

NORTHWEST TERRITORIES AND NUNAVUT

**Workers' Compensation
Appeals Tribunal**



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2014 Annual Report



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September 13, 2015

Honourable Jackson Lafferty
NWT Minister Responsible for the WSCC

Honourable Keith Peterson
NU Minister Responsible for the WSCC

Dear Honourable Ministers:

I am pleased to present the Northwest Territories & Nunavut Workers' Compensation Appeal Tribunal's 2014 Annual Report in accordance with the provisions of the *Workers' Compensation Act*.

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 established 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 Workers' Safety & Compensation Commission, appoint Tribunal Members

Tribunal Members and Staff – 2013

Colin Baile – Chairperson (Yellowknife)

Michael Chandler (Iqaluit)

Louis Sebert (Fort Smith)

Cayley Thomas (Yellowknife)

Maria Jobse – Registrar/General Manager

Operations

In 2014, the Appeals Tribunal received 5 new appeals and 4 requests for rehearing. During this same period, 9 appeals and requests for rehearing were heard. The majority were heard by documentary hearing. Due to appeals that began in the previous year, 13 decisions were issued.

All of the appeals received were filed by workers. No employer appeals were received.

78% of the appeals and requests for rehearing received in 2014 originated in the Northwest Territories and 22% in Nunavut.

Of the issues for which a decision was rendered, 79% resulted in the Review Committee's decision being upheld with the remainder being reversed or varied. One Section 63 application was received in 2014.

Financial Operations

In 2014, the Tribunal's total expenditures were within 72% of the original authority of \$475,530.

Tribunal Mandate and Procedural Authority

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.

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

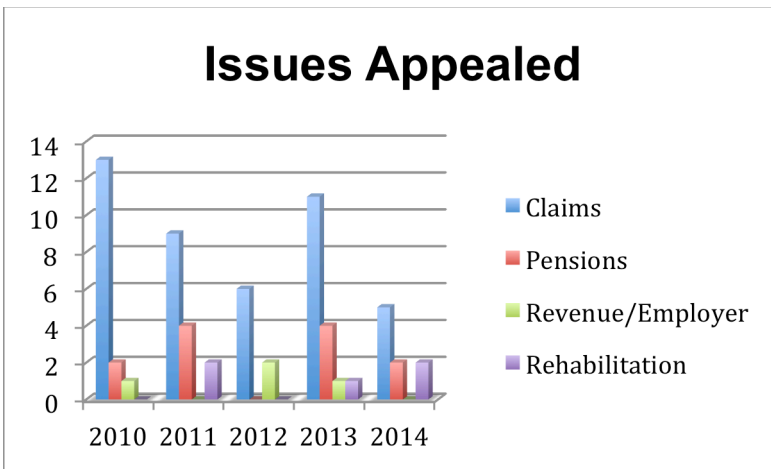
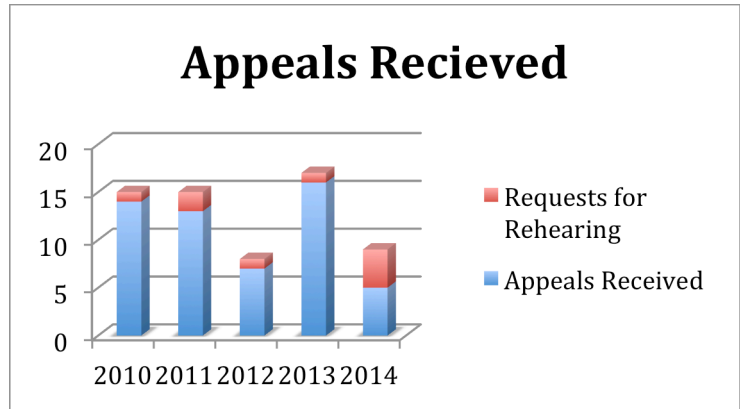


Statistics

One Section 63 application was received in 2014. One was withdrawn.

Appeals and Requests for Reviews Received

This year saw an increase in the number of appeals over last year and has been the greatest number in the past six years.

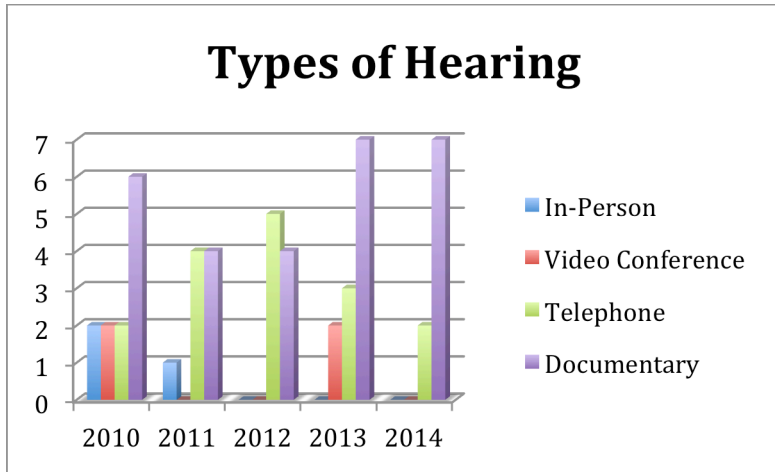


Issues Appealed

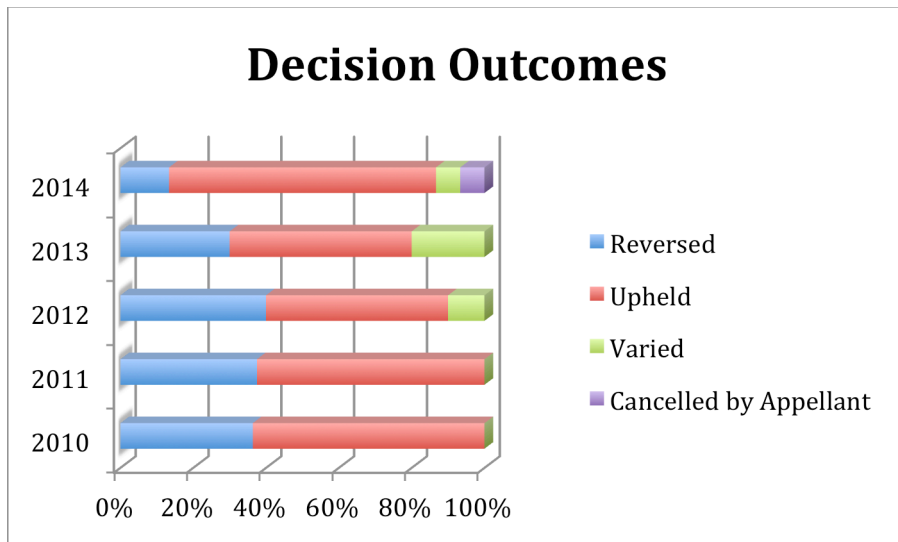
The majority of appealed issues were claims issues followed by pension issues.

Types of Hearings

The majority of hearings were documentary. No in-person hearings were conducted.



Decision Outcomes

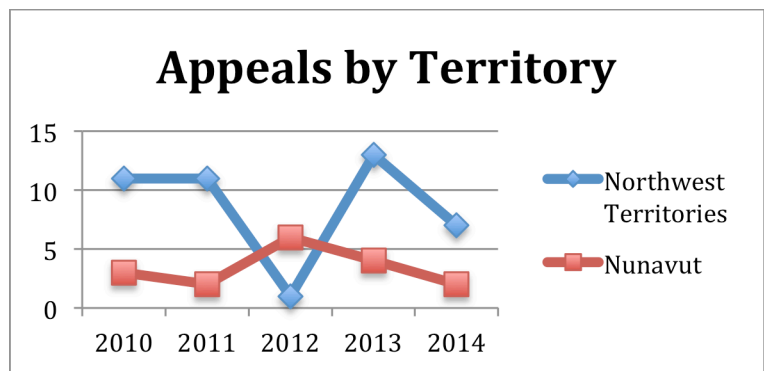


Decisions Issued / Outcomes

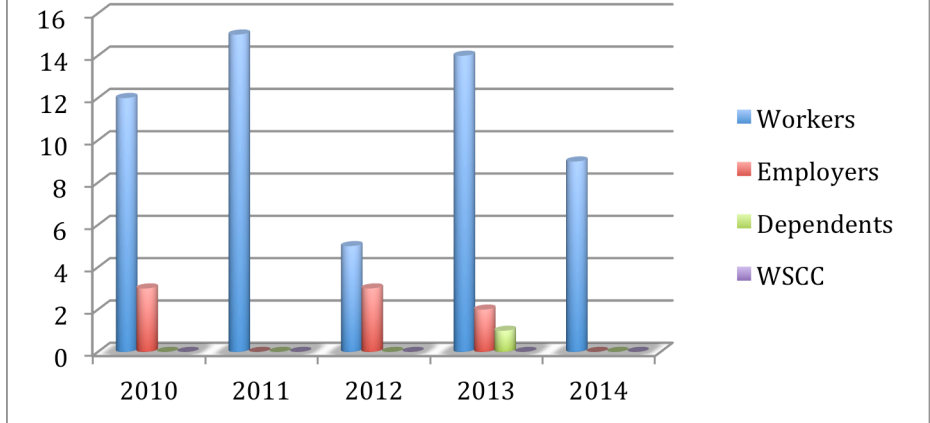
78% of the Tribunal's decisions upheld the WSCC decision under appeal while the remaining Tribunal decisions overturned or varied the WSCC decision under appeal.

Appeals by Territory

The majority of appeals resulted from NWT claims. Apart from 2012, this has been the norm.



Type of Appellant



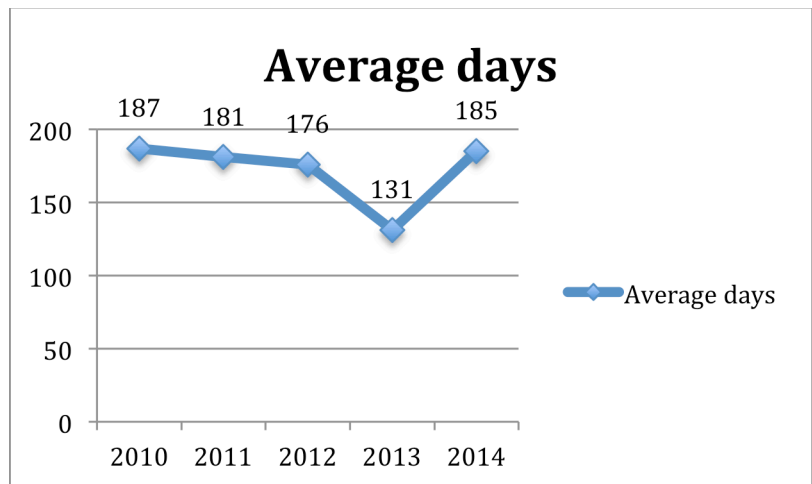
Types of Appellant

All appeals received in 2014 were made by workers.

Time from Filing to Decision

The average time of appeal increased over last year, however was with the five-year average.

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



Decisions of 2014

The Workers' Compensation Act requires Appeals Tribunal hearings to be 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 2014.

- 1 Decision 13-015**
Worker Appeal – Written Submissions
Clothing Allowance & Home Maintenance and Independent Living Allowance
WSCC Decision - Upheld
The Employer did not participate
The WSCC did participate

The Appellant Worker suffered disabling leg injuries as a result of a workplace accident. The Appellant, for some time after recovering, received a clothing allowance and Home Maintenance and Independent Living Allowance. The Appellant later underwent total knee replacement surgery. This surgery resulted in the Appellant no longer requiring use of a knee brace. It was the knee brace, which originally led to the need for the two allowances. The WSCC stopped the allowances after surgery. The Appellant appealed that decision. The Appeals Tribunal found the Appellant no longer met the policy requirements for either allowance due to the Appellant's improved mobility. The appeal was denied.

- 2 Decision 13-007**
Worker Appeal – Written Submissions
Permanent Partial Disability Benefits, Allowance Entitlement
WSCC Decisions -1.Varied, 2. Reversed 3. Upheld
The Employer did not participate
The WSCC did participate

The Appellant Worker suffered a back injury as a result of lifting a heavy object. The injury exacerbated pre-existing multilevel degenerative disc disease. The Appellant appealed the WSCC's decisions regarding Permanent Partial Disability ("PPD") benefits, compensation for chronic pain and depression, vocational rehabilitation services, and a Home Maintenance and Independent Living ("HMIL") Allowance. The Appeals Tribunal found the WSCC's decisions regarding the Appellant's pension and entitlement to chronic pain benefits were made in accordance with policy. Those decisions were upheld. The WSCC's decision regarding the Appellant's benefit entitlement for depression was reversed. It was found there was a *de minimus* connection between the accident and the disorder. As to the Appellant's entitlement to HMIL allowance, the Appeals Tribunal found the Appellant met the "significant impairment" test and therefore was entitled to the allowance.

- 3 Worker Appeal (2) - Written Submissions**
Exacerbation of pre-existing conditions, Dental repair
WSCC Decisions -1. Reversed 2. Reversed
The Employer did not participate
The WSCC did participate

A workplace incident exacerbated the Appellant's three pre-existing conditions. The WSCC accepted only one of the conditions was exacerbated by the workplace incident. The Appeals Tribunal found the WSCC used the incorrect test for the remaining two

conditions. The Appeals Tribunal found the incident itself exacerbated the conditions. It was found the exacerbated conditions also led to denial damage for which the Appellant is entitled to benefits.

4 Decision 13-002R – Request for Reconsideration **Request for reconsideration was denied**

The Appellant sought a rehearing of his appeal. Additional evidence was submitted. The request to re-hear the appeal was made 11 months after the original decision was issued. The Appeals Tribunal found the six-month time limit for making such a request was exceeded and the “new” evidence was available to the Appellant at the time of the appeal.

5 Decision 13-006 **Worker Appeal - Teleconference** Denial of lump sum payment WSCC Decisions - Upheld The Employer did not participate The WSCC did participate

The Appellant had requested from the WSCC, and received a partial conversion of the Appellant’s pension for the purpose of paying off a home mortgage. Some time later the Appellant sought the conversion of an additional portion of the pension in order to purchase a new vehicle. The WSCC denied the second require on the grounds the vehicle purchase would require more than all of the remaining pension and put into question the Appellant’s financial viability. The Appellant appealed that decision and argued the remaining portion of pension was about ten times that determined by the WSCC. The Appeals Tribunal upheld the WSCC’s decision. It was determined the calculation of the remaining pension was accurate.

6 Decision 13-005 **Worker Appeal - Teleconference** Temporary Total Disability (TTD) Benefits, New Evidence WSCC Decisions - Upheld The Employer did not participate The WSCC did participate

The Appellant sought Temporary Total Disability (TTD) benefits for a specific period of time. Submitted in support of this appeal were several generic doctor’s notes stating the Appellant was off work for medical reasons. The Appeals Tribunal found the doctor’s notes did not support that the Appellant was unable to work to due a compensable injury. The notes did not indicate the reason why the Appellant could not work. The WSCC decision was upheld.

7 Decision 13-012 **Worker Appeal - Written Submissions** Denial of Footwear WSCC Decision -Upheld The Employer did not participate The WSCC did participate

The Appellant appealed a WSCC decision, which denied sponsorship of special footwear. The Appellant had received sponsorship of special footwear in the past to a maximum of two pairs per year. The WSCC considered a third pair however required the

Appellant to provide a letter from the Appellant's employer about the work being performed. The Appellant refused this request. The Appeals Tribunal found without confirmation of the necessity for replacing work boots, the WSCC's policy was properly applied.

- 8** **Decision 14-002**
Worker Appeal - Written Submissions
Permanent Medical Impairment
WSCC Decision -Varied
The Employer did not participate
The WSCC did participate

The Appellant received a Permanent Partial Disability pension in the amount of 20% for a hip injury and 6% for a knee injury totaling 26%. Several years later, the pension for the knee injury was reviewed by the WSCC. It reassessed the knee pension to be 2.5%. This reduced the total pension to 22.5%. The Appellant appealed that reduction. The Appeals Tribunal found the reduced percentage was accurately reduced to 2.5% however the combined total pension using the combining tables was inaccurately applied. The WSCC's decision was varied with a total pension of 22%.

- 9** **Decision 13-014**
Employer Appeal - Written Submissions
Late Filing Penalty
WSCC Decision -Upheld
The WSCC did participate

The employer appealed the WSCC's decision to impose a late filing penalty. Employers are required to file with the WSCC, by February 28th each year, a payroll statement. The employer file its payroll statement on March 13th. The Appeals Tribunal found:

1. The employer failed to file the payroll statement within the time specified by the legislation;
2. The penalty was properly calculated in accordance the Regulations; and
3. There was no reasonable explanation for the delayed filing.

The WSCC decision was upheld.

- 10** **Decision 13-010**
Worker Appeal - Teleconference
Permanent Medical Impairment
WSCC Decision -Upheld
The Employer did not participate
The WSCC did participate

The Appellant worker appealed the pension awarded by WSCC. A wrist injury resulted in an 8.5% pension. The Appeals Tribunal found the pension awarded was in accordance with the legislation and policies.

- 11** **Decision 12-007**
Worker Appeal – Video-Conference
Permanent Medical Impairment
WSCC Decision -Upheld
The Employer did not participate
The WSCC did participate

A workplace accident resulted in the Appellant suffering a wrist injury. Over two years later, the Appellant sought to have leg and hip disability attributed to the accident. The WSCC denied entitlement for hip and leg disability. The Appeals Tribunal found there to be little supporting evidence of the workplace injury contributing to the additional conditions. The WSCC's decision was upheld.

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Decision 13-008

Worker Appeal – Video-Conference

Permanent Medical Impairment

WSCC Decision -Reversed

The Employer did not participate

The WSCC did participate

The Appellant worker received Total Temporary Disability benefits resulting from a back injury. The WSCC stopped these benefits as it determined the Appellant had reached full recovery and any remaining disability resulted from pre-existing degenerative changes. The Appellant appealed the decision to not award a pension. The Appeals Tribunal determined the workplace injury contributed in more than a *de minimus* manner to the Appellant's disability. The WSCC's decision was reversed.

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