

#28 OCCUPATIONAL HEALTH AND SAFETY APPEALS

Please note: if you are looking for guidance on filing an appeal, or for further information on the appeal process generally, go to the Frequently Asked Questions section at page 6 of this Information Bulletin.

I. INTRODUCTION: *Occupational Health and Safety (OHS) Laws*

The OHS *Act*, OHS *Code*, and OHS *Regulations*¹ protect the health and safety of workers in Alberta. OHS laws are enforced by OHS Officers, who conduct inspections, make orders, and issue administrative penalties to enforce OHS laws. OHS Officers also investigate dangerous work and disciplinary action complaints. Officers can dismiss or confirm these complaints. If they confirm a complaint, Officers can issue orders.

II. THE APPEAL BODY FOR OHS MATTERS

The Alberta Labour Relations Board is the appeal body under the OHS *Act*. The appeal body's role is to consider appeals of various OHS decisions. As the appeal body, the Board is not where you bring new OHS concerns: the Board is not an investigator of OHS issues, and the Board does not have general oversight over the operations of OHS. Rather, as the appeal body, the Board *reviews* OHS's decision—it does not provide a fresh determination of the issues in dispute.

After an appeal is filed with the appeal body, OHS will provide the parties and the appeal body with the “record” of its decision, which includes all the information and evidence it had when it made its decision. Appeals are generally reviewed “on the record” and new evidence is only allowed in exceptional circumstances.

In an appeal, the appeal body considers arguments from the parties about whether there is a reason to confirm, revoke, or vary an OHS decision or to send it back for reconsideration. As discussed below, when considering an OHS decision, the appeal body typically asks itself whether OHS's decision was reasonable.

¹ *Occupational Health and Safety Act*, SA 2020, c O-2.2; *Occupational Health and Safety Code*, Alta Reg 191/2021; *Occupational Health and Safety Regulation*, Alta Reg 184/2021

III. THE STANDARD OF REVIEW OF OHS DECISIONS

OHS Officers and Directors are experts in workplace safety and many of the decisions they make are highly technical. Accordingly, when the appeal body reviews OHS decisions, it usually focuses on whether OHS's decision was reasonable: *Ledcor Pipe & Infrastructure v. Alberta (Occupational Health and Safety)*, Decision 2109 (Board File No. OHS 2020-6).

The appeal body shows deference to OHS's expertise on:

- findings of fact, including its credibility and evidentiary assessments from its investigations,
- findings of mixed fact and law,
- discretionary decisions like which remedy is appropriate, and
- questions of law involving occupational health and safety policy considerations.

In doing so, the appeal body considers the overall rationality and coherence of OHS's analysis and decision. The appeal body asks itself whether OHS's decision was reasonable in this sense, *not* whether the appeal body would have made the same decision in the circumstances. An appeal is not an opportunity for parties to simply re-argue their complaint, or for the appeal body to re-evaluate and re-weigh the evidence.

There may be cases where the reasonableness standard is not appropriate—for instance, on certain questions of law that do not involve OHS policy. If a party believes the issues on appeal should be reviewed on a less deferential standard, it should let the appeal body know why.

The Board may also consider an appeal of a decision on the ground of procedural unfairness—that is, if an appellant alleges that in making its decision something in OHS's investigation or process denied the party a fair process.

IV. TYPES OF APPEALS BEFORE THE APPEAL BODY

(i) Appeals of OHS enforcement or compliance measures

OHS enforcement and compliance measures include:

Compliance orders, which set out specific things that must be done and specific timelines for doing them.

Stop work orders, which may be for work to stop, for a person to leave, or for removal of danger. These orders may apply to parts of a work site, to an entire work site, or to multiple work sites.

Stop use orders, which force parties to stop using equipment, substances or explosives that could seriously injure workers.

Administrative penalties for non-compliance with OHS laws.

The appeal body may hear appeals of these types of enforcement or compliance measures. If the appeal is successful, the appeal body has limited remedies. It may confirm, revoke, or vary the OHS order or administrative penalty, or send the matter back to the OHS Officer for reconsideration.

(ii) Appeals related to the cancellation or suspension of a licence

OHS can cancel or suspend a licence issued under the OHS *Code*.

The appeal body may hear an appeal of the cancellation or suspension of a licence. If the appeal is successful, the appeal body has limited remedies. It may:

Add conditions to a licence.

Confirm the cancellation of a licence, reinstate it, change the cancellation to a suspension, or send the matter back to the OHS Director for reconsideration.

Confirm, remove or vary a licence suspension, or send the matter back to the OHS Director for reconsideration.

(iii) Appeals related to dangerous work

Under OHS laws, workers have a right to refuse dangerous work. In some cases, an OHS Officer will investigate the alleged dangerous work and prepare a written record of the investigation and findings.

The appeal body may hear an appeal of the findings in such a record. If the appeal is successful, the appeal body has limited remedies. It may confirm, revoke or vary an Officer's findings in an OHS record or report, or send the matter back to the Officer for reconsideration.

(iv) Appeals of Disciplinary Action Complaints (DACs)

As with all matters, employees who allege they have been treated improperly because they complied with OHS legislation, must file their disciplinary action complaint ("DAC") with OHS. Once OHS has completed its report or order concerning the complaint, the employee or employer may appeal to the appeal body. Before commencing an appeal, it is important to understand the nature of DAC complaints and appeals.

Disciplinary Action

Workers can file DACs with OHS in the following circumstances:

1. They comply with OHS legislation; and
2. They experience disciplinary action²; and

² Under the OHS *Act*, disciplinary action is defined as "any action or threat of action by a person that does or would adversely affect a worker with respect to any terms or conditions of employment."

3. The disciplinary action happens because of their compliance.

All three elements of this equation must exist for a DAC to be successful. The onus is on the employer to show that the act of compliance with OHS laws was not a reason for the disciplinary action.

It is important to understand that a DAC complaint is only about the alleged connection of the discipline with OHS compliance. A DAC complaint or appeal is *not* an assessment of the validity of the original occupational health and safety concern, or whether the discipline might be excessive or improper on grounds other than OHS compliance.

DAC appeals

The following principles generally apply to DAC appeals:

- The appeal body generally reviews OHS DAC decisions on the standard of reasonableness, discussed above.
- Because of the reasonableness standard, the appeal is an assessment of overall rationality and coherence of OHS's analysis and decision; it is not an opportunity for parties to simply re-argue their complaint or for the appeal body to re-evaluate and re-weigh the evidence presented to OHS: *Esperidion Parantar Jr. v. Endurance Technologies Inc.*, 2024 ABOHSAB 9.
- The appeal body can also determine whether OHS' process was procedurally fair.
- If the appeal is successful, the appeal body has limited remedies. It may confirm, revoke, or vary a disciplinary action complaint report or order, or send the DAC back to the OHS Officer for reconsideration.
- The appeal body does not have general supervisory authority over OHS' operations. For example, the appeal body cannot prevent OHS from making future orders or findings.

V. TIMELINES

Appeals of OHS enforcement or compliance measures and DACs must be made to the appeal body within 30 days of being served or given notice of the decision being appealed. The appeal body has no discretion to extend or relieve against this strict time limit.

VI. ADDITIONAL POWERS OF THE APPEAL BODY

Under the OHS *Act*, the appeal body is allowed to:

- Reject a matter summarily (through summary dismissal);
- Stay proceedings; and
- Reconsider any order it makes and vary, revoke or affirm the order.

These three powers are explored in more depth below.

Summary Dismissal

Summary dismissal is the power to reject an appeal without a full hearing.

Under 45(5)(g) of the OHS *Act*, the appeal body may summarily dismiss an appeal if it is:

- Without merit;
- Frivolous, trivial, vexatious;
- Filed with improper motives;
- An abuse of process; or
- For other reasons.

The appeal body may also summarily dismiss an appeal if an appellant does not follow statutory requirements. For instance, if the appeal is untimely, the Board has no discretion to consider the appeal: *Thorkelson v Shell Canada Limited*, 2024 ABOHSAB 17.

Stay of proceedings

When a party appeals an **administrative penalty**, the penalty is automatically stayed—this means the party does not have to pay the penalty until the appeal body makes its decision or the appeal is withdrawn.

Otherwise, OHS orders and decisions aren't automatically stayed—an appellant must apply to the appeal body for the stay of an order, cancellation, suspension, record or report appealed from, pending the appeal to the appeal body.

These are the conditions for a stay:

- The Appellant's challenge to OHS's order or decision must raise a sufficiently strong case.
- OHS's order or decision will cause irreparable harm to the Appellant.
- The "balance of convenience" must favour a stay, which means there must be a strong risk of harm or prejudice to the appellant that would outweigh any harm of not granting a stay, in the event the interim stay application is unsuccessful, but the appeal succeeds.

Generally, when addressing stay applications, the appeal body applies the framework set out in *RJR – MacDonald Inc. v. Canada (Attorney General)*, [1994 CanLII 117 \(SCC\)](#), [1994] 1 S.C.R. 311 as well as occupational health and safety considerations. This approach mirrors the approach taken by the Labour Relations Board, which considers the *RJR* factors and labour relations considerations when a stay application is made with respect to its orders: see *United Brotherhood of Carpenters and Joiners of America, Local Union No. 1325 v. Permasteel Construction*, [2000] Alta. L.R.B.R. 291.

Reconsideration

The appeal body may reconsider any order it makes and vary, revoke or affirm the order. Generally, the appeal body will only exercise its reconsideration power if there are substantial errors in the way it selected or applied the standard of review of an OHS decision or if the appeal body's process was unfair.

Parties can ask the appeal body to reconsider its decision by making an application, but these applications are not a chance to re-argue or repeat points that were made in the original OHS appeal or simply to disagree with the outcome of an appeal: *Astolfi v Stone Creek Resorts Inc.*, 2024 ABOHSAB 1. Furthermore, reconsideration applications must be timely; the appeal body generally expects they will be filed within 30 days: *Little v Rolling Hills Energy Ltd.*, 2025 ABOHSAB 8.

For more information on the appeal body's approach to reconsideration, see: *Wilson v Grande Yellowhead Public School Division* (Board File No. OHS-2019-5) and *Astolfi v Stone Creek Resorts Inc.*, 2024 ABOHSAB 1.

Decisions of the appeal body are also subject to judicial review by the courts. There is a strict 30-day time limit to seek judicial review of a decision by the appeal body. The appeal body's reconsideration power may be narrower than a court's on judicial review. Reconsideration applications should not be viewed as either an alternative or prerequisite to seeking judicial review.

VII. FREQUENTLY ASKED QUESTIONS

1. How do I start an appeal?
2. What are the timelines for starting an appeal?
3. What happens if my application is late?
4. What information does the appeal body rely on during the appeal?
5. What if I want to provide new information or evidence?
6. What if I cannot meet a deadline or attend a hearing?
7. Will my name be published?
8. How do I know if the appeal body has power over my employment related disputes?
9. How do I challenge the appeal body's decision?

1. How do I start an appeal?

Fill out a **Notice of Appeal** form and include a copy of the OHS decision you want to appeal.

File the Notice of Appeal and the decision under appeal with the Labour Relations Board by:

Email: ALRB.OHSAPPEALS@gov.ab.ca

or

Delivery or mail:

Alberta Labour Relations Board
308, 1212 - 31 Avenue NE
Calgary AB T2E 7S8

Alberta Labour Relations Board
Suite 640, 10155 102 Street
Edmonton AB T5J 4G8

2. What are the timelines for starting an appeal?

If you want to appeal an order, administrative penalty, cancellation, suspension, record, report, or variance from OHS, you must do so **within 30 days** of being served or notified of the OHS decision.

3. What happens if my appeal is late?

There is a strict deadline for serving Notices of Appeal and the appeal body does not have the power to extend the timeline, or to apply it flexibly: see *Thorkelson v Shell Canada Limited*, 2024 ABOHSAB 17.

4. What information does the appeal body rely on during the appeal?

In most cases, the appeal body decides appeals based on the Notice of Appeal, Respondent Statement, the Record filed by OHS of all the information and documents it relied on in making its original decision, and written submissions from the parties.

5. What if I want to provide new information or evidence?

You can request to introduce new evidence that was not shared with OHS before it made its decision, but it is only allowed in exceptional circumstances. The evidence must be directly relevant to the issues under appeal and make a material difference to the outcome of the case. Also, if you had it or it was available when the matter under appeal was decided by OHS, it is unlikely it will be allowed.

If new evidence requests will include testimony, include a *will-say* document. [Note: Will-say documents explain what information you expect a witness to provide. Under the OHS Rules of Procedure, they must be five pages or less and signed and dated by the person who will provide the evidence.]

6. What if I cannot meet a deadline or attend a hearing?

If you need more time to file a record or response with the appeal body, you should write to ask the Director of Settlement for an extension in advance.

If an appeal is scheduled for hearing and you need to reschedule, you can request an adjournment (which is a postponement). The appeal body will decide whether or not to adjourn, taking into account whether another party opposes the request.

It is not easy to get an adjournment, especially last minute: they will only be granted in exceptional circumstances. The appeal body considers the reasons for the request, the timeliness

of the request, the position of the parties, the impact it will have on the parties, the need for efficiency, fairness to all parties, and the regulatory objectives of the *Act*.

To request adjournments or extensions email ALRB.OHSAPPEALS@gov.ab.ca as soon as possible with detailed reasons for your request.

7. Will my name be published?

Yes, probably. The appeal body's decisions are public; they are posted on the Labour Relation Board's [website](#) and [CanLII](#), and may be reported by other legal decision reporting services.

You can ask the appeal body to anonymize its decision so they will not publish your name. Make the request in your Notice to Appeal or Respondent Statement form. If you miss this step, raise it as a preliminary request as soon as you can. These requests are only granted in exceptional circumstances, for instance if publishing your name creates a safety risk or negatively impacts your privacy by revealing health information. If these exceptional circumstances exist, the appeal body may anonymize your name in its decision even without a request.

8. How do I know if the appeal body has power over my employment related disputes?

The appeal body is focused on OHS appeals. If workers want to challenge actions or outcomes that do not breach the OHS *Act*—for instance, if they want to make a wrongful dismissal claim—they may be able to seek legal recourse in the courts or other venues.

9. How do I challenge the appeal body's decision?

You can ask the appeal body to reconsider its decision, but the grounds for reconsideration are narrow and accordingly, reconsideration occurs infrequently.

Your application for **reconsideration** must be in writing and should be sent to the appeal body within 30 days of its decision. If the reconsideration application is accepted, the respondents have a right to respond and then you will have a right of reply. The OHS Rules provide more information on the process.

The appeal panel will review the materials to determine whether grounds exist to refer the application to a full hearing. If the appeal panel finds there is no plausible case for reconsideration, it may summarily dismiss the application.

You can apply to the courts for judicial review if you think the decision is incorrect, unreasonable or procedurally unfair. Applications for **judicial review** must be filed and served with the Court of King's Bench within 30 days of the appeal body's decision: section 46(11) of the OHS *Act*.

Applications are made by Originating Notice and governed by rules 3.15 – 3.24 of the *Alberta Rules of Court*. Applicants must serve the application on the Minister of Justice and/or the Attorney General of Canada as the circumstances require, as well as every person or body

directly affected by the application: See *Julien v Alberta (Appeals Commission for Alberta Workers' Compensation)*, 2023 ABCA 81.

For more information on the judicial review process, see the Alberta Labour Relations Board's *Information Bulletin #6: Applications for Reconsideration, Judicial Review, and Stays*.