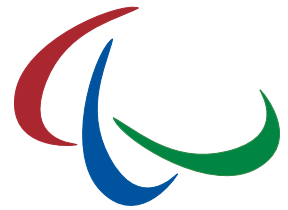




Chapter 2.8 – Bylaws Board of Appeal of Classification

June 2018



1 Introduction

1.1 Capitalised terms used in these Bylaws will have the following meanings:

Appellant has the meaning given to that term in clause 4.1.

BAC means the IPC Board of Appeal of Classification.

BAC Administrator means the person appointed by the IPC to act in that role.

BAC Chairperson means the person appointed by the IPC to act in that role.

Notice of Appeal has the meaning given to that term in clause 4.1.2.

Respondent has the meaning given to that term in clause 4.1.3.

1.2 For the purpose of calculating a period of time under these Bylaws, non-working days are included in the calculation except that if the time period ends on a non-working day, then it will be deemed to end on the next working day in Bonn, Germany.

2 Jurisdiction

2.1 The IPC will be responsible for establishing the BAC in accordance with these Bylaws.

2.2 The BAC will have jurisdiction over the following:

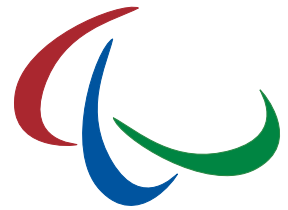
2.2.1 classification appeals for sports for which the IPC acts as the international federation;

2.2.2 classification appeals for all sports submitted during the Paralympic Games period (as defined in clause 11.1) or IPC regional games;

2.2.3 the resolution of disputes that involve allegations of intentional misrepresentation made pursuant to the classification rules and regulations of a sport for which the IPC acts as the international federation or during IPC recognised events; and

2.2.4 such other matters as specified in the IPC's rules and regulations.

2.3 The BAC may also be made available for Paralympic sports not governed by the IPC, subject to an agreement between the IPC and the respective international federation governing that sport.



3 Scope of appeal and entitlement to appeal

- 3.1 An appeal can only be brought by an athlete's respective National Paralympic Committee or national federation, whichever is the member organisation of the international federation (i.e., for sports governed by the IPC the National Paralympic Committee must submit the appeal; for sports not governed by the IPC the national federation that is the member of the respective international federation must submit the appeal).
- 3.2 On an appeal the Appellant will have the burden of proving that:
- 3.2.1 there was a procedural error made in respect of the allocation of a sport class and/or sport class status; and
 - 3.2.2 the procedural error could reasonably have caused the athlete to be allocated an incorrect sport class and/or sport class status.

[Note: the limited scope of review available to the BAC appeal body is a fundamental aspect of an appeal. The allocation of a sport class and sport class status is a sport decision and must be made by those experts who are authorised and certified by an international federation to do so. Those decisions must not be changed except by other persons who are similarly authorised and certified. In particular, the right to appeal must not be seen as an opportunity to simply dispute the opinion of the relevant experts, and the BAC appeal body will only review the process by which the decisions have been arrived at to ensure that such process has been conducted in accordance with the rules.]

4 Appeal submission

- 4.1 For an appeal to be valid, the party making the appeal (**Appellant**) must comply with the following conditions:
- 4.1.1 Before submitting an appeal, the Appellant must first have exhausted all other available remedies, including protest procedures.
 - 4.1.2 The Appellant must file a notice of appeal (**Notice of Appeal**) complying in all respects with clause 4.1.3, below, within 15 calendar days of notification of the decision from which the appeal arises. The Notice of Appeal must be submitted using the standard form made available by the IPC.
 - 4.1.3 The Notice of Appeal must:
 - (a) be submitted to the IPC in writing by fax, e-mail or post to the BAC Administrator or such other person as nominated by the IPC from time to time;
 - (b) identify the Appellant;



- (c) provide the name, nation and sport of the athlete who is the subject of the appeal;
- (d) identify the decision being appealed, by attaching a copy of the decision (if written) or briefly summarising it;
- (e) specify the grounds for the appeal and, in particular, (i) details of the procedural error alleged, and (ii) how such error could reasonably have caused the athlete to be allocated an incorrect sport class and/or sport class status;
- (f) indicate what, or that all, available remedies have already been used to resolve the case;
- (g) identify all documents, fact and expert witnesses, and other evidence to be relied on in support of the appeal;
- (h) to the extent possible, identify the respondent (**Respondent**), which in the case of classification appeals will be the relevant international federation; and
- (i) be accompanied by a fee of €300.00 (and proof of payment of the fee must also be included with the Notice of Appeal).

5 Initial assessment and formation of the BAC appeal body

- 5.1 Following receipt of a Notice of Appeal, the IPC will advise the BAC Chairperson.
- 5.2 The BAC Chairperson will conduct a review of the Notice of Appeal to determine whether the conditions set out in clause 4.1, above, have been met. The BAC Chairperson may, at his/her discretion, request further information from the parties in this respect.
- 5.3 If it is determined that the Notice of Appeal does not comply with the conditions set out in clause 4.1, the BAC Chairperson will issue a written reasoned decision dismissing the appeal.
- 5.4 If it is determined that the Notice of Appeal is valid:
 - 5.4.1 the BAC Administrator will provide a copy of the Notice of Appeal to the Respondent; and
 - 5.4.2 the BAC Chairperson will appoint an appeal body pursuant to clause 6, below.



5.5 The above process will ordinarily be completed within 28 calendar days of the Notice of Appeal being received by the IPC.

6 Appointment of the BAC appeal body

- 6.1 When a valid Notice of Appeal is filed, the BAC Chairperson will appoint either one or three persons (which may include the BAC Chairperson) to sit as an appeal body. The appeal body must have appropriate skills and experience, including in relation to Para sport. If three persons are appointed, the BAC Chairperson will designate one of those persons to act as the chair of the appeal body.
- 6.2 The appointment of members of the BAC appeal body will be within the sole discretion of the BAC Chairperson except that no member will be appointed if the circumstances of the appeal are such that they thereby have a conflict of interest.
- 6.3 In its sole discretion, the BAC appeal body may designate counsel to assist it in the proceedings.
- 6.4 All members of the BAC appeal body are required to comply with the IPC Code of Ethics.
- 6.5 The BAC Administrator will act as secretary to the BAC appeal body and is a non-voting member.
- 6.6 The BAC Administrator will advise the Appellant and Respondent as soon as the BAC appeal body is appointed.

7 Conduct of proceedings

- 7.1 The BAC appeal body will determine the appeal in accordance with the relevant classification rules and regulations and these Bylaws.
- 7.2 The BAC appeal body will have all powers necessary for, and incidental to, the discharge of its responsibilities under these Bylaws, including (without limitation) the power, whether on the application of a party or of its own motion:
 - 7.2.1 to expedite or adjourn, postpone or suspend its proceedings, upon such terms as it will determine, where fairness so requires;
 - 7.2.2 to extend or abbreviate any time limit provided by the Bylaws (except for the filing deadline in clause 4.1.2), the relevant classification rules and regulations, or by the BAC appeal body's own orders;



- 7.2.3 to conduct such enquiries as appear necessary or expedient in order to ascertain the facts;
 - 7.2.4 to order the disclosure of relevant documents and/or other materials in the possession or under the control of any party;
 - 7.2.5 subject to the consent of the original parties, to allow one or more third parties to intervene or be joined in the proceedings (the status and rights of a third party will be at the discretion of the BAC appeal body); and
 - 7.2.6 to rule on its own jurisdiction.
- 7.3 As soon as practicable after the formation of the BAC appeal body, the chair of the BAC appeal body will issue directions to the parties in relation to the procedure and timetable to be followed in the proceedings. In particular, the directions will:
- 7.3.1 establish a schedule for the exchange of written submissions and evidence in advance of the hearing (ordinarily, however, the Appellant will be required to file its written submissions and evidence with the BAC appeal body and all parties within 15 calendar days of notification of the directions; the Respondent will then be required to file its written submissions and evidence with the BAC appeal body and all parties within 30 calendar days of notification of the Appellant's written submissions and evidence); and
 - 7.3.2 make such order as deemed appropriate in relation to the disclosure of relevant documents and/or other materials in the possession or under the control of any party.
- 7.4 The Appellant may not (in its written submissions and evidence, at the hearing or otherwise) advance any ground of challenge that was not specified in the Notice of Appeal.
- 7.5 A party intending to rely upon the evidence of a witness (including the athlete) or expert must serve a statement or report setting out the proposed evidence of such witness or expert at a date in advance of the hearing that is specified by the chair of the BAC appeal body.
- 7.6 The BAC appeal body will have the power to allow, refuse or limit the evidence, questioning or appearance at the hearing of any witness or expert.
- 7.7 The chair of the BAC appeal body may make procedural rulings on his/her own.
- 7.8 All documents must be in English, and any documents not in English must be translated into English at the expense of the party relying on them.



- 7.9 The BAC appeal body will have the power to decide on the admissibility, relevance and weight of any evidence and will not be bound by any judicial or evidential rules in relation to such matters.
- 7.10 If any party fails or refuses to act in accordance with the directions applicable to the proceedings, the BAC appeal body will first give that party the opportunity to make submissions in relation to that failure or refusal. The BAC appeal body may then, in its discretion, impose any one or more of the following consequences in respect of that failure or refusal: a refusal to allow evidence to be submitted/relied on and/or submissions made (for example, if evidence is submitted late); an order that an appeal be dismissed or a defence or submission struck out. The BAC appeal body will also be entitled to draw adverse inferences from such a failure or refusal, and it will not be a valid excuse to rely on any privilege against self-incrimination and any such privilege is deemed to have been waived.

8 Hearing

- 8.1 The chair of the BAC appeal body will decide on the format of the hearing (in person, or by (partial) telephone conference or by (partial) video conference, or on the papers). The hearing will be conducted in English. Where applicable, the chair of the BAC appeal body will fix the date, time and venue of the hearing (the BAC Administrator will liaise with the parties in this respect, with the aim of holding a hearing as soon as reasonably practicable).
- 8.2 The Appellant will have the right, at its own expense, to be represented by counsel and, if necessary, to engage an interpreter approved by the BAC appeal body. A maximum of four representatives of the Appellant, including the athlete and any interpreter, will be entitled to participate in the hearing.
- 8.3 The Respondent will have the right to be represented by counsel and, if necessary, to engage an interpreter approved by the BAC appeal body. A maximum of four representatives of the Respondent will be entitled to participate in the hearing.
- 8.4 The chair of the BAC appeal body may decide on a further number of representatives as deemed appropriate under the circumstances.
- 8.5 The procedure to be followed at the hearing will be at the discretion of the chair of the BAC appeal body, provided always that the hearing is conducted in a fair manner, with a reasonable opportunity provided for each party to present evidence (including the right to call and to question witnesses), address the BAC appeal body and present its case. Where



appropriate, the hearing will include an opportunity for the athlete to personally address the BAC appeal body (in their capacity as a witness), should the athlete wish to do so.

- 8.6 In exceptional circumstances, the BAC appeal body may adjourn the hearing and issue a request that the Appellant and/or Respondent provide such additional evidence that the BAC appeal body believes, in its sole discretion, is required in order to enable it to reach a decision regarding the appeal. However, for the avoidance of doubt, the BAC appeal body must make a decision based on the merits of the case presented to it, and accordingly “exceptional circumstances” will not include instances where a party simply has presented insufficient evidence.

9 Appeal consequences

- 9.1 The BAC appeal body will either affirm the decision appealed against or set aside the decision appealed against. In particular, the BAC appeal body will have no power to modify, alter or otherwise change any athlete evaluation, sport class and/or sport class status decision (for example by allocating an athlete a new sport class and/or sport class status).
- 9.2 No member of the BAC appeal body may abstain. Where the BAC appeal body consists of three persons, it will make its decision by majority.
- 9.3 The BAC appeal body will issue a written decision resolving any appeal as soon as reasonably practicable and ordinarily within 28 calendar days after the hearing. The written decision will set out the reasons for the decision and the actions that are required as a result. If the decision appealed against is set aside, the written decision will also specify the procedural error committed and how that error could reasonably have caused the athlete to be allocated an incorrect sport class and/or sport class status. Where it considers it appropriate, the BAC appeal body may also decide to communicate the operative part of its decision prior to issuing the written reasons.
- 9.4 The decision of the BAC appeal body will be provided to the Appellant and Respondent, and to the IPC.
- 9.5 Where the BAC appeal body finds that an argument advanced by a party was frivolous or otherwise entirely without merit, the BAC appeal body may award costs as it deems appropriate against that party. Otherwise, however, each of the parties will bear its own costs, legal, expert or otherwise, and the BAC appeal body will not have the power to order any other party to pay such costs, or the costs of convening the BAC appeal body.



9.6 Appeal decisions are final and are not subject to any further appeal.

10 Confidentiality

10.1 Subject to clause 10.3 below, proceedings under these Bylaws are confidential and are not open to the public.

10.2 The BAC appeal body may, in its sole discretion, require all persons who attend a hearing to sign a statement agreeing to maintain the confidentiality of facts or information disclosed during the hearing. Any individual refusing to sign such a statement will be excluded from the hearing.

10.3 Each of the IPC and the relevant international federation may, in its sole discretion, publish the decisions of BAC appeal bodies made under these Bylaws (including, without limitation, in full or redacted form).

11 Ad hoc rules for the Paralympic Games

11.1 Accelerated procedures will apply for all classification appeals submitted during the Paralympic Games period, which for this purpose is defined as the period commencing with the opening of the Paralympic athlete village and ending at midnight of the day of the closing ceremony.

11.2 The procedures set out in other parts of these Bylaws will apply as varied below.

11.3 Ad hoc rules:

11.3.1 The Notice of Appeal must be submitted within 24 hours of notification of the decision from which the appeal arises.

11.3.2 The initial assessment and formation of the BAC appeal body as set out in clauses 5.1 to 5.4 above will ordinarily be completed within 24 hours following the receipt of the Notice of Appeal.

11.3.3 The hearing set out in clause 8 above will ordinarily be held within 48 hours following the receipt of the Notice of Appeal. The chair of the BAC appeal body will decide on the time and location of the hearing. However, if considered appropriate the chair of the BAC appeal body may adjourn the matter to be dealt with after the Paralympic Games.



11.3.4 The decision of the BAC appeal body will be communicated verbally to the Appellant and Respondent immediately following the BAC appeal body having reached a final decision. The international federation technical delegate will be informed at the same time. The written decision will be issued as soon as reasonably practicable thereafter. Communications to these parties will be to such office, hotel room, Paralympic athlete village location, and/or email address as are determined most appropriate by the chair of the BAC appeal body.