

BETWEEN:

THE GOVERNMENT OF BRITISH COLUMBIA
REPRESENTED BY THE GOVERNMENT PERSONNEL
SERVICES DIVISION
("GPSD" OR "The Employer")

AND:

THE B.C. GOVERNMENT EMPLOYEES' UNION
("THE BCGEU" or "The Union")

TERMS OF REFERENCE FOR CLAIMS REVIEW COMMITTEES

Purpose

The purpose of these Terms of Reference is to provide assistance to Claims Review Committees ("CRC's") established under Section 2.13 of Appendix 4 of the Master Collective Agreement between the Government of the Province of British Columbia (the "Employer") and the B.C. Government Employees' Union (the "Union"). The provisions of this document are subject to terms of the Collective Agreement.

Background

CRC's have the jurisdiction to review decisions by the claims-paying agent regarding a claim for benefits under the Long Term Disability plan found in Part 2 of Appendix 4 to the Collective Agreement. It has been held by labour tribunals that a CRC is an "arbitration board" within the meaning of the Labour Relations Code when carrying out this function. It is therefore subject to Part 8 of the Code, including Sections 99 and 100 which respectively allow for the reconsideration or appeal applications to the Labour Relations Board and the British Columbia Court of Appeal. However, it is also recognized that a CRC is a special purpose arbitration panel that is not subject to the same rigors as a traditional labour arbitration board.

CRC's have the power to determine their own practice and procedure consistent with these terms of reference.

In addition to these terms of reference, all CRC members shall be provided with copies of:

- (i) all medical and other information on file relevant to the specific claim under review, including the employee's job description and any vocational reports if applicable;
- (ii) Part 8 of the Labour Relations Code;
- (iii) a summary of arbitration and labour board decisions, agreed to by the Employer and the Union, which provides direction on the applicable definitions and procedures; and

- (iv) the applicable Collective Agreement provisions regarding the STIIP/LTD plans.

Terms of Reference

1. A CRC will be composed of three medical doctors; one designated by the Employer, one designated by the employee and a third selected by the designates of the Employer and the employee. No doctor shall be designated or selected who has diagnosed or treated the employee seeking review or who has acted as a consultant in the diagnosis or treatment of the employee.
2. It is important that the CRC be established and perform its function as quickly as possible. Accordingly, the medical doctors designated by the Employer and the employee should contact each other within ten days of receiving the medical file from the claims-paying agent in order to coordinate the selection of the third medical doctor.
3. The date, time and location of the CRC meetings shall be with the concurrence of all members. In order to properly review the claims-paying agent's decision, the Committee must conduct an enquiry. The enquiry shall be conducted consistent with the following terms of reference.
4. The employee must be given a medical examination and be given reasonable advance notice of the examination. All CRC members must be present except where the employee agrees to be examined by a single doctor, in which case the examination must be carried out by the third medical doctor selected by the designates. The CRC may also direct that any other established medical procedure or test (including x-rays, etc.) be carried out in order to assist in its review, provided that the results are made available to all CRC members and the employee.

Members of the CRC may not consider medical reports which were not provided by the claims-paying agent unless the reports were initiated by the CRC pursuant to this section.

5. The CRC must ensure that the employee is provided, in advance of the examination, with a list of all materials which will be considered by the Committee in making its decision. Where requested, copies of the materials shall be provided to the employee, who shall be given a reasonable opportunity to address that information before the Committee makes its decision.

6. If the CRC has any questions regarding the vocational aspects involved in its review, then clarification should be sought jointly from both the Employer and the Union, either in person or by written communication or conference call.
7. The CRC must ensure that a "fair hearing" is provided. The CRC must not accept or consider written submissions where the others (employee, Union or Employer) have not had an opportunity to review and respond to that submission. As the CRC process is not intended to be adversarial, it is not expected that the parties will make appearances for the purpose of making representations.
8. All members of the CRC must be present when the results of the examination (and any other procedure or test) are being discussed and when the CRC is deliberating over its decision.
9. If a CRC has any questions regarding its obligation or the procedures it should follow, then clarification should be sought as soon as possible but, in any event, prior to the CRC rendering its decision. Clarification should be sought jointly from both the Employer and the Union, either in person or by written communication or conference call.
10. The CRC must render its decision within 30 days after the conclusion of its deliberations. The decision should, at a minimum, include the following:
 - (a) a description of the procedures followed by the CRC;
 - (b) a statement of the evidence before the CRC (including documentary evidence) and a summary of what aspects of the evidence have been relied upon by the CRC in reaching its decision;
 - (c) where there is a conflict in the evidence, the grounds upon which certain evidence has been preferred; and
 - (d) the reasons for the CRC's decision.

Where confidential medical information is placed before the CRC, its decision shall record that such information was reviewed, but should not disclose the contents.

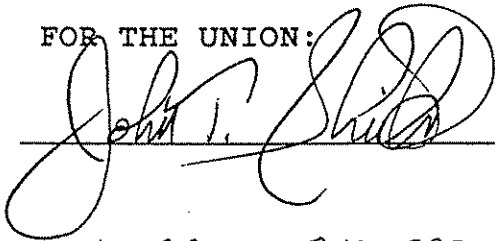
It is particularly important that the CRC's reasons reveal the analysis which led to its conclusion(s) so that the basis of the decision can be understood; i.e., it is not sufficient to simply state the end result. Further, the reasons should distinguish between the medical and vocational judgments which the CRC is required to make.

11. The CRC's decision shall include a space for the signature of all three members. A majority decision shall be binding on all concerned.
12. A CRC may consider more than one claims appeal on the same day(s).
13. If an issue arises around the interpretation of the applicable Collective Agreement provisions, the CRC must refer this issue back to the Employer and the Union for resolution.

Term of Memorandum

1. The provisions of this Memorandum shall come into force effective on the date of signing.
2. Either party may terminate this Agreement on three months written notice.

FOR THE UNION:



MARCH 24, 1993

FOR THE EMPLOYER:

