

Deciding a request for an extension of time to lodge an application for review

Purpose

To outline the process to be undertaken by Workers' Compensation Regulatory Services (WCRS) to determine a request to extend the three-month time limit to lodge an application for review in accordance with section 542(3) of the *Workers' Compensation and Rehabilitation Act 2003*.

The Workers' Compensation Regulator delegates its functions in relation to the review of decisions and the management of appeals under the Act to be undertaken by Workers' Compensation Regulatory Services (WCRS).

Background

One of WCRS's functions under section 327 of the *Workers' Compensation and Rehabilitation Act 2003* is to undertake reviews of insurer decisions under chapter 13, part two. The objective of this part, stated in section 539, is to provide a non-adversarial system for prompt resolution of disputes.

To facilitate the prompt resolution of disputes, the legislation prescribes time limits for:

- the insurer (original decision maker) to provide reasons for their decision
- the applicant to lodge an application for review (three months)
- OIR to make a review decision (25 business days)
- OIR to provide the review decision to the applicant (ten business days after decision).

Section 542 states:

1. An application for review must be made within three months after the person applying for review (the applicant) receives the insurer's decision and reasons for decision.
2. The applicant may, at any time but not more than once, ask the Office of Industrial Relations (OIR) to allow further time to apply for review.
3. OIR may grant the extension if it is satisfied that special circumstances exist.
4. The application for review must be made in the approved form and must state the grounds for review.
5. The application for review may be accompanied by any relevant documents the applicant wants considered in the review.

The timeframe for applying for review of three months gives the applicant sufficient time to:

- formulate their grounds for review
- obtain independent advice if they wish
- gather information to support their grounds for review
- assess their prospects of having the insurer's decision overturned on review
- make an application for review that is fully compliant and accompanied by any supporting submissions.

The legislation recognises that in some cases, due to special circumstances, an applicant may not be able to properly prepare an application for review within the three months allowed. The Act provides that the applicant may seek an extension of time, and WCRS may grant an extension, if satisfied that **special circumstances** exist.

Special circumstances may include, but are not limited to:

- medical incapacity to prepare their review application (with medical evidence) as opposed to an incapacity to work
- medical or legal advice against lodging a review
- personal circumstances such as family illness
- financial hardship
- delays in obtaining relevant information.

WCRS's policy on requests

WCRS expects that applicants will typically be able to lodge a complete application for review within the three-month timeframe. WCRS is enabled by section 542(3) of the Act to grant an applicant an extension of time to lodge an application for review, if it is satisfied that **special circumstances** exist that prevent the lodgement of an application within three months. When an applicant lodges a request under section 542(2) of the Act, WCRS expects the applicant will provide clear reasons for the request as well as supporting evidence of the special circumstances that have caused the request.

When requesting further time to apply for a review under section 542(2), the applicant or their legal representatives should note the following:

- It is not sufficient for the applicant to state that they were not able to lodge an application for medical reasons – the applicant needs to supply medical evidence stating why they were not capable of, or competent to, lodge an application for review within the three months.
- Extensions granted are more likely to be for short periods given that the three-month timeframe for lodgement may have already elapsed.
- Extensions to obtain appointments for doctors to examine or provide a report about an applicant that are speculative in nature (not from the treating doctors/specialists) are not sufficient grounds by themselves to constitute 'special circumstances'. In the event of an extension being granted it is unlikely that a further three or more months will be granted, particularly if there is already substantial medical evidence on the insurer file from the applicant's treating medical practitioner.
- WCRS does not consider an applicant's failure to consult a solicitor until the time to lodge a review application is about to expire constitutes a special circumstance. While we acknowledge that the applicant, by their actions, has placed their solicitor in a difficult position, legal representation is not required for the review process and it is the applicant's responsibility to appropriately use the legislative timeframe to seek advice or representation.

- As an extension of the three-month timeframe can only be granted once, there is no jurisdiction for WCRS to provide additional extensions of the three month timeframe.

Examples

1. An injured worker was diagnosed with cancer requiring chemotherapy treatment beyond the due date for the application for review. The injured worker requested an extension of time in which to lodge their application and provided information from their General Practitioner confirming the chemotherapy treatment and the level of incapacity during that treatment. The worker was granted an extension to enable the worker to complete the application for review.
2. Shortly before the end of the timeframe to apply, an employer requested an extension of time to lodge the application for review as they were awaiting a copy of the insurer file which they had recently requested. The employer did not identify why they delayed in requesting the insurer file nor why they were not able to complete their application for review without a copy of the file. There is no evidence the employer took any action to advance their application for review until the end of the three-month time limit and WCRS could not be satisfied that special circumstances existed which prevented them lodging the application.
3. After their claim was rejected, the worker goes to a specialist for a second opinion regarding his condition and the specialist says the injury is work related and that he will provide a report confirming this. There was a delay in the provision of the report by the specialist due to his holiday and surgery commitments and the worker supplied copies of his correspondence with the specialist confirming the reason for the delay and a copy of the report which confirmed the injury was work related. An extension to apply for review was granted.
4. An injured worker's General Practitioner recommended referral to a specialist for further opinion regarding the relationship between an injury and employment but the insurer did not make this referral and relied upon the inconclusive opinion of the GP. Immediately after the rejection of the claim for compensation, the worker contacted an Orthopaedic Surgeon however was unable to obtain an appointment until the end of the timeframe to apply for review. The worker requested a short extension of time to enable him to consult with the Orthopaedic Surgeon at which time he could ascertain if he wished to proceed with the application for review. The injured worker was allowed a three-week extension.
5. An injured worker's claim for a psychological or psychiatric injury was rejected on the basis of s.32(5) of the Act. The worker subsequently applied for income maintenance and medical benefits under their superannuation arrangements. After four months on superannuation benefits, the injured worker then submitted an application for review of the insurer's workers' compensation decision, stating they were unable to cope with lodging an application for review within the three months. WCRS considered that no steps were taken by the worker to bring themselves within the timeframe to apply and that they had demonstrated competence to make a claim for superannuation, submit themselves for an independent medical examination for the superannuation claim and provided medical reports for the superannuation claim, a process demanding significant competence relative to lodging a review application. An extension of time to apply for review was not granted.

The decision-making process

A review applicant may apply for an extension of the three-month timeframe to apply for review at any time before or after the timeframe expires, but may do so only once.

When WCRS receives an application for review and determines that it has been lodged outside the three month timeframe, and the review applicant has not already done so, we will request the review applicant to provide reasons for the late lodgement and any evidence to support those reasons (this is treated as the extension request).

A review applicant's extension request may need to address the following matters in order for WCRS to establish whether special circumstances exist:

- the extent of the delay
- the reason for the delay in lodging the application for review
- the steps taken by the applicant to progress the application for review
- the reason for obtaining and submitting additional information
- the merits of the application.

WCRS will consider the submissions and evidence supplied by the review applicant and determine whether or not to release that information to the other party to the claim, either the worker or the employer, for consideration and response in the interests of natural justice. If information is released to the other party, they will be given five business days to respond to the information.

When WCRS reaches a decision about the request for an extension, either to grant or deny the extension, we will advise the applicant and notify the other party whether or not the review will proceed. Should the other party require details of the basis for the decision this can be provided on request.

If you have any queries regarding this procedure, please direct them to the Business Support Unit on 1300 739 021.



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