

NORTHWEST TERRITORIES AND NUNAVUT
WORKERS' COMPENSATION APPEALS TRIBUNAL



ANNUAL REPORT 2015



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Honourable Louis Sebert
NWT Minister Responsible for the WSCC

Honourable Keith Peterson
NU Minister Responsible for the WSCC

Dear Honourable Ministers:

In accordance with the Workers' Compensation Act, I am pleased to present the Northwest Territories and Nunavut Workers' Compensation Appeals Tribunal's 2015 Annual Report.

Sincerely,

Colin Baile
Chairperson

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Overview

The Northwest Territories & Nunavut Workers' Compensation Appeals Tribunal is an independent quasi-judicial tribunal, which hears appeals of decisions made by the Workers' Safety and Compensation Commission's ("WSCC" or "the Commission") Review Committee. Both Workers and Employers may file an appeal. The Tribunal may only hear matters for which the Review Committee has made a decision. Appeals are heard by one Tribunal Member, however a panel of three may be struck to hear an appeal.

The Tribunal may confirm, vary or reverse any decision of the WSCC's Review Committee. While the Tribunal may make its own procedural rules, it must follow and apply the Workers' Compensation Act (the Act) of both the Northwest Territories and Nunavut.

The workers' compensation system provides compulsory, no-fault mutual insurance for workers and employers. One of the corner stones of this system is the immunity from action. This means employers and workers cannot be sued as a result of a workplace accident. There are however very specific circumstances where such immunity may be challenged. Applications from any party to a court action may apply to the Tribunal for a determination of whether a person is immune from action under the Act.

The Ministers from both the Northwest Territories and Nunavut, responsible for the Workers' Safety & Compensation Commission, appoint Tribunal Members.

Tribunal Members and Staff – 2015

Colin Baile – Chairperson (Yellowknife)

Michael Chandler (Iqaluit)

Louis Sebert (Fort Smith)

Cayley Thomas (Yellowknife)

Grant Paziuk (Fort Smith)

Maria Jobse – Registrar/General Manager

During this reporting period, Mr. Sebert resigned from the Appeals Tribunal in late 2015.

Operations

During this reporting period, 14 appeals, 3 requests for rehearing, and 2 Section 63 applications were received. Additionally, 2 judicial review applications were made to the Supreme Court regarding Tribunal decisions.

Of the 10 decisions rendered, half of the Review Committee decisions were upheld, and half reversed.

As with past years, the majority of appeals are requested by Workers with only 2 having been requested from Employers. One appeal was directed to be reheard by the WSCC's Governance Council as provided for by section 131 of the Workers' Compensation Act.

Of the appeals and requests for rehearing, 50% were upheld and 50% were reversed. This percentage is in keeping with the past several years.

During this reporting period, two judicial review applications were made stemming from Tribunal decisions. These are the first such applications in over eight years.

Financial Operations

In 2015 the Tribunal's total expenditures were \$377,598, which was 78% of the Tribunal's budget (\$481,215).

Tribunal Mandate and Procedural Authorities

Both the Commission and the Appeals Tribunal are governed by the Workers' Compensation Act of each Territory. The Tribunal is ordinarily not bound by Commission decisions or opinions. The Tribunal must apply Commission policies where the Tribunal determines the policy applies to the circumstances of an appeal.

The Appeals Tribunal is guided by the principles of administrative law, legislation, and court decisions. Within this framework, the Tribunal endeavors to maintain the balance between fairness and efficiency.

Appeals may be heard by documentary submissions, teleconference, videoconference, or in-person. Tribunal decisions are written. The Act requires decisions to be made within 90 days of receiving all the evidence.

Tribunal decisions are final and conclusive. The Act provides for the Commission's Governance Council to direct the Tribunal to rehear an appeal should the Governance Council determine the Tribunal has not properly applied Commission policy or failed to comply with the Act/Regulations. The Tribunal may reconsider a decision on the basis of new evidence. Appeals may be dismissed for delay of proceeding where the Tribunal determines procedural deadlines have not been met.

Procedural Framework



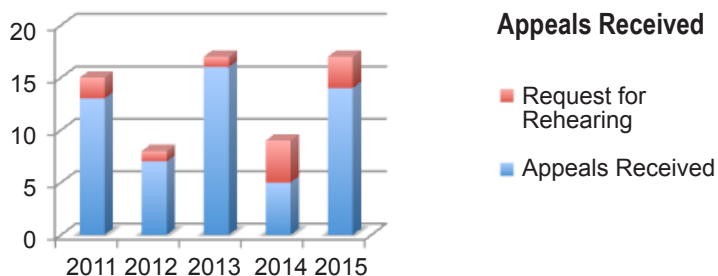
Statistics

Please refer to the Appendix for specific data.

Two Section 63 applications were received in 2015. One was withdrawn and the other had not been concluded.

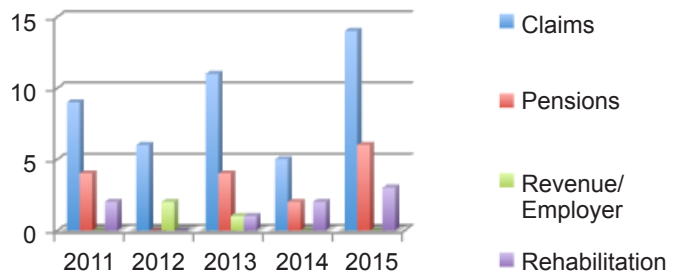
Appeals and Requests for Reviews Received

The number of appeals and requests for rehearing increased over the previous year, however remained within the long term norm.



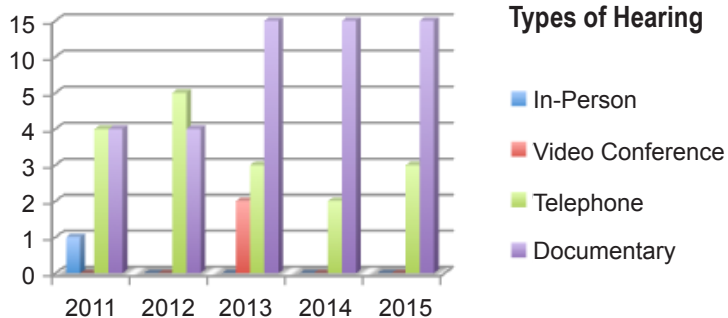
Appeals and Requests for Reviews Received

Claims issues continue to form the majority of appeals, followed by pension issues.



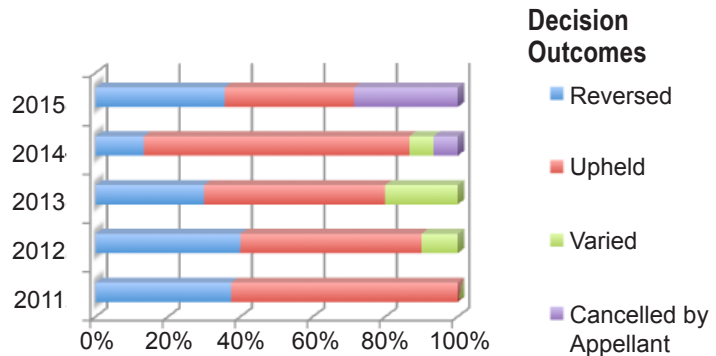
Types of Hearings

The majority of hearings were documentary. For the second year no in-person hearings were conducted.



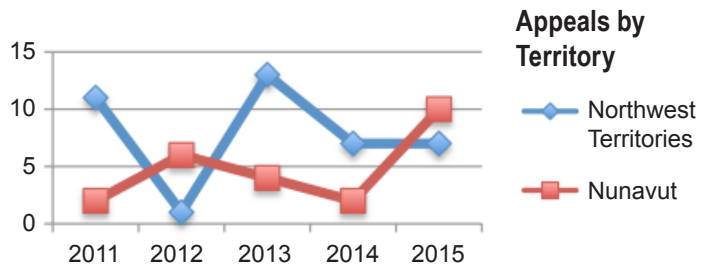
Decision Outcomes

Half of the Tribunal decisions upheld the WSCC decision under the appeal while the remaining Tribunal decisions overturned the WSCC decision under appeal. Four appeals were withdrawn by Appellants prior to a hearing.



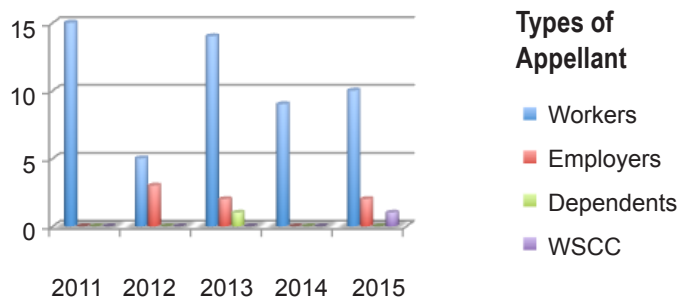
Appeals by Territory

The majority of appeals resulted from Nunavut claims.



Types of Appellants

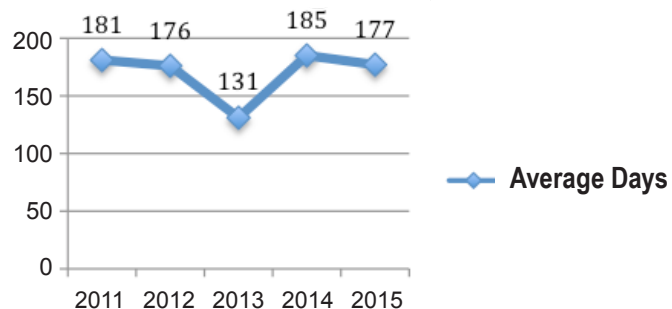
In 2015, two of the Appellants were Employers. For the first time in several years, the WSCC Governance Council directed a rehearing of an appeal.



Time from Filing to Decision

The time required for appeals have remained consistent for the past several years.

Note: this time includes that attributed the activities of Appellants and WSCC, as well as the Tribunal.



Decisions of 2015

Appeals Tribunal hearings are conducted in camera. Because Tribunal decisions contain personal information such as medical and financial information, they are not made public.

The following are summaries of the Tribunal's decisions made in 2015 by category.

Noteworthy Decisions

1

Decision 13-011R Section 131 Reconsideration

Previous decision upheld

Worker Appeal – Documentary

The Employer did not participate

In December 2014 the Appeals Tribunal issued a decision dealing with two appeals. Section 131 of the Workers' Compensation Act allows for the Governance Council of the Workers' Safety & Compensation Commission to order a rehearing of an appeal. Such direction was given to the Appeals Tribunal in July 2015 for these two appeals. A panel of three Tribunal Members was struck to rehear the two appeals.

The first of the two appeals considered the WSCC's denial to accept two medical conditions as being compensable. The Worker had an accepted compensation claim on the basis of the workplace incident causing an exacerbation of a pre-existing condition. The Worker also had two other pre-existing conditions that were not accepted. The Appeals Tribunal's 2014 decision found the two other conditions were similarly exacerbated by the workplace incident as was the accepted condition. Upon rehearing, the Tribunal found the two pre-existing conditions at issue to have been similarly exacerbated as a consequence of the incident. The Tribunal also found the two conditions were not caused by the accepted condition, but were separate conditions and needed to be addressed in a similar manner as the accepted condition. This decision confirmed the Tribunal's earlier decision.

The second of the two appeals dealt with the denial of dental care and sponsorship of a mouth guard. The rehearing panel declined to rehear this appeal. The direction to rehear was based upon the Worker not having asked for compensation. This then implied jurisdictional error by the Tribunal in deciding the appeal in 2014. The panel found evidence that the Worker had in fact sought the awarded compensation.

Other Decisions

2

Decision 14-007 Entitlement

WSCC decision was upheld

Worker Appeal – Documentary

The Employer did not participate

The WSCC did not participate

The Worker was injured as a result of slipping and falling at work. The Worker received compensation benefits for a lower back injury and was eventually awarded a 10% Permanent Partial Disability pension for a pain disorder. The Worker then sought compensation for cervical neck injury alleged to have occurred at the same time.

The issue before the Appeals Tribunal was:

Whether there is a causal link between the Worker's cervical spine issues and the workplace injury.

The Worker was diagnosed with a spinal cord impingement of the cervical spine or degenerative disc disease. The Appeals Tribunal found no causal link between the Worker's neck condition and the workplace injury.

3

Decision 11-013 Continuing Benefits

WSCC decision was reversed

Worker Appeal – Documentary

The Employer did not participate

The WSCC did not participate

The Worker was struck about the head, shoulder and back with a heavy object. The compensation claim was accepted as a soft tissue strain to the neck and shoulders. Temporary Total Disability benefits were paid for two short periods totaling 12 days. The Worker was also provided physiotherapy treatments. Benefits were discontinued based upon the Worker failing to accept modified work duties offered by the Employer.

Prior to leaving the worksite, a form was presented to the Worker confirming modified duties were offered and refused. The Worker had very limited English language skills.

The issue before the Appeals Tribunal was:

Whether or not the Appellant is entitled to Temporary Total Disability benefits beyond that already awarded.

Other Decisions

The Appeals Tribunal found the Worker's limited English skills resulted in a lack of understanding of the contents of the modified work form or the consequence of signing it. The Worker's injury should have been adjudicated on the basis of aggravating a pre-existing condition, and on the basis that the Appellant was denied the opportunity for modified duties.

4

Decision 15-001 Home Maintenance and Independent Living Allowance

Independent Living Device

WSCC decisions were upheld

Worker Appeal – Documentary

The Employer did not participate

The WSCC did not participate

This appeal heard two WSCC decisions consisting of three issues. The issues before the Appeals Tribunal were:

- 1. Is the Worker entitled to retroactive Home Maintenance and Independent Living Allowance?*
- 2. Is the Worker entitled to WSCC sponsorship of an iPad as an Independent Living Device?*
- 3. Is the Worker entitled to WSCC sponsorship of a pool membership?*

The Worker had an accepted claim and sought retroactive Home Maintenance and Independent Living Allowance. This allowance is intended to assist with home maintenance and independent living. The allowance is intended to be used for services such as yard maintenance and housekeeping. The Appeals Tribunal found such an allowance should not be paid retroactively without proof of actual expenditure.

The Worker sought an iPad to assist with daily activities. The Appeals Tribunal found there was no medical evidence to substantiate the device would assist the Worker in overcoming the compensable condition.

The Worker also sought the purchase of a pool membership at a local aquatic center. The denied request was upheld by the Appeals Tribunal. Providing injured workers with membership to unsupervised activities unreasonably exposes the WSCC to liability.

Prior to the commencement of the appeal hearing, the WSCC took the unusual step of asking the Tribunal to return this matter to the Commission's Review Committee. The Commission was of the view the Worker may have raised human rights and Charter issues that were not fully addressed at that level. The request was denied however both the Worker and the WSCC were given the opportunity to give submissions on these issues as part of the appeal hearing. Both the WSCC and the Worker declined.

Other Decisions

5**Decision 14-004 Suspension of Benefits
Refusal to attend treatment****WSCC decision was reversed**

Worker Appeal – Teleconference

The Employer did not participate

The WSCC did not participate

The Worker had suffered shoulder and back soft tissue injuries and was later diagnosed with a pain disorder. As part of a vocational rehabilitation plan, the Worker was seen by a doctor for a psychological evaluation. The doctor found the Worker's substance abuse problem was an impediment for or to the Worker's return to work. The WSCC wanted the Worker to attend a substance abuse program. The Worker refused and denied having a substance abuse problem. The Worker's benefits were terminated as the Worker failed to attend the treatment program. The Tribunal reversed the WSCC's decision. It found the WSCC incorrectly placed the onus on the Worker to prove there was no substance abuse and relied on incomplete information.

6**Decision 14-003 Entitlement Hearing Loss****WSCC decision was upheld**

Worker Appeal – Teleconference

The Employer did not participate

The WSCC did not participate

The Worker was employed as an underground miner in the Territories during the 1950's. The Worker was so employed for about 10 months. He had worked both before and after that time in similar work. After leaving the North, he had various jobs that exposed him to high noise levels. Some twenty years ago, the Compensation Board in his home jurisdiction awarded him a hearing loss pension of 65% for his hearing loss suffered in that jurisdiction. WSCC denied his claim. The Appeals Tribunal upheld that decision.

7**Decision 14-006 Temporary Total Disability Benefits****WSCC decision was reversed**

Worker Appeal – Documentary

The Employer did not participate

The WSCC did not participate

The Worker had been a Heavy Duty Mechanic for several years. He developed bilateral carpal tunnel syndrome. His claim was accepted, however due to having been laid off and awaiting further work, no benefits were paid. During the lay off period, an accident caused further injury to one of the Worker's wrists. He underwent bilateral carpal release surgery. The Worker received Temporary Total Disability (TTD) benefits during the surgical recovery term only. The Worker felt entitled to TTD benefits prior to surgery as he was unable to work and his pre-existing condition contributed to his disability. The Appeals Tribunal found on a balance of probabilities the Worker's compensable carpal tunnel syndrome contributed in a material way to his inability to work.

8**Decision 01-006R Request for Rehearing****Request denied**

Worker appeal

The Worker requested his appeal heard in 2002 be reheard based upon new medical evidence. The evidence in question was a note from the Worker's present doctor. The request for rehearing was denied based upon the relevance of the evidence. The doctor had been seeing the Worker for the past 4 years and spoke of the Worker's present condition. The appeal dealt with an injury that occurred some 18 years ago. The Worker was advised to contact the WSCC if his compensable condition had deteriorated since he was assessed for a pension.

Appendix

APPEALS / REQUESTS FOR REHEARING RECEIVED

	Appeals	Requests for Rehearing	Total Received
2011	13	2	15
2012	7	1	8
2013	16	1	17
2014	5	4	9
2015	14	3	17

ISSUES APPEALED

	2011	2012	2013	2014	2015
Claims	9	6	11	5	14
Pensions	4	0	4	2	6
Revenue/Employer	0	2	1	0	0
Rehabilitation	2	0	1	2	3
Total Received	15	8	17	9	23

TYPE OF HEARING

	2011	2012	2013	2014	2015
In-Person	1	0	0	0	0
Video Conference	0	0	2	0	0
Telephone	4	5	3	2	3
Documentary	4	4	7	7	7

DECISION OUTCOMES

	2011	2012	2013	2014	2015
Reversed	6	4	3	2	5
Upheld	10	5	5	11	5
Varied	0	1	2	1	0
Cancelled by Appellant				1	4

APPEALS BY TERRITORY

	2011	2012	2013	2014	2015
Northwest Territories	11	1	13	7	7
Nunavut	2	6	4	2	10

TYPE OF APPELLANT

	2011	2012	2013	2014	2015
Workers	15	5	14	9	10
Employers	0	3	2	0	2
Dependents	0	0	1	0	0
WSCC					1

AVERAGE DAYS FROM FILING TO DECISION

	2011	2012	2013	2014	2015
Average days	181	176	131	185	177

SECTION 63 APPLICATIONS

	2011	2012	2013	2014	2015
Count	1	0	2	1	2

JUDICIAL REVIEW APPLICATIONS

	2011	2012	2013	2014	2015
Count	0	0	0	0	2



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2011	13	2	15	
2012	7	1	8	
2013	16	1	17	
2014	5	4	9	
2015	14	3	17	

የገንዘብ ለውጥ ለውጥ					
	2011	2012	2013	2014	2015
የገንዘብ ለውጥ	9	6	11	5	14
የገንዘብ ለውጥ	4	0	4	2	6
የገንዘብ ለውጥ / የገንዘብ ለውጥ	0	2	1	0	0
የገንዘብ ለውጥ	2	0	1	2	2
ገንዘብ ለውጥ	15	8	17	9	23

የገንዘብ ለውጥ ለውጥ					
	2011	2012	2013	2014	2015
የገንዘብ ለውጥ	1	0	0	0	0
የገንዘብ ለውጥ በገንዘብ ለውጥ	0	0	2	0	0
የገንዘብ ለውጥ	4	5	3	2	3
በገንዘብ ለውጥ	4	4	7	7	7

የገንዘብ ለውጥ ለውጥ					
	2011	2012	2013	2014	2015
የገንዘብ ለውጥ	6	4	3	2	5
የገንዘብ ለውጥ	10	5	5	11	5
የገንዘብ ለውጥ	0	1	2	1	0
የገንዘብ ለውጥ የገንዘብ ለውጥ				1	4

ግብርና ለውጭ ጋራ ገቢ ለውጭ ጋራ ገቢ					
	2011	2012	2013	2014	2015
መደብ ለሀገር	11	1	13	7	7
ወይንም	2	6	4	2	10
ግብርና ለውጭ ጋራ ገቢ ለውጭ ጋራ ገቢ					
	2011	2012	2013	2014	2015
ግብርና ለውጭ ጋራ ገቢ	15	5	14	9	10
ግብርና ለውጭ ጋራ ገቢ	0	3	2	0	2
LPL ለውጭ ጋራ ገቢ	0	0	1	0	0
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	2011	2012	2013	2014	2015
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	2011	2012	2013	2014	2015
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	2011	2012	2013	2014	2015
ግብርና ለውጭ ጋራ ገቢ	0	0	0	0	2

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