

Canadian Union of Public Employees

Guide for CUPE BC Members – Obtaining Medical Evidence & Reports for WorkSafeBC Claims & Appeals

WCB Advocacy Department – BC Regional Office

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Nothing in this Guide should be construed as legal advice or advocacy. The information provided is for general education purposes only and is subject to ongoing change and revision.

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INTRODUCTION:

This Guide provides a process that can be used in both obtaining and generating written medical evidence, medical opinions and medical reports for a WorkSafeBC (“WCB”) claim or appeal. Medical evidence is a form of expert evidence. Expert evidence is a form of evidence that consists of opinions from persons who have the academic qualifications, experience, training or other qualifications in a particular area such as medicine.

It is important to address the factual underpinnings of the WCB claim when obtaining medical evidence. This Guide does not apply to arbitrations, Labour Relations Board matters, Human Rights Tribunal matters or Section 10 of the Evidence Act. It reviews the initial steps, preparation, presentation of file information, and how to address conflicting medical evidence.

Please note that there are different processes and medical evidence requirements for non-WCB matters such as employment or Collective Agreement issues. This Guide should not be used or applied to those.

BACKGROUND:

Who are experts? Experts include:

- Physicians – specialists or general practitioners
- Physiotherapists
- Chiropractors
- Occupational Therapists
- Vocational Rehabilitation Consultants
- Ergonomists
- Kinesiologists

This is only a partial list. Despite statements to the contrary, the WCB does have a hierarchy of experts, though this is not supported by law, the Act, Policy or the Practice Directives.

During a WCB claim or appeal, a number of types of medical evidence will be required at different times during the respective processes. These include:

1. WCB Form 8 /11 – Physician’s Report
(www.worksafebc.com/forms/assets/pdf/8_11.pdf)

2. WCB Activity Related Soft Tissue Disorder Pre-Site Questionnaire
3. Chart Notes / Clinical Records
4. Emergency Room Reports
5. Diagnostic and Imaging Reports e.g. X-Rays, CT Scans, MRI Scans
6. Medical Notes
7. Medical Letters
8. Medical Reports
9. Reports from Physiotherapists, Chiropractors, Vocational Rehabilitation Consultants, Occupational Therapists, Ergonomists, et ceteras
10. Functional Capacity Evaluations
11. Job Demands Analysis
12. Employability Assessments
13. ARCON Permanent Functional Impairment assessment via WCB Disability Awards

This is only a partial list. Generally, prescription pad notes are not recommended. Independent Medical Exams ("IMEs") are not recommended.

WHEN IS MEDICAL EVIDENCE REQUIRED:

Medical Evidence is required for:

- ❖ WCB claims
- ❖ Appeals
- ❖ return to work programs
- ❖ vocational rehabilitation
- ❖ disability awards - loss of earnings awards, permanent functional impairment awards, et ceteras
- ❖ employability assessments

- ❖ when diagnoses are in dispute
- ❖ when diagnoses are unknown
- ❖ when there are multiple diagnoses
- ❖ when there are pre-existing conditions
- ❖ complex claims
- ❖ when determining the level of disability
- ❖ when determining the duration of disability
- ❖ when determining if the disability has plateaued or stabilized
- ❖ when determining limitations
- ❖ when determining restrictions
- ❖ when determining pain conditions
- ❖ for re-opening a claim
- ❖ for recurrences

This is a short list. Each claim or appeal is dependent on the facts.

PROCESS:

To prepare for obtaining these types of documentation, or, as a medical or other practitioner preparing the documents, knowing what is being sought and why is required.

A. Initial Steps & Preparation

- (i) The physician or other practitioner should be contacted in person or by telephone and asked if they are prepared to assist in the WCB claim or appeal. If they are not able to assist, this initial step eliminates the possibility of the physician or other practitioner rendering an opinion that is damaging to the claim or appeal, or, rendering an opinion that involves unnecessary costs, as determined by the respective applicable BCMA, WCB, Review Division and Workers' Compensation Appeal Tribunal fee schedules.

- (ii) If the physician or other practitioner agrees to assist, they must act as an objective, independent expert, and not as an advocate. Opinions that contain advocacy are often given little or no weight.
- (iii) The physician or other practitioner should be provided, in advance, the following documents:
 - The WCB decision(s) under review or appeal, and,
 - The Job Description for the position, and,
 - The Job Duties for the position, and,
 - The WCB Form 6, and,
 - The WCB Form 7 if available, and,
 - Employer Accident / Incident Report or Log, via the Union, and,
 - A detailed chronology of the incident, accident or event, and,
 - Any medical evidence or opinions from the WCB Medical Advisor.

B. Presentation of File Information, Factual Information and Non-Medical Information

- (i) The worker, advocate or representative should write what is being sought and why.
- (ii) The worker, advocate or representative should ask the physician or other practitioner to list their qualifications and experience.
- (iii) The worker, advocate or representative should write a summary of the reasons why the WCB claim or appeal was denied.
- (iv) The worker, advocate or representative should write a summary of the employer, or their representative's reasons for opposing the claim or appeal.
- (v) The worker, advocate or representative should write a detailed chronology of the events leading up to the current WCB decision in question.
- (vi) The worker, advocate or representative should write a summary of the relevant Act, Policy, Practice Directives, Risk Factors, et ceteras.

- (vii) The worker, advocate or representative should refer to the documents referred to in "A" above as required, and attach these as appendixes to the request letter (if these have not been submitted previously as per protocol).
- (viii) The worker, advocate or representative should attach the relevant fee schedule if there is a fee for the written medical evidence, medical opinion and / or medical report.
- (ix) The worker, advocate or representative should attach the relevant Releases (from the worker, for example).
- (x) The worker, advocate or representative should attach any other evidence such as maps, drawings, specifications, investigation reports, et cetera.
- (xi) The worker, advocate or representative may wish to offer an invitation for the physician or medical practitioner to attend the work site to observe the workplace setting, where the Union and the employer have been notified and such a visit is authorized.
- (xii) The worker, advocate or representative should remind the physician or other practitioner that they cannot act as advocates for the worker.

C. Dealing with Conflicting Medical Opinions & Evidence

When weighing medical evidence, the WCB and appellate tribunals give weight to a number of factors, depending upon the fact pattern and Act, Policy and Practice Directives involved. Examples of primary considerations include:

- the preponderance of medical evidence;
- objective (versus subjective) medical evidence;
- the type of medical practitioner e.g. specialist vs. generalist.

WCB Medical Advisor's opinions are accorded deference and greater weight than most other medical evidence due to their deemed specialization in Occupational Medicine. Any claim or appeal must rebut all comments made by a WCB Medical Advisor.

In particular, the following factors will be considered (in addition to the above):

- (i) The expertise of the person rendering the opinion.
- (ii) The presence of conflicting medical evidence.

- (iii) The statements made in the Chart Notes / Clinical Records.
- (iv) The statements made in the WCB Form 8 / 11 reports.
- (v) The familiarity of the physician or other practitioner with the worker's job, the accident, the injury, and the WCB file.
- (vi) Whether the issue of causation (how the injury or condition relates to employment) has been addressed.
- (vii) When the issue of causation was initially addressed.
- (viii) Whether the diagnoses changed over time, or were clarified, and why.
- (ix) The reference to diagnostic reports in the opinion.
- (x) The presence or absence of words such as "may have," "could have," "might have," possibly," "unsure," et ceteras.
- (xi) The presence or absence of definitive statements as to causation e.g. "The work related injury was caused by employment for the following reasons..."
- (xii) If there was a pre-existing condition or disease, was it stable/non-deteriorating or deteriorating? If it was deteriorating there must be evidence that it was at a critical point. Work duties must be required for employment. There must be an exceptional strain. What was the extent to which the injury was related to the pre-existing condition?

SOURCES:

Workers' Compensation Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20W%20--/Workers%20Compensation%20Act%20RSBC%201996%20c.%20492/00_Act/96492_00.htm

Rehabilitation Services & Claims Manual

http://www.worksafebc.com/publications/policy_manuals/Rehabilitation_Services_and_Claims_Manual/default.asp

WCB Forms

<http://www.worksafebc.com/forms/default.asp>

WCB Practice Directives

http://www.worksafebc.com/regulation_and_policy/practice_directives/compensation_practices/practice_directives/default.asp

Review Division Decisions

http://www.worksafebc.com/claims/review_and_appeals/review_division/review_search/advanced_search.asp

Workers' Compensation Appeal Tribunal Decisions

http://www.wcat.bc.ca/search/decision_search.aspx

Workers' Compensation Appeal Tribunal Requirements for Medical Evidence

http://www.wcat.bc.ca/appeals/preparing/medical_evidence.html
http://www.wcat.bc.ca/appeals/preparing/gathering_evidence.html

SUMMARY:

In summary, it is imperative to ensure that the medical evidence and opinions reflect an understanding of the fact pattern of the claim; an understanding of the job being performed by the worker; and that the medical evidence both corroborates the relationship between the injury and the employment as well as rebuts the WCB Medical Advisors contradicting opinions. Should you have any further questions regarding this Guide or any of the other many Guides and educational resources I have produced, please do not hesitate to contact me at (604) 291-1940.