

Client Services Procedure Manual

Procedure: 26.00
Subject: Weighing Evidence

26.01 Preamble

This procedure provides a general step-by-step framework for decision making. It is intended to supplement Policy EN-20 "Weighing Evidence" which outlines the standard of proof for decision making and instructs decision makers to assess and weigh all relevant evidence before deciding upon the balance of probabilities.

26.02 Decision Making Process

1. Identify the Issues

A decision maker must clearly identify the issue(s) to be decided before making an entitlement decision.

2. Determine evidence required

Once an issue to be decided is identified the decision maker must determine whether a reasonable decision can be made based on the evidence on file or whether further evidence is required before making a decision. (If enough evidence is available proceed to number 5.)

3. Obtain relevant missing information

When relevant information is available but not on file, the decision maker must identify the information to be gathered, record relevant events and document his or her investigative efforts.

4. Weigh the evidence to make a decision

When sufficient evidence is available the decision maker must weigh the evidence in order to reach a final decision.

5. Communicate the decision

Decision makers must provide rationale for their decisions in writing

26.03 Weighing Evidence

A. What is Evidence?

Evidence is various things presented to decision makers that tend to prove or disprove an issue under inquiry. It may include items such as: oral statements (sworn or unsworn); documents (forms, reports, photographs, films, video, police reports, OH&S etc.); physical evidence (objects and demonstrations, product and equipment information); witness statements; histories from workers, co-workers and employers.

B. Hearsay

Hearsay is considered a poor form of testimony and should always be assigned less weight than direct evidence because:

- a. The author of the statement is not under oath and not subject to cross-examination.
- b. Hearsay results in a decision based on secondary rather than primary information and therefore, support for the reasoned decision is weaker.

C. What is Not Evidence?

- a. Speculation, namely, where there is a conclusion of fact for which there is no supportive evidence.
- b. Personal knowledge and/or experience of the decision maker.
- c. Opinions of a lay person and authorized representatives (someone who is not an expert on the subject matter). Such opinions may help decision makers interpret the evidence, but it is not evidence.

D. Factors/Considerations of Weighing Evidence

The process of weighing evidence involves four factors:

- i. Relevance
- ii. Direct vs. Circumstantial
- iii. Credibility
- iv. Best Evidence

i. Relevance

- a. Relevance is not purely a legal test, it is more a common sense test to determine whether or not the information has any logical connection to the issue under review.
- b. Decision makers evaluate relevant evidence in their written decisions.
- c. It is not always possible to determine the relevance at the outset, sometimes as much evidence as possible needs to be gathered and the question of relevance is determined at the end.

ii. Direct v. Circumstantial

- a. An example of direct evidence is: witness sees the worker slip off a platform.
- b. An example of circumstantial evidence is: witness sees the worker lying on the ground under the platform.
- c. Direct evidence confirms the cause and the effect. Circumstantial evidence confirms the effect only.
- d. Direct evidence is better than circumstantial evidence because it is possible to make wrong inferences based on observed circumstances. For example, while it seems logical to assume that the worker lying on the ground fell off the platform, he or she may in fact be lying there for any number of reasons.
- e. However, circumstantial evidence may sometimes be used, particularly in the absence of any other evidence.

iii. Credibility of the Evidence

- a. When faced with contradictory evidence the decision maker may have to assess the credibility of individuals, statements or documents.
- b. Assessing credibility may involve judging the sincerity of individuals providing information. It may involve judging whether it is plausible that an event or series of events unfolded as recalled. Is the individual telling the truth or providing an objective opinion?
- c. Credibility is highly subjective, so it must be remembered that this is just one aspect of the investigation and it must be considered in the context of all the evidence. Objective evidence can be referenced, if relevant, to help reduce the subjectivity.
- d. Because a decision maker concludes that someone is not credible in relation to an isolated fact or memory, this does not mean that the individual's credibility is always in question. For example, someone may honestly believe that what they are saying is the truth but the weight of other evidence does not support their belief.

iv. Best Evidence

- a. Evidence is an important part of the investigation process. The ability to weigh evidence is critical for effective decision making.
- b. Whenever possible, consider original documents rather than copies.
- c. Statements prepared closer in time to the events they are describing are preferable to those prepared later.
- d. Sworn statements have more weight than unsworn statements.

E. Conflicting Medical Evidence

Decision makers will consult with a WorkplaceNL medical consultant where the weight of conflicting medical evidence is uncertain. See Policy EN-20 (Weighing Evidence) guidelines governing weighing medical evidence.

F. Balance of Probabilities

The standard of proof for decisions made under the Act is the balance of probabilities. This means a degree of proof which is more probable than not. If the evidence weighs more heavily in favour of one view over the other, then that is the conclusion which must be reached. On the other hand, if the evidence for and against is evenly balanced then the issue must be resolved in favour of the worker.

Reference: *The Workplace Health, Safety and Compensation Act*, Section 60
Policy EN-20 Weighing Evidence

Amendment History

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| <i>Original Effective Date</i> | 2001 06 01 |
| <i>Revision #</i> | 2008 07 03 |