

Chapter 4

THE BOARD FILE

1. INTRODUCTION	4-1
2. ACCESS TO THE FILE	4-1
2.1 Statutory Right	4-1
2.2 Issue in Dispute	4-2
2.3 Ordering the File	4-2
2.4 File Updates	4-2
3. CONTENTS OF THE FILE	4-3
3.1 General	4-3
3.2 The Memoranda Section	4-4
3.3 The Medical Section	4-5
3.4 The Forms Section	4-5
3.5 The Correspondence Section	4-5
3.6 The NEL Section	4-5
3.7 Vocational Rehabilitation Section	4-6

THE BOARD FILE

Written by Nicole Godbout
Updated by Alberto Lalli

1. INTRODUCTION

Ordering the Board file (or “claim file”) is the first step to take in the appeal process. The Board file contains information necessary to prepare for an appeal of a workers’ compensation decision. Workers and their representatives have a right to obtain a copy of the Board’s file upon request. If a worker brings you their file and you are not sure if it is complete, order a new one yourself with the client’s consent.

This chapter describes how to obtain the Board file and what kind of information is found in it. The employer’s right to obtain a copy of the worker’s Board file is dealt with in Chapter 6: Employer Issues Affecting Workers’ Rights, Section 3.

2. ACCESS TO THE FILE

2.1 Statutory Right

Section 57 of the WSIA provides:

- (1) If there is an issue in dispute, the Board shall, upon request, give a worker access to the file kept by the Board about his or her claim and shall give the worker a copy of the documents in the file. If the worker is deceased, the Board shall give access and copies to the persons who may be entitled to payments under section 48.
- (2) If there is an issue in dispute and the worker is deceased, the Board, upon request, shall give access to and copies of such documents as the Board considers to be relevant to the issue in dispute to persons who may be entitled to payments under subsection 45(9).
- (3) The Board shall give the same access to the file and copies of documents to a representative of a person entitled to the access and copies, if the representative has written authorization from the person.

The only exception to this right is with respect to records that contain medical or other information which, in the Board’s opinion, would be harmful to the worker (s.57(4)). Copies of such records are sent to the worker’s treating physician and notice of this is sent to the worker or representative. The Board’s decision to withhold a medical document may be appealed to the WSIAT.

2.2 Issue in Dispute

There must be an “issue in dispute” in order for the right of access to exist. The Board considers that there is an issue in dispute when an objection is made or is being considered regarding an aspect of a written decision made by a decision-maker of the Board.¹

It is arguable that the term “issue” is not limited to decisions that are communicated in written form but includes anything that is being done in the worker’s claim whether noted in writing or not. In practice, however, whether there is an issue in dispute is rarely a question of concern. Invariably, there is a written adverse decision to object to when the worker comes to you for assistance. As mentioned before, an issue in dispute would mean that a decision was made which, in turn, has triggered a time limit. Advocates should be aware that, in these cases, the copy of the Board file will include a form called the “Objection Form (Appeals)” which must be completed to initiate the appeal procedure. It is usually located at the beginning of the file and signifies that a specific time limit has been met.

In those rare cases where no issue in dispute can be identified, you can request a copy of the file, pursuant to the *Freedom of Information and Protection of Privacy Act* (FIPPA), by writing to the claims adjudicator or directly to the Access Department, citing FIPPA.² However, the right of access under the WSIA is broader and, therefore, is usually the preferable means of access.

Be careful how you word your request for the file documents when the issue in dispute is the worker’s earnings basis. The statute provides that where the usual manner of calculating the earnings basis does not fairly represent the worker’s average earnings, the Board may recalculate the earnings basis using a different approach. Once the Board has recalculated the earnings basis under the alternative method, it will use the new figures even if they result in a reduction of benefits for the worker. When you lodge your objection, phrase it so it cannot be misconstrued as a request for recalculation under the alternative method, unless this is actually what you want to have done (see Chapter 23: Compensation Rate, for a discussion of earnings basis calculations).

2.3 Ordering the File

Outside Toronto, files are obtained from the regional office in charge of the claim. In Toronto, file access services are centralized and files are requested from the Access Department at the Board’s head office. (See Appendix 4-B for a sample letter of request.) They can be reached by telephone at:

416-344-3842.

Remember to enclose with your letter an authorization to act signed by the worker, if one is not already on file. It usually takes anywhere from one to two months before you receive the file.

2.4 File Updates

You can get a copy of the documents placed on file after your first access request by mailing a subsequent request for a copy of the updated file documents. An update of the file can be requested as often as needed.

It is often a good idea to request a file update at the time you schedule an appeal at the Board. The Appeals Branch usually provides the updates four weeks before the hearing date.

3. CONTENTS OF THE FILE

3.1 General

The Board file is usually divided into the following sections:

- memoranda;
- medical reports;
- forms;
- correspondence;
- non-economic loss (NEL); and
- vocational rehabilitation (labour market re-entry).

There may be other sections as well, but the above usually contain the information of greatest interest. (If a Board file contains an investigation section, it may be the most important part of the file because it will relate to issues of disputed facts and credibility. However, most files do not contain an investigation section.)

Board files can be quite large. How you organize the records you receive is mostly a matter of personal style and, to a certain extent, a function of the issues on appeal. Some representatives arrange all file documents in a loose leaf binder divided into various sections such as medical, vocational/LMR, and general correspondence. Others prefer to simply collect and organize all documents that are relevant to the issue that is being appealed. This reduces an often bulky file to something of a manageable size.

Whatever way you choose to organize the documents in the file, there are two rules to follow:

- read through the whole file; and
- make notes of the general history, at least, of the worker's claim.

Even though a good number of the documents may be of no use to you at all, you should at least scan all of them once for any piece of evidence helpful to your case.

As you are reading through the file, make note of key dates and events, particularly if the history is lengthy and complex. It is important to have a clear and concise record of the sequence of events surrounding the worker's injury and the payment of benefits. The appeal preparation and final hearing may be a long and drawn-out process. You will probably not be able to recall even the general history of the claim very well after a number of months. You will waste a great deal of time if you have to go through the file again to refresh your memory every time you do some work on the case.

Your record of the claim's history does not need to be lengthy, but it should contain the following information:

- the claim number with the date and a brief description of the accident;
- the name of the employer;
- the injury (for example, low back strain, and knee contusion);
- the initial diagnosis;
- the job held at the time of the injury;
- the type of benefits and period of payments; and
- any other important facts such as surgery, a NEL assessment, LMR training periods, and recurrence of the disability.

Many representatives like to record this information by drawing a time line along which key dates and events are noted.

3.2 The Memoranda Section

This section of the file contains the Board's internal notes regarding actions and decisions taken with respect to entitlement and benefit issues. Make sure all of the memos are there. They are usually numbered in chronological order.

The opinions and recommendations of the Board doctors on a medical issue may sometimes appear in the memoranda section of the file rather than in the medical one. There are often requests from claims adjudicators regarding issues of medical compatibility, confirmation of areas of entitlement, and other medical matters related to the claim.

Records of any phone calls between Board staff and the worker, the employer, the treating physician, representatives, or other parties should be in this section as well. It is well worth reading through this whole section carefully because of the time limits imposed by the WSIA. For instance, an intent to appeal a decision during a conversation with the claims adjudicator could be documented. This could be useful if there is a need to argue for a time limit extension. There are often some small facts recorded which you may want to use in support of the worker's appeal. Also, there may be details of conversations with the worker which, if accurate, will be harmful to your case. You need to clarify these points with the worker.

The memoranda as a whole often reveal more about the adjudication staff's reasoning than does the actual written decision sent to the worker.

See Appendix 4-A for a glossary of some of the abbreviations most commonly found in the memoranda.

3.3 The Medical Section

This section contains most of the medical records pertaining to the worker's injury:

- the "Health Professional's Report" (Form 8), and/or records from a hospital's emergency department;
- the treating physician's progress reports;
- the worker's progress reports; and
- medical reports from treating specialists, Board consultants, Regional Evaluation Centres (RECs) or other treatment centres.

This section of the file often contains the most important documentary evidence in the case.

3.4 The Forms Section

This section usually contains the "Employer's Report of Accidental Injury or Industrial Disease" (Form 7). The report of injury filed by the worker (Form 6), would be there as well.

The employer's report usually contains all the information necessary for the Board to determine the worker's net average earnings at the time of the injury. This figure is used to determine the earnings basis upon which the worker's benefits will be calculated. It also provides a brief description of the accident and the resulting injury.

The employer's reasons for disputing the worker's claim may be set out in the employer's report and sometimes in accompanying letters or other documents.

3.5 The Correspondence Section

With the imposition of time limits, this section has become a very important one. Advocates should review it thoroughly in order to find out whether a decision triggering a time limit is present. In addition, medical reports are occasionally found in this section. This section may contain letters written by the worker. You should be aware of any statements the worker has made to the Board. And finally, there could be correspondence from the employer that provides relevant information such as the employer's position on the availability of suitable work.

3.6 The NEL Section

This section is important because it shows the areas of entitlement recognized by the Board, which do not always correspond with the areas affected by the accident or disease. In addition, it contains the calculations performed by the NEL adjudicator in order to determine the percentage of the award. These calculations should be reviewed to confirm that the results are correct. Finally, there are time limits to be considered. For instance, there is a six-month period to object to the level of the award granted. If the award equals or exceeds an indexed threshold (\$11,590 at the time of writing), there is a 30-day period to decide whether to receive it in monthly payments or in a lump sum.

3.7 Vocational Rehabilitation Section

Although Vocational Rehabilitation (VR) has been changed to Labour Market Re-entry (LMR), Board files still include LMR plans under the heading of Vocational Rehabilitation. This information is of interest when the worker's efforts toward or prospects for successful LMR are at issue. Reports of the LMR service providers are found in this section and will usually offer information about such things as work history, job skills, and education, as well as vocational assessment and plan proposals.

NOTES

1. Operational Policy Manual, Document 21-02-01.
2. RSO 1990, c.F-31.

Chapter 4: Appendices

- 4A-1 to 2 Glossary of abbreviations
- 4B-1 Sample letter to Board from representative requesting copy of worker's Board file

Glossary of abbreviations

AE	accident employer
ARO	appeals resolution officer
CA or C. Adj . . .	claims adjudicator
CCDO*	Canadian Classification and Dictionary of Occupations
DRC	Downsview Rehabilitation Centre (formerly H&RC)
DX	diagnosis
ESL	English as a second language
ESRTW	early and safe return to work
FAE	functional abilities evaluation
Form 6	Worker's Report of Injury/Disease
Form 7	Employer's Report of Accidental Injury or Industrial Disease
Form 8	Health Professional's First Report
FEL	future loss of earnings
HCB	health care benefits
IW	injured worker
LOD	level of disability
LOE	loss of earnings
LOI	level of impairment
LMR	labour market re-entry
MMR	maximum medical recovery
NAE	net average earnings
NCM	nurse case manager
NEL	non-economic loss
NFA	no further action [required]
NLT	no lost time
NOC*	National Occupational Classification
O/P	overpayment
PD	permanent disability pension
PDA	permanent disability assessment, or physical demands analysis
PI	permanent impairment (used both for pensions under the pre-1990 Act and for NEL awards)
REC	Regional Evaluation Centre

RTW return to work
SEB suitable employment or business
SIEF Second Injury Enhancement Fund. The term is used in reference to the relief available to employers from having part or all of the cost of the claim showing on their accident cost statement.
TX treatment
UMA unit medical advisor
VR vocational rehabilitation

* Human Resources Development Canada publications used to define jobs for vocational rehabilitation and “deeming” purposes.

**Sample letter to Board from representative
requesting copy of worker's Board file**

Date

Claims Adjudicator
WSIB
200 Front St. West
Toronto, Ontario
M5V 3J1

Dear Madam/Sir:

Re: Name & Claim #

Please forward a copy of Mr. X's claim file to me. We are (considering an appeal / appealing)
the decision to _____ dated _____.

An authorization to represent Mr. X is (already on file / enclosed).

Yours truly,