

MEDICAL APPEALS

Appeals against Assessments
by Approved Medical Specialists



Appealing against a medical assessment

It is possible to appeal against an assessment by an Approved Medical Specialist who was appointed by the Workers Compensation Commission.

There must be sound reasons for bringing a medical appeal, and most people get legal advice before doing so.

An appeal can only be made in relation to:

- The degree of permanent impairment of the worker as a result of an injury.
- Whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality.
- Whether impairment is permanent.
- Whether the degree of permanent impairment is fully ascertainable.
- The nature and extent of loss of hearing suffered by a worker.

Grounds of appeal

There must be good reasons, or grounds, for a medical appeal. These reasons are:

- Deterioration of the worker's condition that results in an increase in the degree of permanent impairment.
- Availability of additional relevant information (being evidence that was not available before the medical assessment appealed against, or that could not reasonably have been obtained before that medical assessment).

- The assessment was made on the basis of incorrect criteria.
- The Medical Assessment Certificate contains a demonstrable error.

When you cannot appeal

You cannot appeal if a Certificate of Determination has been issued by the Commission in accordance with the Medical Assessment Certificate.

There is a strict time limit in bringing a medical appeal if the grounds for appeal are either incorrect criteria or demonstrable error. In these cases, the appeal must be made within 28 days of the medical assessment, although in some special circumstances the Registrar of the Commission may allow an increase in the time period.

How to begin a medical appeal

You must make your appeal application on the correct form. *An Application to Appeal Against Decision of Approved Medical Specialist – Form 10* must be completed in full.

We recommend that you read the following documents prior to completing an application to ensure it is completed fully and accurately:

- *Guide to completing Form 10,*

- the *Workers Compensation Commission Rules 2006*, and
- *Registrar's Guideline - Appeal Against Medical Assessment*

These documents contain important information and requirements that you must address when completing the appeal form.

If your appeal application fails to meet the requirements, it will be rejected and you will be advised of the reasons for the rejection.

The form and documents can be downloaded from the Commission's website or obtained from the Commission by calling 1300 368 040.

The application must be accompanied by a minimum of two copies - one copy for the lodging party and one copy for each party to be served.

If the application is accepted for filing, the Registrar seals (stamps) these documents and returns the copies to the person who lodged the appeal. The documents must then be sent (in legal terms, served) to the other parties.

Responding to a medical appeal

The other parties involved in an appeal will be instructed to respond by a given date.

The other parties to the appeal must respond to the Application by way of Form 10A - *Notice of Opposition to Appeal Against Decision of Approved Medical Specialist*.

This form should be completed in full.

We recommend that the following documents be read prior to completing Form 10A to ensure completeness and accuracy:

- *Guide to completing Form 10A,*
- *the Workers Compensation Commission Rules 2006, and*
- *Registrar's Guideline - Appeal Against Medical Assessment*

The form and documents can be downloaded from the Commission's website or obtained from the Commission by calling 1300 368 040.

Who decides a medical appeal?

Your appeal will be referred to either an Appeal Panel or to an Approved Medical Specialist for further assessment (as an alternative to appeal) if the Registrar is satisfied that, on the face of the application and any submissions made to the Registrar, at least one of the grounds for appeal has been made out.

An Appeal Panel consists of two Approved Medical Specialists and one Arbitrator. The Approved Medical Specialist who made the original medical assessment **will not be** on the Appeal Panel.

If the Registrar refers the matter for further assessment, the Registrar will decide whether to send the matter back to the same Approved

Medical Specialist or to a different Approved Medical Specialist.

The Appeal Panel process

The Medical Appeal Panel first makes a preliminary review of the documents. None of the parties are present for this review.

At the preliminary review, the panel decides whether the matter can be determined ‘on the papers’ or whether new evidence should be allowed.

The panel also considers whether the injured worker should have a further examination. If so, one of the Approved Medical Specialist members on the panel will undertake this examination and the parties will be advised when this is to take place.

The Assessment Hearing

If the appeal has not been finalised by this stage, the parties are invited to an Assessment Hearing.

All members of the Medical Appeal Panel are present at the Assessment Hearing, which is informal. However, proceedings are still recorded so that there is a record of what has occurred. Parties may bring a legal adviser, or any other person to act as their advocate at the Assessment Hearing, and to help in the presentation of their case.

The Commission should be advised beforehand if an interpreter is needed at any time.

The decision

The Medical Appeal Panel makes a decision by majority. The decision will either confirm the assessment on the original Medical Assessment Certificate or revoke the assessment and issue a new one.

Further information

For further information on medical appeals, refer to the following guidelines on the Commission's website or call the Commission for a copy:

- WorkCover's *Medical Assessment Guidelines*
- *Registrar's Guideline – Appeal Against Medical Assessment*

The information in this brochure is not legal advice. If you need legal advice about lodging or responding to an appeal against the decision of an Approved Medical Specialist, you need to talk with a solicitor. If you do not have a solicitor, you can contact the Law Society of NSW for referral to a solicitor by phoning:

- (02) 9926 0300 (if you live in Sydney), or
- 1 800 422 713 (if you live outside Sydney).

How to contact us

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All enquiries: 1300 368 040

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