

Manitoba Ombudsman

REPORT UNDER

THE PERSONAL HEALTH INFORMATION ACT

CASE 2014-0053

THE APPEAL COMMISSION- WORKERS COMPENSATION ACT OF MANITOBA

PRIVACY COMPLAINT: DISCLOSURE

PROVISIONS CONSIDERED: Clause 22(2)(o) of *The Personal Health Information Act*
Subsection 101(1.5) of *The Workers Compensation Act*
Subsection 6(5) of Manitoba Regulation 279/91, *Appeal Commission Rules of Procedure*

REPORT ISSUED ON MAY 6, 2014

SUMMARY: In relation to the complainant's claim with the Workers Compensation Board (WCB), the appeal panel determined that certain personal health information was relevant to the complainant's appeal and disclosed it to his employer under clause 22(2)(o) of *The Personal Health Information Act* (PHIA). PHIA permits disclosure of personal health information where authorized or required by an enactment of Manitoba or Canada. *The Workers Compensation Act* (WCA) provides an appeal panel the final authority to decide whether file information is relevant and should be provided to the employer. The complaint is not supported.

THE COMPLAINT

Our office received a complaint under *The Personal Health Information Act* (PHIA) against the Appeal Commission, requesting that we investigate what was alleged to have been an unauthorized disclosure of the complainant's personal health information.

The complainant advised our office that, contrary to his wishes and a decision by the chief appeal commissioner, the Appeal Commission disclosed records containing information about one of his medical conditions to his employer.

BACKGROUND

Under section 101(1.2) of *The Workers Compensation Act* (the WCA), where an appeal has been filed with the Workers Compensation Board (the WCB) or the Appeal Commission, the employer is entitled to receive all information relevant to the issue under appeal. A worker has

the right to review the contents of the claim file and object to the release of information to the employer. The WCB initially rules on the objection and its decision may be appealed to the chief appeal commissioner.

In this case, the complainant (the worker) had appealed the WCB's decision to release certain personal health information which it considered relevant to his appeal. The worker's objection was referred to the chief appeal commissioner. Under subsection 101 (1.5) the WCA, the chief appeal commissioner will consider any written submissions from the worker and/or employer and provide a decision. This decision is final and conclusive unless the issue goes before an appeal panel. The chief appeal commissioner subsequently decided that the information was not relevant to the issue under appeal and that it should not be released to the complainant's employer. The complainant was advised of that decision by letter [date removed] and the employer was provided with a copy of the redacted claim file later that month. The [date removed] letter also advised that, at the time the matter is considered by the Appeal Commission, the appeal panel dealing with the appeal has the authority to release that information to the employer if it decides that the information is relevant.

In anticipation of the Appeal Commission hearing schedule several months later, the appeal panel assigned to hear the appeal was asked to review the information received on the complainant's file. Upon review, the appeal panel decided that all of the correspondence and medical information within the claim file was relevant and should be disclosed to the complainant's employer. This was conveyed to the complainant in the Appeal Commission's letter to him dated [date removed].

INVESTIGATION

Does authority exist under PHIA for the Appeal Commission to have disclosed the complainant's personal health information to his employer?

Under clause 22(2)(o) of PHIA, a trustee may disclose personal health information if the disclosure is authorized by an enactment of Canada:

Disclosure without individual's consent

22(2) A trustee may disclose personal health information without the consent of the individual the information is about if the disclosure is

(o) authorized or required by an enactment of Manitoba or Canada

Under subsection 101(1.5) of the WCA and subsection 6(5) of Regulation 279/91, *Appeal Commission Rules of Procedure*, an appeal panel that is hearing an appeal has the authority to rule on the relevance of any file information and to decide whether it should be disclosed to the employer. This applies to file information previously considered by the WCB and the chief appeal commissioner (as in this case) as well as to file information received after an access request has been decided but prior to or during an appeal hearing.

The relevant provisions follow:

Review of decision by C.A.C.

101 (1.5) A person referred to in subsection (1.1) or (1.2) may apply to the Chief Appeal Commissioner to review a decision of the board under subsection (1.2) and the decision of the Chief Appeal Commissioner thereon is final and conclusive except where a panel, in hearing the main appeal, determines a document to be relevant to an issue in that appeal, in which case the person referred to in subsection (1.2) may examine and copy the document.

Employer's access to information

101(1.2) Notwithstanding subsection (1) and section 20.1 (medical reports), an employer or the agent of the employer who is a party to a reconsideration of a decision by the board or an appeal to the appeal commission may examine and copy such documents in the board's possession as the board considers relevant to an issue in the reconsideration or appeal and the information shall not be used for any purpose other than a reconsideration or appeal under this Act, except with the approval of the board.

Evidence determined by panel

6(5) The panel shall determine any questions respecting evidence, including the relevance of evidence to the matter before the panel.

We reviewed subsection 101(1) and section 20.1 of the WCA and determined that these provisions were not relevant to this matter.

It is clear that the legislation provides the appeal panel with the final ruling on the relevance of file information and the authority to decide what information shall be disclosed to the employer. In closing, we found that the Appeal Commission had authority under clause 22(2)(o) of PHIA by virtue of subsection 101(1.5) of *The Workers Compensation Act* to disclose, to the complainant's employer, records that the appeal panel found relevant to the issue.

CONCLUSION

Based on our findings, the complaint was not supported.

May 6, 2014
Manitoba Ombudsman