

WORKERS COMPENSATION AMENDMENT ACT, 1989

CHAPTER 42

Assented to June 28, 1989.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1. Section 1 of the *Workers Compensation Act*, R.S.B.C. 1979, c. 437, is amended by repealing the definition of "minister".
2. Section 71 (8) is amended by striking out "A commissioner or officer of the board" and substituting "An officer of the board" and by striking out "a commissioner or officer" wherever it appears and substituting "the officer".
3. Sections 79 to 85 are repealed and the following substituted:

Interpretation

79. In this Division

"appeal commissioner" means an appeal commissioner appointed under section 85 and includes the chief appeal commissioner;

"appeal division" means the appeal division constituted under section 85;

"chief appeal commissioner" means the chief appeal commissioner appointed under section 85;

"governors" means the governors constituted under section 81;

"president" means the president and chief executive officer appointed under section 84.

Board

80. The Workers' Compensation Board is continued as a corporation.

Governors

81. (1) The governors of the board shall consist of

(a) 13 voting governors appointed by the Lieutenant Governor in Council on the recommendation of the minister as follows:

- (i) one governor who shall be chairman;
- (ii) 5 governors representative of workers;
- (iii) 5 governors representative of employers;
- (iv) 2 governors representative of the public interest, and

(b) the president and the chief appeal commissioner who are non-voting governors by virtue of their office.

(2) The minister shall

(a) consult with the governors appointed under subsection (1) (a) (ii) and (iii) before making a recommendation to the Lieutenant Governor in Council with respect to the appointment of the chairman, and

(b) consult with the governors appointed under subsection (1) (a) (ii) and (iii) and the chairman before making a recommendation to the Lieutenant Governor in Council with respect to the appointment of the governors referred to in subsection (1) (a) (iv).

(3) A voting governor shall be appointed for a term of up to 6 years and is eligible for reappointment or extension of his appointment.

(4) The chairman may designate a governor appointed under subsection (1) (a) (iv) to act in the chairman's place during the chairman's temporary absence, and while so acting the designated governor has the power and authority of the chairman.

(5) The voting governors shall be paid out of the accident fund

(a) remuneration in an amount determined by the Lieutenant Governor in Council, and

(b) reasonable and actual travelling and out of pocket expenses necessarily incurred by them in discharging their duties.

Powers of the governors

82. The governors shall approve and superintend the policies and direction of the board, including policies respecting compensation, assessment, rehabilitation and occupational safety and health and

(a) shall

(i) select and define the functions of the president and the chief appeal commissioner,

(ii) review and approve operating policies of the board,

(iii) approve operating and capital budgets of the board,

(iv) develop policies to ensure adequate funding of the accident fund and of the silicosis fund referred to in section 41,

(v) approve major programs and expenditures,

(vi) plan for the future of the board, and

(vii) enact bylaws and pass resolutions for the conduct of the business and functions of the governors, including, without limitation, bylaws with respect to

(A) the quorum for a meeting or class of meetings of the governors, and

(B) the manner in which their policies shall be published, and

(b) may

(i) establish and give direction to committees,

(ii) authorize the board to acquire and dispose of land and buildings, and

(iii) delegate in writing any of the powers and duties of the governors to the president, chief appeal commissioner or an officer of the board, subject to any terms and conditions set out in the delegation.

Meetings

83. (1) The chairman shall preside at meetings of the governors.

(2) Meetings of the governors shall be held at the call of the chairman at any place in British Columbia that the chairman determines.

(3) A majority of the voting governors in office constitutes a quorum at a meeting of the governors unless a different quorum is specified by bylaw or resolution under section 82 (a) (vii) with respect to a meeting or class of meetings specified in the bylaw.

(4) A vacancy in the membership of the governors does not impair the right of the other governors to act.

President

84. (1) The governors shall appoint a person to be president and chief executive officer of the board.

(2) The governors on behalf of the board may enter into a contract with the president providing for the president's remuneration, which shall be paid out of the accident fund, and containing other terms and conditions that are not inconsistent with this Act.

(3) The president is responsible to the governors and shall

- (a) attend and participate as a non-voting member at meetings of the governors,
- (b) implement the policies of the governors with respect to administration of the board,
- (c) in accordance with the policies of the governors, be responsible for all functions related to staff other than appeal commissioners appointed under section 85, and
- (d) carry out any other functions and duties assigned to the president by the governors.

(4) The president may delegate in writing any of his powers and duties to an officer of the board or other person subject to any terms and conditions set out in the delegation.

Appeal division

85. (1) There shall be an appeal division of the board consisting of

- (a) a chief appeal commissioner appointed by the governors, and
- (b) one or more appeal commissioners, appointed by the chief appeal commissioner, who are selected in accordance with the policies established by the governors.

(2) Subject to the approval of the governors, the chief appeal commissioner may appoint part time or temporary appeal commissioners.

(3) The chief appeal commissioner shall be appointed for a fixed term agreed on between the chief appeal commissioner and the governors and is eligible for reappointment or for extension of his appointment, but may be removed by the governors at any time for just cause.

(4) An appeal commissioner other than the chief appeal commissioner shall be appointed for a term agreed on between the appeal commissioner and the chief appeal commissioner and is eligible for reappointment or for extension of his appointment, but may be removed by the governors at any time for just cause.

(5) For the purposes of subsections (3) and (4), just cause does not arise in a case where an appeal commissioner makes a decision with which the governors do not agree with respect to an appeal.

(6) Where an appeal commissioner resigns or his appointment terminates, he may carry out and complete his duties and responsibilities and continue to exercise his powers as an appeal commissioner, in relation to a proceeding in which he participated, until the proceeding is completed.

(7) The chief appeal commissioner is responsible to the governors for the general operation of the appeal division and shall

- (a) attend and participate as a non-voting member at meetings of the governors,
- (b) implement the policies of the governors with respect to the administration of the appeal division, and
- (c) preside at hearings or meetings of the appeal division.

(8) The chief appeal commissioner may delegate in writing any of his powers and duties to an appeal commissioner subject to any terms and conditions set out in the delegation.

Practice and procedure

85.1 Subject to any policies of the governors and any bylaws enacted or resolutions passed under section 82, the chief appeal commissioner may determine the practice and procedure for the conduct of appeals by the appeal division under this Act.

Panels

85.2 (1) The chief appeal commissioner may establish one or more panels of the appeal division, and in matters referred to a panel by the chief appeal commissioner, a panel has the power and authority of the appeal division.

(2) Two or more panels may proceed with separate matters at the same time.

(3) The chief appeal commissioner may refer a matter that is before the appeal division to a panel or a matter that is before a panel to the appeal division or another panel.

(4) A panel of the appeal division shall consist of

(a) the chief appeal commissioner or an appeal commissioner designated by the chief appeal commissioner, sitting alone, or

(b) the chief appeal commissioner or an appeal commissioner designated by the chief appeal commissioner to preside over the panel and of 2 other appeal commissioners designated by the chief appeal commissioner.

(5) The chief appeal commissioner may terminate a designation to a panel and may fill any vacancy on a panel

(6) A decision of the appeal division or of a panel shall be deemed to be a decision of the board.

4. Section 86 (6) is repealed and the following substituted:

(6) The chief appeal commissioner and the other appeal commissioners appointed under section 85 shall receive

(a) remuneration out of the accident fund,

(b) the benefits provided under subsections (3) and (5) of this section, and

(c) other benefits

as determined by the governors.

(7) The *Industrial Relations Act* and the *Public Service Labour Relations Act* do not apply to the chief appeal commissioner and other appeal commissioners appointed under section 85

5. Section 87 is amended by adding “, including the appeal division,” after “board” wherever it appears.

6. Section 88 is amended

(a) in subsection (1) by striking out “any commissioner or by”,

(b) in subsection (2) by striking out “commissioner”,

(c) in subsection (3) by striking out “board members,”, and

(d) in subsection (4) by striking out “member of the board and every officer or person authorized by it” and substituting “officer or person authorized by the board”.

7. Section 91 is repealed and the following substituted:

Appeal to appeal division

91. (1) Where the review board makes a finding under section 90, the worker, the worker's dependants, the worker's employer or the representative of any of them may, not more than 30 days after the finding is sent out, or within a longer period the chief appeal commissioner may allow, appeal the finding to the appeal division.

(2) Where an appeal is commenced under subsection (1), the appeal division may direct the review board to reconsider the matter either generally or on a particular issue, and the appeal division may withhold its decision pending the finding of the review board.

(3) A decision on an appeal commenced under subsection (1) shall be made as soon as practicable and in any case within

(a) 90 days of the date on which the appeal is commenced,

(b) 90 days of a reconsideration by the review board under subsection (2),
or

(c) a longer period the chief appeal commissioner may designate where the appellant requests a delay in the proceedings or where the chief appeal commissioner considers the longer period necessary because of an act or omission of the appellant or because of the complexity of the matter under appeal.

8. Section 92 is amended

(a) by renumbering the section as section 92 (1),

(b) by striking out "following a finding by the review board, periodic payments under the finding shall commence notwithstanding that an appeal is taken under section 91," and substituting "by the review board, periodic payments shall commence", and

(c) by adding the following subsections:

(2) Notwithstanding subsection (1), where a finding of the review board is appealed under section 91 or reopened or reheard under section 96, payment of any compensation that has not yet been paid with respect to the period prior to the finding of the review board shall be deferred until the date on which the appeal division makes its decision or redetermination under section 91 or 96, as the case may be.

(3) If the appeal division decision is in favour of the worker or his dependants, interest

(a) calculated in accordance with the policies of the governors, and

(b) beginning 31 days after the date on which the review board made its finding or beginning on an earlier day determined in accordance with the policies of the governors

shall be paid on compensation that has been deferred under subsection (2).

9. Section 96 is amended

(a) in subsection (1) by striking out "member of the board" and substituting "governor, officer, appeal commissioner or employee of the board", and

(b) in subsection (2) by striking out "which has been dealt with by it, by an officer of the board or by the review board." and substituting "except a decision of the

appeal division, which has been dealt with by it or by an officer of the board.", and

(c) by adding the following subsections:

(3) On an appeal under section 91 (1), the appeal division may reopen, rehear and redetermine any matter that has been dealt with by the review board.

(4) The president may, not more than 30 days after a finding of the review board is sent out, refer the finding to the appeal division for redetermination on grounds of error of law or contravention of a published policy of the governors.

(5) Section 91 (2) applies to a redetermination under subsection (4).

(6) An employer who has received notice of

(a) an assessment under section 39, 40 or 41,

(b) a classification, special rate, differential or assessment under section 42, or

(c) an additional assessment, levy or contribution under section 73

may, not more than 30 days after receiving the notice or within a longer period the chief appeal commissioner may allow, appeal the assessment, classification, special rate, differential or additional assessment, levy or contribution to the appeal division on the grounds of error of law or fact or contravention of a published policy of the governors.

(6.1) An employer who has received a notice relating to

(a) an assessment,

(b) a classification,

(c) a monetary penalty, or

(d) an apportionment or shifting of cost between classes

under this Act not referred to in subsection (6) but designated in the policies of the governors, may, not more than 30 days after receiving the notice or within a longer period the chief appeal commissioner may allow, appeal the assessment, classification, monetary penalty or apportionment or shifting of cost between classes to the appeal division on the grounds of error of law or fact or contravention of a published policy of the governors.

(7) The commencement of an appeal under subsection (6) or (6.1) does not relieve an employer from paying an amount in respect of which the appeal is commenced but, if the appeal is successful, the amount to be returned to the employer shall be accompanied by interest, calculated in accordance with the policies of the governors, on the amount to be returned.

(8) Section 91 (3) applies to a rehearing or redetermination under this section.

10. The following section is added:

Reconsideration by appeal division

96.1 (1) Subject to this section and sections 58 to 66, a decision of the appeal division is final and conclusive.

(2) A worker, the worker's dependants, the worker's employer or the representative of any of them may apply to the chief appeal commissioner for reconsideration of a decision of the appeal division on the grounds that new evidence has arisen or has been discovered subsequent to the hearing of the matter decided by the appeal division.

(3) Where the chief appeal commissioner considers that the evidence referred to in subsection (2)

(a) is substantial and material to the decision, and

- (b) did not exist at the time of the hearing or did exist at that time but was not discovered and could not through the exercise of due diligence have been discovered,
 he may direct that
- (c) the appeal division reconsider the matter, or
 (d) the applicant may make a new claim to the board with respect to the matter.

Consequential Amendments

Criminal Injury Compensation Act

11. Section 20 of the *Criminal Injury Compensation Act*, R.S.B.C. 1979, c. 83, is amended
- (a) in subsection (2) by striking out "member of the board" and substituting "governor, officer, appeal commissioner or employee of the board", and
 (b) in subsection (3) by striking out "that has been dealt with by it." and substituting ", except a decision of the appeal division, that has been dealt with by it or by an officer of the board."
12. Section 22 is amended
- (a) in subsection (3) by striking out "a commissioner of the board, the commissioners of the board" and substituting "the chief appeal commissioner of the board, the appeal division",
 (b) by adding the following subsection:
 (3.1) A decision of the appeal division or of a panel of the appeal division shall be deemed to be a decision of the board.
 (c) in subsection (4) by striking out "A member" and substituting "An appeal commissioner", and
 (d) in subsection (5) by striking out "Every member" and substituting "Every appeal commissioner".
13. The following section is added:
- Reconsideration by appeal division**
- 22.1** (1) Subject to this section, a decision of the appeal division is final and conclusive.
- (2) A victim, a dependant of a victim or the Attorney General may apply to the chief appeal commissioner for reconsideration of a decision of the appeal division on the grounds that new evidence has arisen or has been discovered subsequent to the hearing of the matter decided by the appeal division.
- (3) Where the chief appeal commissioner considers that the evidence referred to in subsection (2)
- (a) is substantial and material to the decision, and
 (b) did not exist at the time of the hearing or did exist at that time but was not discovered and could not through the exercise of due diligence have been discovered,
 he may direct that
- (c) the appeal division reconsider the matter, or
 (d) the applicant may make a new claim to the board with respect to the matter.

Miscellaneous Statutes Amendment Act, 1983

14. Section 74 of the *Miscellaneous Statutes Amendment Act, 1983*, S.B.C. 1983, c. 20, is repealed.

Workplace Act

15. Section 3 (1) of the *Workplace Act*, S.B.C. 1985, c. 34, is amended by striking out "A commissioner or" and substituting "An".
16. Section 6 (1) is amended by striking out "a commissioner or" in both places and substituting "an".

Transitional - appeals

17. (1) In this section
 "former *Criminal Injury Compensation Act*" means the *Criminal Injury Compensation Act* as it read immediately before the amendments enacted by this Act came into force;
 "former *Workers Compensation Act*" means the *Workers Compensation Act* as it read immediately before the amendments enacted by this Act came into force;
 "new *Criminal Injury Compensation Act*" means the *Criminal Injury Compensation Act* as it reads after the amendments enacted by this Act come into force;
 "new *Workers Compensation Act*" means the *Workers Compensation Act* as it reads after the amendments enacted by this Act come into force.
- (2) If an appeal or a rehearing under section 20 or 22 of the former *Criminal Injury Compensation Act* or section 91 or 96 of the former *Workers Compensation Act* has been commenced but has not been completed on the date that this Act comes into force, that appeal or rehearing shall be continued by the appeal division under and in conformity with the new *Criminal Injury Compensation Act* or the new *Workers Compensation Act*, as the case may be, so far as it may be done consistently with that new Act.
- (3) Notwithstanding section 91 (3) of the new *Workers Compensation Act*, the chief appeal commissioner may designate the time within which a decision with respect to an appeal or rehearing under section 91 or 96 of the former *Workers Compensation Act* shall be made.
- (4) A victim, a dependant of a victim or the Attorney General may apply to the chief appeal commissioner for reconsideration of a decision made under section 20 or 22 of the former *Criminal Injury Compensation Act* on the same grounds and in the same manner as that set out in section 22.1 of the new *Criminal Injury Compensation Act*.
- (5) A worker, the worker's dependants, the worker's employer or the representative of any of them may apply to the chief appeal commissioner for reconsideration of a decision made under section 91 or 96 of the former *Workers Compensation Act* on the same grounds and in the same manner as that set out in section 96.1 of the new *Workers Compensation Act*.

Transitional - regulations

18. The Lieutenant Governor in Council may make regulations providing for any transitional matter necessary to give effect to the amendments made in sections 1 to 17 of this Act, but any regulation made under this section ceases to have effect after the last day of the next ensuing session of the Legislature.

Commencement

- 19.** This Act comes into force by regulation of the Lieutenant Governor in Council.

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