employers may be an important consideration, it cannot detract from ensuring fairness to the employer in the consideration of its appeal.

I find that the criteria for granting a stay are met, and exercise the discretion under section 244 of the Act in favour of granting a stay of the December 9, 2005 Review Division decision with respect to the claim costs levy of $45,485.92 under section 73(1) of the Act pending the outcome of the employer's appeal to WCAT. No stay is granted of the December 9, 2005 Review Division decision to impose an administrative penalty of $3,250.00 under section 196 of the Act. The employer does not appear to be disputing

the administrative penalty. In any event, having regard to the evidence provided, I do not consider that the amount is such as to cause "serious irreparable harm".

Conclusion

The employer's request for a stay of the December 9, 2005 Review Division decision is granted in part. A stay is granted in connection with the claim costs levy of $45,485.92 under section 73(1) of the Act. A stay is not granted in connection with the administrative penalty of $3,250.00 under section 196 of the Act. The WCAT Registry will contact the employer concerning the further handling of its appeal.

Herb Morton
Vice Chair

HM/cda

WCAT Decision Number: **WCAT-2006-02784a**
WCAT Decision Date: July 18, 2006
Panel: Herb Morton, Vice Chair

Amended Decision

In *WCAT Decision #2006-02784*, issued on July 6, 2004, I granted the employer's request for a stay, in part, of the December 9, 2005 Review Division decision.

It has come to my attention that my decision contains typographical errors. After reviewing the original decision, and based on the statutory authority set out in section 253.1(1) of the *Workers Compensation Act* regarding correction of decisions, I am amending the original decision (with corrections bolded):

Paragraph 2, page 2, is corrected as follows:

> A decision to levy claim costs under section 73(1) of the Act is reviewable by the Review Division under section 96.2**(1)**(b) of the Act.

Paragraph 3, page 6, is corrected as follows:

> In the present case, the review officer noted that: "The policy does not indicate how much of the maximum levy should be imposed." The review officer confirmed the imposition of a levy of $45,485.92 (the statutory maximum levy in effect at the time of the **2005** decision, rather than at the time of the **2003** fatal accident).

Herb Morton
Vice Chair

HM/cda

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