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LawTalk Blog



Disputing a workers compensation decision

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An updated version of this blog can be found [here](#).

We are often surprised by the decisions case managers come to in relation to our client's [workers compensation](#) claims. Many decisions seem to defy all logic and reason, and clients instruct us to dispute their matter in the [South Australian Employment Tribunal](#).

Disputing a bad workers compensation decision is not a straightforward or easy process, and can have significant consequences if correct procedures and rules are not followed.

Under the [Return to Work](#) legislation that has been operational since July 2015, the process to pursue a dispute is initiated with a document called an 'Application for Review'. This document is quite lengthy, and requires a solid understanding of workers compensation law to fill out correctly. We do not recommend that workers fill out and submit their own Applications for Review

without seeking legal advice from a lawyer experienced in this type of work.

Mistakes in an Application for Review can prejudice the worker in the long term. Also workers and their representatives need to be wary of the most appropriate time to lodge the Application because formal lodgement of the Application with the South Australian Employment Tribunal ("SAET") commences a chain of events that can easily become uncontrollable if proper preparation is not performed at the outset.

The process which applies when an Application for Review is lodged is detailed in this blog. This is intended to provide workers with a general overview of the dispute resolution process, and we do not expect that workers will recall all the information outlined below.

Once the Application for Review is lodged, the Compensating Authority (the insurer or employer) is required to "reconsider" their original decision. They can confirm their decision, set the decision aside, or vary the decision. If the decision is varied in a manner which satisfies us, this will likely end the dispute. However, more often than not the reconsideration process does not assist with the resolution of the dispute.

If the reconsideration process is unhelpful, the dispute will need to proceed through the SAET.

Shortly after lodging the Application for Review, the dispute will be allocated to a Conciliation Officer. This Conciliation Officer will likely contact the respective parties to the dispute to see if the matter is capable of a quick resolution. However, if no such resolution is possible, the Conciliation Officer will list an Initial Directions Hearing (IDH).

The IDH is usually conducted within 21 days of the lodgement of the Application and is a procedural conference located at the SAET. A worker's personal attendance is not required for the IDH. During the IDH, the Conciliation Officer will attempt to ascertain whether the parties have all the materials and information they need in order to progress the dispute.

Once the Conciliation Officer believes that the parties have all the material they need for the dispute to progress, they will schedule a Compulsory Conciliation Conference ("CCC"). The worker's personal attendance **is** required for the CCC unless circumstances apply to justify their non-attendance. This CCC is usually held within 28 days of the IDH.

At the CCC the parties have an opportunity to discuss the details of the dispute and hopefully engage in negotiations with a view to reaching an agreed resolution of the matter, or 'settlement'. If a settlement is reached, the SAET will issue Orders recording the agreement reached between the parties.

If an agreement is not reached at CCC, a worker has the right to request that the review be referred to a trial. If it is apparent that an agreed settlement cannot be reached, the Conciliation Officer will refer the matter to a Deputy President of the SAET who will list another conference called a Pre-Hearing Conference.

At the time of referring the dispute, the Conciliation Officer will provide a written summary of the dispute, and make comments regarding the merits of each party's respective case. This document will need to be carefully considered by the worker and/or their representative, because this could impact on the chances of success as the matter progresses.

At the Pre-Hearing Conference, the parties will discuss the details concerning the dispute generally and the likely need to proceed towards a trial in due course. At the Conference, the parties will have an opportunity to discuss whether a further Conciliation Conference may be necessary to facilitate a resolution of the dispute. The worker's personal attendance is not required for the Pre-Hearing Conference.

If the dispute is still not capable of resolution, the matter will be set down for a trial where a Deputy President of the Tribunal will hear all the necessary evidence from witnesses (including experts), read all the relevant documentation and then provide a judgment either in favour of the worker or the Compensating Authority.

Again, this blog provides you with a snapshot of a very complex dispute resolution process. There are many other elements to a dispute that have not been referred to in this blog. We strongly recommend you contact us if your case manager makes a decision regarding your claim that you think is unfair, unreasonable or incorrect.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.