

**POLICY NUMBER: POL-160**

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**Chapter:**  
**CLAIMS**

**Subject:**  
**DECISION MAKING**

**Effective Date:**  
**July 23, 2020**

**Last Updated:**  
**December 10, 2020**

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**PURPOSE STATEMENT:**

This policy explains how the Workers Compensation Board makes decisions on claims.

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**REFERENCE:**

*Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Sec 6, 17, 32(3), 56(2), 59(1), 59(2), 59(3)*  
Workers Compensation Board Policy, POL-48, Internal Reconsideration  
Workers Compensation Board Policy, POL-71, Conditions for Entitlement  
Workers Compensation Board Policy, POL-87, Third Party Actions  
Workers Compensation Board Policy, POL-90, Time Frame Limitations for Claims Filing and Invoicing

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**DEFINITION:**

In this policy:

“New evidence” means information that is factual, new, relevant and substantive to a decision.

“Objective information” means information or evidence that can be quantified or measured.

“Person with a direct interest” related to a claim decision means the worker or dependants of the deceased worker, the accident employer where the decision has a direct financial, legal or

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operational impact on that employer, and the Workers Compensation Board.

“Subjective information” means opinions that are based on information that cannot be quantified or measured.

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**POLICY:**

1. When a claim is filed for compensation, the Workers Compensation Board (WCB) has the legislated responsibility to make the decisions on the claim.
2. The WCB makes its decisions based on the merits and justice of each case. In doing so, the WCB:
  - Gathers and considers sufficient relevant information to establish the facts and circumstances of the case.
  - Applies relevant provisions of the *Workers Compensation Act* and Regulations.
  - Applies relevant WCB policies.
3. The WCB is not bound to follow strict legal precedent when making decisions. This means that each matter is evaluated individually and the outcome is not determined by previous decisions.

**Gathering Information**

4. The WCB is required to gather sufficient information to make initial and ongoing decisions on the claim. Information is gathered throughout the duration of the claim as required and the WCB will determine when it has enough information to make a decision.
  5. Workers, employers and health care providers must provide the WCB with information related to the claim, but they are not required to prove or disprove a claim.
  6. If more information is required the WCB will work with the worker, employer, health care providers and other third parties, if applicable, to obtain sufficient information to make a decision.
  7. The WCB will make all reasonable attempts to gather sufficient information. If the
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attempts are not successful, the WCB must make a decision based on the information available.

8. The WCB will analyse the information it gathers to determine whether it is evidence in the decision. To be considered evidence, the information must be reliably accurate and relevant to proving or disproving a fact in the decision.

### **Weighing Evidence**

9. The WCB will assess the evidence to determine the weight on either side of the issue. Weight is determined by the nature, credibility and quality of the evidence.
10. Evidence that is factual and objective has greater weight than evidence based on subjective information.
11. If there is conflicting evidence, the WCB will analyse and give weight to the evidence by considering the following:
  - Whether the evidence is based on objective versus subjective information.
  - The accuracy, completeness and source of the information relied upon in the evidence.
  - The timeliness and comprehensiveness of the evidence.
  - The relevant expertise or degree of specialization of the person providing the evidence.
  - The relevance and credibility of any research referenced in the evidence.
  - Any issues of bias or lack of objectivity by the person providing the evidence.
12. The WCB will assess and weigh the evidence and base the decision on the balance of probabilities – a degree of proof which is more probable than not.

### **Benefit of Doubt**

13. If, after all of the evidence is weighed, the evidence for or against the issue is approximately equal in weight, the benefit of doubt will apply. This means that the decision will be made in favour of the claimant.

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14. The benefit of doubt is not used to make decisions:
- When the decision can be made on the balance of probabilities.
  - As a substitute for lack of evidence.
  - Based on specific pieces of evidence without considering all of the evidence.
  - In a purely speculative sense.

**Application of Legislation and Policy**

15. The WCB will apply the relevant provisions of the *Workers Compensation Act* and Regulations, as well as other applicable legislation, to the evidence to make a decision on the claim. All decisions must be in accordance with the legislation.
16. The WCB will also apply the relevant WCB policies to the evidence to make a decision. To be considered relevant, the policy must relate to the issue being decided and be in place at the time of the decision.
17. The factors that are considered to make decisions about entitlement to workers compensation benefits are explained in WCB policy, POL-71, Conditions for Entitlement.

**Communicating Decisions**

18. The WCB will explain the reasons for the decision, including the application of legislation and policies used in the decision making process. The WCB will also clarify the significance of the evidence used to make the decision.

**Reconsiderations**

19. The WCB may reconsider previous decisions at the request of a person with a direct interest as set out in WCB policy, POL-48, Internal Reconsideration.

**New Evidence**

20. If new information becomes available after a decision is made, the WCB will consider whether it is new evidence and, if so, whether the decision should be changed or reversed.

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21. A person with a direct interest in the decision must request a review of information to be considered as new evidence. The WCB may also obtain information on its own initiative.
22. To be considered new evidence, the information must meet all of the following criteria:
- It must be factual and objective.
  - The information must be new. Information is not new if it reiterates, reviews, or is an argument about information that is already on file.
  - It was not reasonably available at the time the decision was made.
  - The information must be relevant and substantive. This means that it must be credible information that is directly related to the decision and could have an impact on the outcome of the decision.
23. If information is determined to be new evidence, the WCB will consider the new evidence and review the relevant decision.
- If the new evidence changes the balance of probabilities, the decision will be changed or reversed.
  - If the new evidence does not change the balance of probabilities, the decision will not change.

Exceptions to the Consideration of New Evidence

24. The WCB is unable to consider new evidence to change or reverse the following types of decisions:
- Decisions related to the time frame to file a claim for compensation, as set out in the *Workers Compensation Act* and WCB policy, POL-90, Time Frame Limitations for Claims Filing and Invoicing.
  - Pension decisions.
  - Decisions resulting from periodic reviews and adjustments of worker benefits set out in the *Workers Compensation Act*.
  - Decisions on the removal of the right of action, as set out in WCB policy, POL-87, Third Party Actions.

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25. The WCB may refuse to consider a request to change or reverse a decision if the request is frivolous, vexatious or an abuse of process, or the decision is more than 20 years old.

New Evidence and Internal Reconsideration

26. If a decision is under internal reconsideration – the first level of appeal – and information is submitted that was not on file at the time of the decision, the Internal Reconsideration Officer (IRO) will determine whether the information is new evidence.
27. If it is determined to be new evidence, the IRO will consider the new evidence when making an internal reconsideration decision.
28. If it is not new evidence, the information will not be considered in the internal reconsideration and the person who submitted the information will be advised in writing.
29. If new information is submitted to the WCB after the internal reconsideration decision has been made, the IRO will determine if it is new evidence, at the request of a person with direct interest.

If information is determined to be new evidence, the IRO will consider the new evidence and review the relevant IRO decision, as set out in this policy.

New Evidence and the Workers Compensation Appeal Tribunal

30. If a decision is under appeal to the Workers Compensation Appeal Tribunal (WCAT) and WCAT receives new information at a hearing that may be new evidence, the matter will be referred back to the IRO to be considered under this policy.
31. The IRO decision about whether the new information is considered new evidence can be appealed at WCAT. If WCAT determines that the new information is new evidence, they can apply the new evidence to the original matter under appeal.

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**HISTORY:**

December 10, 2020 - Non-substantive changes to reflect revised definitions in policy, POL-48, Internal Reconsideration.

Board of Director Approval Date: July 23, 2020. This policy incorporates amended content from – and replaces – WCB policies POL-62, Benefit of Doubt, POL-68, Weighing of Evidence, and POL-83, New Evidence.