OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 02-41

WORKERS' COMPENSATION BOARD

David Loukidelis, Information and Privacy Commissioner
August 21, 2002

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Summary: The applicant made a request for correction of a decision letter and a reiteration letter issued by a WCB adjudicator, alleging errors in law, interpretation of WCB policy and interpretation of other materials in doing so. The WCB correctly declined to correct both letters and properly annotated the affected records

Key Words: error – omission – correction – annotation.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 28, 29.

Authorities Considered: B.C.: Order No. 124-1996, [1996] B.C.I.P.C.D. No. 51; Order 00-51, [2000] B.C.I.P.C.D. No. 55; Order 01-23, [2001] B.C.I.P.C.D. No. 24, Order 02-16, [2002] B.C.I.P.C.D. No. 16.

1.0 INTRODUCTION

[1] The applicant in this case attempted, unsuccessfully, to persuade the Workers' Compensation Board ("WCB") to correct, under s. 29(1) of the *Freedom of Information and Protection of Privacy Act* ("Act"), a decision letter and a "reiteration letter" that a WCB adjudicator issued respecting the applicant's claim. The May 19, 1998 decision letter was in response to the applicant's claim that he had an employment-related medical condition. The WCB decided not to accept the applicant's claim. The reiteration letter, dated October 10, 2000, re-affirmed the original WCB decision not to accept the applicant's claim.

[2] In a letter dated April 30, 2001, the applicant asked the WCB to correct the original decision letter and the reiteration letter. The applicant alleged that the "adjudicator made an error of law and policy" in denying his claim. In his letter, the applicant detailed the alleged errors of law and policy, as well as statements contained in the adjudicator's letters, with which he disagreed. To support his position, the applicant provided his own interpretation of events, as well as his view of how various pieces of legislation, policies and medical evidence should be interpreted.

[3] In a letter dated June 11, 2001, the WCB told the applicant it would not correct the letters, as they are "decision letters of [WCB] Compensation Services staff members". The WCB told the applicant that it had annotated the two letters and placed an annotated copy of each, and a copy of his correction request, in his claim file, in accordance with s. 29(2) of the Act. The WCB also told the applicant he could contact the WCB Compensation Services Department for advice as to whether or not he could still appeal the decision letter.

[4] The applicant, in a letter dated July 4, 2001, requested a review of the WCB's decision to annotate, but not correct, the May 19, 1998 and the October 10, 2000 letters. He requested "that the corrections are made according to section 29(1) of the Act." As the matter was not settled in mediation, I held a written inquiry under s. 56 of the Act.

2.0 ISSUE

[5] The only issue in this inquiry is whether the WCB acted appropriately under s. 29 of the Act in declining to make the requested corrections and annotating the affected records with the corrections. Consistent with previous orders, the WCB has the burden of proving that it has complied with s. 29.

3.0 DISCUSSION

[6] **3.1 Applicable Principles** – Section 29(1) of the Act provides that an individual may request that a public body correct any "error or omission" in the individual's personal information. Section 29 reads as follows:

> **Right to request correction of personal information**
>
> 29 (1) An applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.
>
> (2) If no correction is made in response to a request under subsection (1), the head of the public body must annotate the information with the correction that was requested but not made.
>
> (3) On correcting or annotating personal information under this section, the head of the public body must notify any other public body or any third party to whom that information has been disclosed during the one year period before the correction was requested.

> (4) On being notified under subsection (3) of a correction or annotation of personal information, a public body must make the correction or annotation on any record of that information in its custody or under its control.

[7] As I have discussed in previous orders, including Order No. 02-16, [2002] B.C.I.P.C.D. No. 16 – which dealt with the same type of matter and involved the same applicant and the WCB – it is well-established that s. 29 (1) only addresses factual errors or omissions in personal information. Section 29(1) is not intended to be used as an avenue of appeal or redress for individuals who do not accept or agree with a decision made by a public body. The section does not require a public body to "correct" opinions or expressions of judgement based on facts and arrived at applying knowledge, skill and experience. In addition to Order 02-16, see also Order No. 124-1996, [1996] B.C.I.P.D. No. 51; Order 00-51, [2000] B.C.I.P.D. No. 55; and Order 01-23 [2001] B.C.I.P.D. No. 24. As my predecessor said at p. 4 of Order No. 124-1996, a similar case involving the WCB:

> I agree with the WCB that section 29 "should not be used as a means of attempting to appeal decisions and opinions of adjudicators with which the worker does not agree. The *Workers Compensation Act* provides legal avenues of appeal …" (Submission of the WCB, p. 9). In this latest case of requested corrections, the WCB has simply placed the applicant's correction letter in the special red-dot annotation of his claim file.

[8] As in Order No. 02-16, the issue here is, again, whether the WCB has acted appropriately in declining to make the changes the applicant has sought.

[9] In his submission, the applicant attempts to broaden the scope of s. 29 to include "subjective opinions", "assessments" and "evaluations" (initial submission, page 2). Section 29 only allows an individual to request a correction of an "error or omission in his or her personal information". I do not accept the applicant's attempt to broaden the scope of s. 29.

[10] **3.2 Annotation Rather than Correction** – It is clear that the WCB acted appropriately in deciding to annotate the two letters rather than to make the requested corrections. The applicant's April 30, 2001 request for correction clearly establishes that he believes that the WCB decision regarding his claim was based on "an error in law and policy" and on interpretations of law and policy with which he disagrees. His letter sets out the interpretations he believes are correct. His submissions further outline his interpretation of events and evidence that he believes the WCB should have considered but did not.

[11] The applicant is, as was the case in Order 02-16, re-arguing his case to the WCB in hopes of having it reverse its decision. As I did in Order 02-16, I again point out that the appropriate thing for the applicant to do would be to pursue whatever appeal procedures might still be open to him under the *Workers Compensation Act* or the WCB's policies and procedures.

[12] I am also persuaded that the WCB's annotation of the applicant's claim file, using the red-dot system described in Order No. 124-1996 and applied in the matter that led to Order 02-16, complies with s. 29(2) of the Act.

[13] I find that the WCB has acted appropriately under s. 29 of the Act.

4.0 CONCLUSION

[14] For the reasons given above, under s. 58(3)(d) of the Act, I confirm the WCB's decision not to correct personal information and, under s. 58(3)(a) of the Act, I confirm that the WCB has performed its duty under s. 29(2) of the Act.

August 21, 2002

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia