

## Scope of Appeals

- ◆ The Board may hear appeals from administrative penalties imposed on a licensee by the Registrar of Passenger Transportation

## Parties to Appeals

- ◆ The appellant is the licensee who has received an administrative penalty
- ◆ The respondent is the Registrar who has imposed an administrative penalty on the licensee

Note: If the board requests information from the registrar for the purposes of an appeal, the registrar may in writing designate an officer or employee of the Registrar to attend before the board if, in the opinion of the registrar, that designated person is knowledgeable in respect of the appeal being considered by the board.

## Board's Authority

- ◆ After considering the information provided by the licensee and the registrar, the Board must
  - (a) rescind any or all of the penalties, or
  - (b) confirm any or all of the penalties.

## Timeline for Filing a Notice of Appeal

- ◆ A Notice of Appeal must be filed not more than **30 calendar days** after a licensee receives Notice from the Registrar, Passenger Transportation that an Administrative Penalty has been imposed on the licensee.

## Exceptions to Timelines for Filing a Notice of Appeal

- ◆ The board may extend the time to file a notice of appeal if the board is satisfied that (a) special circumstances existed that precluded the filing of a notice of appeal within the 30 day time period and (b) an injustice would otherwise result.

## Orders to Suspend Administrative Penalties

- ◆ On an appeal from an order of the registrar imposing an administrative penalty, *other than an administrative fine*, the board may order that the registrar's order is suspended until the outcome of the appeal.

## Steps in the Appeal Process

### A. NOTIFICATION

1. Registrar's notification to a licensee of an Administrative Penalty must include written notification that the licensee may appeal the Registrar's decision to the Board.

2. Notice of Appeal is filed with the Board within **30 calendar days** of receipt of notice of Administrative Penalty (either on form prepared by Board or in a document prepared by appellant)
  - All Notice of Appeals must be in writing and contain the following information
    1. Identification of the decision that is being appealed,
    2. why the decision should be changed,
    3. the outcome requested,
    4. the name, address and telephone number of the appellant, and, if the appellant has an agent to act on the appellant's behalf in respect of the appeal, include the full name of the agent and a telephone number at which the agent may be contacted during normal business hours,
    5. an address for delivery of any notices in respect of the appeal, and
    6. signature by the appellant or the appellant's agent.
  - Notice of Appeal must be accompanied by the **\$150 fee** in the form of a cheque or money order.
  - If a Notice of Appeal is *incomplete* (i.e. missing one of the 1-6 above) or *not accompanied by a fee*, the Board may allow an appellant a reasonable time to complete the notice or pay the fee. If the notice is not completed or the fee not paid within the time period specified by the Board, the Board may dismiss the appeal.
3. Board staff sends appellant acknowledgement of receipt of Notice of Appeal
  - If Notice of Appeal is incomplete or not accompanied by fee, the appellant is given **10 business days** to rectify matters.
4. Board staff confirms that the Notice of Appeal was filed within 30 day time period
  - If Notice of Appeal was not filed within 30 day time period the appellant and the appellant has not explained the special circumstances or why an injustice would result, the appellant will be notified that the appeal may be summarily dismissed unless the appellant can satisfy the Board in writing in **10 business days** that (a) special circumstances existed that prevented the filing of a notice of appeal within the 30 day time period and (b) an injustice would otherwise result.

*B. Request to Suspend Administrative Penalties*

5. The Appellant may request that the Board suspend an administrative penalty (except for an administrative fine) imposed by the Registrar.
  - The appellant may submit a Request to Suspend Administrative Penalties form to the Board.
  - If a Request to Suspend is made, the appellant must provide reasons for the request, identify any hardships resulting from the Registrar's order and whether (and why) there is any urgency to the request.

The Board will copy the Registrar on any Request to Suspend Administrative Penalties form and accompanying documents. Unless the appellant specifies that there is an emergency, the Registrar will have **5 business days** to provide written comments to the Board, with a copy to the appellant. The appellant will have **10 business days** to respond in writing to the Board, unless the Registrar supports the request.

If the Request to Suspend is an urgent request, the Board may waive these procedural requirements and timelines.

6. The Board may arrange a teleconference with the appellant and respondent before making a decision on a Request to Suspend.
7. Board issues its Decision on the Request to Suspend to the appellant with a copy to the Registrar.

### *C. DECIDING APPEALS*

#### *Appeal dismissed for non-compliance with filing requirements*

8. *Appeal is summarily dismissed* because the appellant did not meet filing requirements or appeal was filed late and the board did not approve an extension.

#### *Constitutional Matters*

9. *The Board does not have jurisdiction to decide constitutional matters.* If a constitutional question is raised with respect to an appeal, the Board will proceed with the appeal unless an applicant makes application to a Court in the nature of a prohibition to prevent the Board from considering the application. In such a case, the Board may adjourn the proceedings pending a decision from the court.

#### *Appeal Proceeds*

10. *When filing and time requirements have been met*, Board staff sends the Notice of Appeal and all documents provided by the appellant to the Registrar.
11. Subject to the Freedom of Information & Protection of Privacy Act, the Registrar must, within **10 business days**, provide the Board and the appellant copies of all documents relevant to the appeal other than those filed by the appellant.
12. When the information is received by the Board, the Board chair will appoint an appeal panel.

#### *Appeal Management Conference*

13. The Board may arrange an appeal management conference (AMC), usually by teleconference, to discuss the issues, potential evidence and format for the appeal (written submissions, telephone hearing or full oral hearing).

#### *File Reviews*

14. Most appeals will proceed as file reviews at the outset, unless the Board feels that the appeal could be resolved more effectively by way of an oral hearing.

15. Once the Registrar's material has been received, the Board will provide parties with a comment schedule. The submissions will normally be scheduled to proceed as follows:
- a. Appellant licensee's comments – the appellant will be given **10 business days** to provide additional submissions to the Board and the Respondent Registrar. (If the applicant has no submissions other than those submitted with the Notice of the Appeal, then it should advise the Board and Registrar of this).
  - b. Respondent Registrar's reply – the respondent will be given **10 business days** to reply to the material filed by the appellant licensee (i.e. the Notice of Appeal and any additional comments. Replies must be sent to both the Board and the Registrar.
  - c. Appellant licensee's comments final comments – the appellant licensee will be given **10 business days** to provide final comments to the Board and respondent registrar.
  - d. Parties may request an extension to the submission timelines. Any such requests should be submitted in a timely manner and include reasons for the request and the length of the extension requested.
  - e. If the appellant licensee or the registrar respondent does not provide written comments by the date specified (or as extended), then the Board may dismiss the appeal as having been abandoned or proceed to make a decision.
  - f. The appellant licensee's comments should contain the following information:
    - o the substance of the appellant's objections to imposition of an administrative penalty by the Registrar
    - o the arguments and evidence which support these objections
    - o any documents the appellant is providing in support of his or her arguments
  - g. The respondent registrar's reply should contain the following information:
    - o the substance of the respondent's objections to the appeal
    - o the arguments and evidence which support these objections
    - o reference to any documents previously provided that support these comments
16. At the end of the "Comment/Reply Period" the Board may make a decision or it may hold an oral hearing, either by teleconference or in person.

### *Oral Hearing*

17. If the appeal proceeds by way of an oral hearing, including a teleconference, the Board will provide parties with the date, time and place of the hearing.
18. If the oral hearing is called after a file review, the information accumulated as part of the file review, will form part of the hearing material. Additionally, parties must provide

to the Board and each other **10 business days** before the scheduled date of the appeal:

- the names of the people the appellant or respondent intends to call as witnesses at the hearing
- the author and title of any additional documents the appellant or respondent intends to introduce as evidence at the hearing
- any authority supporting the appellant's or respondent's position

19. If an oral hearing is held based on the Notice of Appeal and Registrar's documentation only (with no additional comments), the Board will request the appellant licensee and respondent registrar to provide a "Statement of Points" and list of documents and witnesses prior to the hearing.

- The appellant must deliver its Statement of Points to the Board and the Respondent at least **10 business days** prior to the hearing date. If the Statement of Points is not received within this time, then the Board may dismiss the appeal as having been abandoned, proceed to make a decision based on the material on file or adjourn the hearing.
- The respondent must deliver its Statement of Points to the Board and the appellant at least **10 business days** prior to the hearing date. If the Statement of Points is not received within this time, the Board may adjourn the hearing, or cancel the oral hearing and make a decision on the appeal based on the material on file.

(a) Appellant Licensee's Statement of Points should contain the following information

- the substance of the appellant's objections to imposition of an administrative penalty by the Registrar
- the arguments which the appellant will make at the hearing
- the names of the people the appellant intends to call as witnesses at the hearing
- the author and title of any documents the appellant intends to introduce as evidence at the hearing
- any authority supporting the appellant's position

(b) Respondent Registrar's Statement of Points should contain the following information

- the substance of the respondent's objections to the appeal
- the arguments which the respondent will make at the hearing
- the names of the people the respondent intends to call as witnesses at the hearing
- the author and title of any documents the appellant intends to introduce as evidence at the hearing
- any authority supporting the respondent's position

20. Once the Statements of Points have been received, the Board may order an appeal management conference

21. The Board will hold the hearing, or a teleconference, which will proceed as follows.

- Appellant's opening statement
- Appellant's witnesses
- Respondent's opening statement
- Respondent's witnesses
- Respondent's closing statement
- Appellant's closing statement

22. Board rules regarding evidence, adjournments and hearing procedures will apply to appeal hearings.

23. Oral Hearings, excluding teleconferences, are open to the public.

*D. DECISIONS*

24. Board decisions will be in writing, with reasons and will be sent to the appellant and the Registrar.

25. Board decisions will be published in the Passenger Transportation Board "Bulletin"