



**ONTARIO NURSES' ASSOCIATION**

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# **APPEALING DECISIONS OF THE WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)**

## **SELF-HELP KIT**

**February 2022**

The Ontario Nurses' Association (ONA) is the union representing 68,000 registered nurses and health-care professionals, as well as more than 18,000 nursing student affiliates, providing care in hospitals, long-term care facilities, public health, the community, clinics and industry.

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# APPEALING DECISIONS OF THE WORKPLACE SAFETY AND INSURANCE BOARD (WSIB)

## SELF-HELP KIT

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This self-help kit is developed by the Ontario Nurses' Association (ONA) for members who suffered an injury at the workplace, whose claim was denied by the WSIB and do not meet the ONA representation criteria.

The kit provides information to support an injured worker to appeal an adverse decision of the Workplace Safety and Insurance Board (WSIB) on their own or with assistance from a family member or friend.

Please also note that while this kit has been prepared for the purposes of assisting members with WSIB appeals, it is not intended to be relied on as professional legal advice. The self-help kit is also based on the WSIB appeals system in place at the time of writing and does not account for any future changes in laws, policies and procedures relevant to WSIB appeals.

If you wish to obtain legal advice or representation, it is recommended you contact a professional legal representative. Please see the Useful Resources list for additional options.

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## **WSIB Appeals Overview and Time Limits**

Most decisions that you receive from the WSIB can be appealed. Common examples of decisions that you may want to appeal include a denial of initial entitlement, a denial of Loss of Earnings (LOE) benefits or denial of a secondary condition, such as a psychological reaction to a physical injury. There are many other types of issues that you may not agree with and can also be appealed.

There are three main levels for appealing a WSIB decision. The first level is known as reconsideration. The reconsideration involves submitting an Intent to Object (ITO) form and any new evidence or relevant information you may have. The initial WSIB decision-maker will then complete a reconsideration review and either confirm the original decision or overturn it. If the reconsideration results in a confirmation of the original decision, you will then be able to proceed to the second level of appeal, which is the Appeals Services Division. After the reconsideration is complete, the WSIB will send you a copy of your file along with an Appeals Readiness Form (ARF). Once you submit the ARF, your appeal will be transferred to the Appeals Services Division, where you will have a hearing in writing or an oral hearing with an Appeals Resolution Officer (ARO). Following this hearing, the ARO will either approve your appeal by overturning the decision, or they will deny the appeal by upholding the original decision.

If your appeal is denied at the ARO level, you can proceed to the third and final level of appeal, which is the Workplace Safety and Insurance Appeals Tribunal (WSIAT). The WSIAT is an independent tribunal that makes final decisions on WSIB appeals. An appeal is started at WSIAT by filing a WSIAT Notice of Appeal (NOA) form after you receive your ARO decision letter. In most cases, a WSIAT appeal will require an oral hearing, however some appeals will be resolved with a written hearing or through a form of mediation that can occur prior to a hearing. Similar to the ARO appeal, the WSIAT will issue a decision either approving the appeal by overturning WSIB's decisions, or denying the appeal by upholding WSIB's decisions.

One of the most important things to remember if you want to appeal a decision of the WSIB is that there are strict time limits involved. Generally, most decisions will have an initial time limit of six months to file an appeal. Certain decisions may have shorter time limits of 30 days. The decision letter will normally state what your time limit is. More detail is provided throughout this self-help kit on how to appeal decisions. If you miss your time limit to appeal, you are unlikely to be able to proceed any further. Extensions for a missed time limit can be requested and possibly granted by the WSIB, but this is not a guarantee. If you wish to proceed with an appeal, make sure you do your best to meet all time limits.

# Reconsideration

## Decision Letter and Time Limit

If a decision is made in your WSIB claim you disagree with, you need to make sure you receive a copy of a written decision letter that outlines the decision. If you do not receive a written decision letter, you should call the WSIB and request one be sent to you; if you have access through the WSIB portal, you can obtain the decision letter from there.

The first thing to be aware of is the time limit to preserve your right to appeal. Normally the time limit will be listed in the decision letter itself, and for most decisions it will be six months from the date of the letter. For example, if the decision letter is dated January 15, 2021, the time limit to appeal will normally be July 15, 2021. This means you need to notify WSIB no later than July 15, 2021 that you want to appeal. Certain decisions may have 30-day time limits. These will often be decisions on issues like Return-to-Work (RTW) plans, Work Transition (WT) plans, Suitable Occupations (SO), Labour Market Re-entry (LMR), Suitable and Available Employment or Business (SEB), and retraining.

An example of a decision letter's time limit has been provided below.

### Time Limit to Object

The law (*Workplace Safety and Insurance Act* or WSIA) puts time limits on objecting to a decision. If you want to object to this decision, you must notify me in writing and I must receive your letter or Intent to Object Form by **December 11, 2021** or you will lose your right to appeal this decision.

If you are unsure what the time limit is for your decision or if the time limit is not listed in the letter, contact the decision-maker and ask them what the time limit is.

Remember, it is very important for you to preserve your right to appeal so you can proceed. If you do not appeal by your time limit and an extension is not granted, you will not be able to appeal. By preserving your right to appeal, you can proceed with your appeal at any time. If possible, it is recommended you preserve your right to appeal as soon as you receive the WSIB's decision and not wait until just before your time limit expires, in case you experience any challenges or delays.

### Intent to Object (ITO)

In order to appeal a decision you need to submit an Intent to Object (ITO) form. To obtain an ITO, you can call WSIB and ask to have one mailed to you, or you can download it from the WSIB website at <https://www.wsib.ca/en/appeals/appeals-objecting-wsib-decision>. There are a few different sections you will need to complete. These include whether you consent to the use of email, your contact details, information about representation, the date of the decision you want to appeal, the specific issues you disagree with and the reasons for your objection.

The reasons for your objection is where you can explain why you disagree with the decision and why you believe the decision should be changed. You can think of this as explaining your version of the events that occurred, and why the WSIB's decision is incorrect. This process is also referred to as providing your appeal submissions.

For more information on what you might want to put in your submissions, please refer to the Submission part of this self-help kit. If you need more room to provide your submissions, you can attach a letter to the ITO form. If you are attaching a letter, make

sure you put your name and WSIB claim number at the top. It is also helpful to attach any new evidence or information to your ITO form.

For example, if you are appealing a decision that denied initial entitlement to a back injury, it is helpful to ask your doctor for a medical report that provides an opinion on whether your back injury happened at work. You can attach the medical report to your ITO and explain how it helps prove your injury happened at work. Please note that it is not mandatory for you to provide additional evidence or information if you do not have any. You can simply provide the ITO form itself with your reasons for the objection.

Once you have completed your ITO and attached new evidence or information (if you have any), you then need to submit the ITO to the WSIB. This can be done in a variety of ways, including by using WSIB's document upload service online at <https://www.wsib.ca/en/appeals/appeals-objecting-wsib-decision>, by fax or by mail.

If possible, it is recommended you use the online upload service or fax, to ensure you get either an email confirmation from the upload service or a fax confirmation. This is important, as having an email or fax confirmation is proof you have met your time limit. It is recommended you keep a copy of your email/fax confirmation, along with your ITO.

### **Reconsideration**

After you submit your ITO, the WSIB will commence a process known as reconsideration. Essentially this will involve the original WSIB decision-maker, often an Eligibility Adjudicator or Case Manager, reviewing the file again, along with your ITO, and any additional evidence or information you provide. The decision-maker may also call you if there are any questions, or if clarification is needed. You may also want to try calling the decision-maker at this time if you would like to ask questions yourself, or if you feel it would be helpful to explain any details that may have been overlooked or are unclear. If you do speak with the decision-maker, it is recommended you remain calm. Although the issues being decided upon can be very important to you and it can seem that WSIB is not helping you, remaining calm and firm while speaking with the decision-maker will help you communicate more effectively and keep a respectful relationship.

Once the decision-maker completes the review, a reconsideration decision will be issued. This should also be sent to you with a written letter that explains the outcome of the review. The letter should discuss the original decision, details of your reasons for objection and any new evidence or information that may have been provided. The reconsideration will either uphold the original decision or will overturn it. For example, if the original decision denied initial entitlement to a back injury, the reconsideration decision will uphold that denial or it will change the decision and approve entitlement to the back injury.

### **File Access**

After submitting your ITO during the reconsideration stage, the WSIB will arrange to send you a copy of your WSIB file, known as file access. Essentially this will be a full copy of all documentation contained in your file. The file will normally be broken up into different sections; each section has a cover page with the title of the section listed. Files will often have sections for Correspondence, Memo, Forms, Medical and Appeals. Depending on your claim, there may be additional sections.

The Correspondence section contains copies of decisions, letters from yourself or your employer and other letters from WSIB about your claim status. The Memo section includes memos created by WSIB staff, which often document phone calls with parties such as yourself or the employer. Memos are also often created when a decision-maker conducts a file review and makes a decision. The Forms section will include WSIB forms such as Form 6 and Form 7. The Medical section should include all medical information provided. The Appeals section should include copies of any ITOs you or your employer may have sent.

Your file access is very important and you should make sure you keep it in a safe and accessible location. It is also recommended that you do not change the order of the file. As you proceed with the appeals process, the file is used as a reference point for all information in your appeal, and therefore it is important that you can access it and view it in the same manner that the WSIB sees it.

# Appeals Services Division

## Appeal Readiness Form (ARF) and Format of Hearing

If your reconsideration decision resulted in upholding the original decision and you wish to continue to the next level of appeal, you will need to submit something called an Appeal Readiness Form (ARF). The ARF is used to transfer your appeal to the WSIB's Appeals Services Division (ASD). The ASD is a second-level appeals department that makes final decisions within the WSIB's internal appeals system.

Similar to completing the ITO, you will have to fill out sections with your contact information, representation details, date of decision being appealed, issues in the decision being appealed and the reasons for appeal. In the reasons for appeal section, you will have another chance to provide your submissions. This is again similar to providing your submissions with the ITO, whereby you are given a chance to explain why you believe the decision is incorrect and why it should be changed. If you already provided detailed submissions with the ITO during the reconsideration stage and feel you have nothing further to add, you can indicate this on the ARF and reference the ITO submission that was previously made.

However, if you have further arguments or reasons to provide, you can include them with the ARF. The best way to do this is to write a letter and attach it to the ARF. Even if you have already provided a submission with the ITO, you may want to provide an additional submission with your ARF that can respond to anything you disagree with from the WSIB's reconsideration letter.

As a reminder, WSIB will have responded to your ITO submissions with a reconsideration decision, so this would now be your chance to address any details of the reconsideration that you disagree with. For more information on what you might want to include in your submissions, please refer to the Submissions part of this self-help kit.

There are also additional sections in the ARF that need to be completed. Before you can proceed with the ARF, you must confirm that you have already provided all relevant information to the front-line decision-maker, and that all related entitlement decisions have already been made. Essentially this means that if you have any information relevant to the appeal, for example a doctor's report, it should have already been submitted during the reconsideration stage and decided upon before you submit the ARF. If you attach new information with the ARF, your file may be returned to the reconsideration decision-maker for another review before your appeal proceeds at this level. If you are unsure whether you should attach any new information at this level, you can call the WSIB to clarify before submitting the ARF.

When completing the ARF you will also have to decide on which format of hearing you will request. There are two different types of hearings, including a Hearing in Writing and an Oral Hearing. A Hearing in Writing means that your file and any additional submissions provided with your ARF will be reviewed by an Appeals Resolution Officer (ARO). After the ARO completes the review, they will issue a decision.

In contrast, an Oral Hearing means that you would attend a live hearing with the ARO. In addition to the ARO reviewing your file, you would also be asked questions at the hearing and your answers to those questions would be recorded as evidence in the form of witness testimony. At the Oral Hearing, you would also have a chance to verbally explain

your position and why you feel the decision should be changed. Your oral explanation and arguments would also be known as your submissions. Following the Oral Hearing, the ARO would then issue the decision.

If you request an Oral Hearing, you will also have to provide reasons for why an Oral Hearing is appropriate for your appeal. What this means is you will need to explain to the WSIB why your appeal requires a hearing as opposed to just a written review of the file. Examples of why an Oral Hearing may be required include situations where there may be a disagreement over the facts of your case. For example, you and your employer may disagree over details like when you reported your accident, how your return-to-work attempt went or what job duties were offered or performed.

Oral Hearings may also be appropriate when there is question over the level of your impairment. For example, you and your WSIB decision-maker may have had a different view on your ability to perform your work duties, and by having an Oral Hearing, you could better explain the true effect of your injury on all aspects of your life, including your work, home and personal life.

Another reason an Oral Hearing may be helpful is if there is an issue about credibility. This means if your own version of events or honesty has been questioned by a decision-maker, having an Oral Hearing would be useful to try and help convince the ARO that you are telling the truth and providing an honest view of what took place in your case.

After you submit the ARF, the WSIB will decide on the format of the hearing. Therefore, you might not get the hearing format requested. If you requested an Oral Hearing and WSIB decides to proceed with a Hearing in Writing instead, you will be given another opportunity to provide any additional written submissions before the appeal is referred for review by the ARO. If an Oral Hearing is granted, your file will then be transferred for scheduling to arrange the hearing date.

If your appeal is selected for an Oral Hearing, it is important that you prepare for the hearing as much as possible and that you ensure you schedule time off from work or other commitments so you can attend. For more details on how to prepare for Oral Hearings and what to expect during an Oral Hearing, please review the Oral Hearings section of this self-help kit.

### **ARO Decision**

Once your file has been reviewed with a Hearing in Writing or once your Oral Hearing has been completed, the ARO will issue a decision, which will be the final decision of the WSIB. The ARO's decision could either deny, allow in part or fully allow the appeal. If the appeal is denied, you can still appeal to the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

More information about starting a WSIAT appeal is found in the next section of this self-help kit.

If your appeal is allowed, it will be returned to the original decision-makers for a process known as implementation, which is where the WSIB will proceed with adjudicating your claim further, taking into account the new decision. If your appeal is allowed in part, then whatever issues were approved in your favour will be returned for implementation, while issues that were denied can be appealed to WSIAT.

In very rare circumstances an ARO decision can be overturned through a process known as reconsideration. This is a rare and complicated process and it is not covered in detail in this self-help kit. More information on ARO reconsiderations can be found on WSIB's website or by calling the WSIB.

# Workplace Safety and Insurance Appeals Tribunal (WSIAT)

## Notice of Appeal (NOA)

Once you receive your ARO decision, you will have a six-month time limit from the date of the decision to file an appeal. This means if there is anything in the ARO decision that you disagree with, you will need to start your appeal within six months from the date of the decision. In order to start your appeal, you will need to complete and submit a Notice of Appeal (NOA) form to the Workplace Safety and Insurance Appeals Tribunal (WSIAT). For example, if your ARO decision is dated August 1, 2021, then you will have to provide a NOA to the WSIAT by February 1, 2022. If you do not provide the NOA within this time limit, you will not be able to proceed any further with the appeal. Time-limit extensions can be requested but are not guaranteed, so it is very important to ensure you meet your time limit to appeal.

You can obtain a copy of the NOA from the WSIAT's website or by calling and asking for a copy to be sent to you. The first page of the NOA has sections to complete regarding the ARO decision being appealed, contact details and representations details. On the second page, you will need to identify the issues from the ARO decision you are appealing, the reasons for appeal and the desired outcome of the appeal. There is also a section to complete regarding consent to the release of information in your file to the employer, should they choose to participate. Finally, you must also ensure you attach a copy of the ARO decision being appealed. After you have completed the NOA, you can submit it to WSIAT using the E-File service on their website, or by sending via fax or mail. It is recommended that you save a copy of your submission for future reference.

## Written Appeals

If you have sent your NOA to the WSIAT within the six-month time limit from your ARO decision, then WSIAT will send you a letter confirming they received the NOA in time. For most appeals, WSIAT will decide to proceed with an oral hearing. However, if WSIAT believes your file is suitable for a written appeal, they will indicate this in the letter and explain the next steps for proceeding with the appeal. If your file is selected for a written appeal, you will be given a chance to provide another written submission. This process will be similar to the submissions you may have already provided at the earlier stages of the appeal, but you can add in any new information and arguments you feel are relevant.

You may also wish to respond directly to any of the reasons for denial that were listed in the ARO decision you are now appealing. In addition, if you have any new evidence, such as an updated medical report, you should attach it with your written submission. For more details on what to include in a submission, please refer to the Submission section of this self-help kit. After you provide the written submission, the WSIAT will confirm if the file is ready to be referred to a Vice-Chair, who will review the file, any new submissions and evidence, and make the final decision.

## Oral Hearings – Readiness Form, Case Record and Confirmation of Appeal (COA)

As mentioned, most WSIAT appeals are selected for oral hearings. If your file is selected for an oral hearing, then the WSIAT will send you a Readiness Form along with their initial letter confirming receipt of your NOA. This letter will also indicate you have a new deadline to submit another form called a Confirmation of Appeal (COA). The deadline will be two years from the date they received your appeal. For example, if WSIAT received your NOA on September 1, 2021, then your COA deadline will be September 1, 2023.

The Readiness Form is to be completed once you are ready to proceed with your WSIAT appeal. As long as you do not have any outstanding issues at WSIB and you would like to proceed with the appeal as soon as possible, it is recommended to fill out the Readiness Form and send to WSIAT soon after you receive it. Once WSIAT receives your Readiness Form, they will order a copy of your file from WSIB and compile it into their own version of your file called a Case Record. After this process is completed the WSIAT will send the Case Record to you along with the Confirmation of Appeal (COA) form. Please also note that as your appeal is processed at WSIAT, you will also receive updates to the Case Record, which are referred to as Addendums. The Case Record and any subsequent Addendums will be used together to form your complete appeal file.

Similar to the Readiness Form, you should complete and send the COA to WSIAT if you are ready to proceed with your appeal. The COA has sections to confirm if you wish the hearing to be in English or French, and if you need an interpreter for a different language. You will also need to indicate whether you are interested in mediation, which is a service offered by the WSIAT where they will explore possible options for resolving the appeal without holding a full hearing. For example, if you and your employer are both participating, the WSIAT could try to facilitate an agreed outcome that both parties are willing to accept, and could propose this as a final result without having to hold a formal hearing. This process is voluntary and completely confidential. You do not need to participate in mediation and can proceed with the normal appeals process if you prefer.

You will also have to indicate if you have any outstanding issues still being adjudicated at the WSIB and if you have any new evidence or information to provide for your appeal. For example, if you have an updated medical report about your injury, you can provide it with the COA. There is a section about witnesses where you will need to confirm that you will be able to participate as a witness for your own appeal. This simply means that you are confirming you are willing to attend a hearing and answer questions about your appeal, which is a form of witness testimony. In addition, if you would like to have any other witnesses attend to help provide evidence, you can indicate this as well. If you wish to have a witness attend and need the WSIAT's help to have them come to the hearing, there is a section where you can indicate to the WSIAT that a summons is required to have this witness attend.

In the last section of the COA, you will need to confirm these are all of the issues you are appealing, and if your employer is participating, you will need to make arrangements to send a copy of the COA to the employer's representative and confirm this has been done. After you have filled out all sections of the COA, you then need to submit it to WSIAT before your COA deadline. Once WSIAT has received the COA, they will respond to you and let you know the next steps.

### **Oral Hearings – Scheduling and Three-Week Rule**

After WSIAT has received your COA, your file will be reviewed and you will be informed if your appeal is ready to proceed to the oral hearing. Once your file is ready to proceed, you will receive something called a Hearing Ready Letter, which will confirm the issues being appealed. Your file will also be transferred to the scheduling department so that a hearing date can be arranged. You will receive a letter proposing a hearing date in the future, and once you receive this letter, there will be instructions for you to respond to WSIAT to advise them if you need to change the proposed hearing date. If you are available for the date that is proposed, it is recommended you accept the date and schedule time off to ensure you are available to attend.

Once your hearing date has been scheduled, it is important you start preparing well in advance of the hearing. In addition, the WSIAT does allow for new evidence to be provided up to three weeks before your hearing. For example, if your hearing is scheduled for February 22, 2022, you can submit new evidence up to three weeks before, which would be February 1, 2022. After these steps have been completed, you will then proceed with attending the hearing for the final stage of your appeal. For more details on how to prepare for an oral hearing and what to expect at the hearing, please refer to the Oral Hearing section of this self-help kit.

### **WSIAT Decision**

After your oral hearing has been completed, or in the case of a written appeal, after your written submissions have been provided, the WSIAT will complete their review of your appeal and issue a final decision. This decision will be the final decision in your WSIB appeal. If the decision allows your appeal in full or in part, then your file will return to the WSIB for implementation. If the decision is denied, your appeal will remain denied and no further action will occur at the WSIB.

Although the WSIAT decision is the final level of appeal, there are rare circumstances where a WSIAT decision can be overturned through a process known as reconsideration or via an application to the courts for judicial review. Both are very rare and complicated processes and are not covered in detail in this self-help kit.

More information on WSIAT reconsiderations can be found on the WSIAT's website at <https://www.wsiat.on.ca/en/practiceDirectionsAndGuides/reconsiderations.html>, or by calling the WSIAT. In addition, if you have received a WSIAT denial decision and want to explore any further options, such as a judicial review, it is recommended you contact a legal professional. To see possible options, please refer to the Useful Resources page of this self-help kit.

# Oral Hearings

## Format and Preparation

If your appeal at the Appeals Services Division or the WSIAT is selected for an Oral Hearing, it is important that you prepare for the hearing as much as possible. You should also be sure that you are aware of the format of the oral hearing (eg. in-person, videoconference, etc.) and whether your employer will be participating. The best way to start preparing for your hearing is to read through your file and become familiar with the main documents. This will include the decisions being appealed, your written submissions already provided and the most important medical reports in the file. In addition, you should also review the memo section of your WSIB file. There will often be important information contained in the WSIB memos that document phone calls, file reviews and other information that is relevant to your file. If your employer has submitted documentation or their own appeal submissions, you should also be sure you read that information as well, so you are aware of your employer's view of the issues in dispute.

In addition to reading through your file and becoming aware of the information in it, you should also make sure that you keep the file in the same order it was sent to you. You will also want to ensure you have your file with you when you attend the hearing. This is important because documents in the file can often be referenced during the hearing, so if you have the file with you and it's in the same order as the original file, it will be easier for you to reference the information. When reviewing your file, you may also want to create your own references. If you have a paper file copy, you could simply put a sticky note on important pages. If you have an electronic version of your file, you could put bookmarks on important pages. An example of how this would be helpful is if there is an important medical report from your doctor or an important memo that confirms details surrounding your accident or return-to-work, then having those pages referenced will allow you to quickly find that information during your hearing.

## Parties in Attendance and Introductions

In addition to reading through your file and familiarizing yourself with the information in it, you should also be prepared for the different stages of the hearing. If you are having an Oral Hearing at the Appeals Services Division stage, then your hearing will take place with an ARO, who will be the decision-maker. If your hearing is at the WSIAT, then your hearing will take place with a Vice-Chair who will be the primary decision-maker. At WSIAT, there may also be two additional decision-makers known as panel members. The decision-makers will oversee the hearing, record the evidence and submissions provided, and complete a final review of the file, before issuing a decision after the hearing is completed.

The hearings will typically begin with the decision-maker making introductory comments confirming the purpose and format of the hearing. The parties will also be asked to confirm their attendance and names for the record. This simply means that each party will confirm who they are. The parties will include the decision-maker and yourself as the worker. If your employer is participating, they will likely have someone attending the hearing as well. This could be someone internal, for example a Human Resources representative, or someone external representing the employer such as a lawyer or paralegal. There may also be additional parties taking part in the appeal such as interpreters, witnesses that either you or the employer are including in the hearing, or support persons.

As the worker, you have the chance to ask for a support person to attend the hearing with you. A support person is often a family member or friend that you may want to attend the hearing with you for the purposes of providing emotional support. Since attending a hearing can be a stressful process, a support person is often allowed if you wish. You will need to explain to the decision-maker why you would like the support person to attend and ultimately it would be up to the decision-maker's discretion to allow the request or not. If allowed, a support person can only observe the hearing and is not allowed to participate or provide witness testimony.

### **Issues being Appealed and Preliminary Issues**

After the introductions are completed, the decision-maker will then confirm the issues that are being appealed. This normally will have already been outlined in the appeals correspondence that you will have received leading up to the hearing. You will need to confirm with the decision-maker that you agree on the decisions and issues in dispute. At this point, you will also be given a chance to raise any preliminary issues you have before the hearing proceeds any further. An example of a preliminary issue could be the submission of late evidence. After the issues in dispute and any preliminary issues have been dealt with, the hearing will proceed to opening statements.

### **Opening Statement**

You do not need to provide a formal opening statement if you are unsure of what to say. However, it is recommended you provide at least a brief opening statement. To keep it simple, you can just tell the decision-makers a summary of what you intend to present to them at the hearing; think of it like providing a roadmap to the decision-makers. This could include a summary of the issues you are pursuing and want changed, and what your desired outcome is of the appeal. This will help the decision-makers understand your point of view and make it easier for them to follow along with you as you provide testimony and closing submissions.

### **Direct Examination**

If you are representing yourself, the direct examination will consist of the decision-makers asking you a series of questions about your case. The questions that will be asked can cover a wide range of areas. You could be asked questions about all phases of your life stemming from childhood, school years, pre-accident, the accident or injury period, post-accident and up to the present day. You could be asked questions that extensively go into detail about your medical history, work details and personal life. Each case is different and the issues under appeal will determine the types of questions you will be asked.

The best way to prepare for this part of the hearing is to review your file as much as you can before you attend the hearing. Although the WSIB claim is your own personal history, it is important that you try to be familiar with the written documentation in your file, such as medical reports, forms and letters that were filed at the beginning of your claim, memos that document important phone calls and other information. You want to ensure your witness testimony (ie. answers to these questions) is consistent with the written evidence in your file. If your testimony contradicts a lot of important information that is written in your file, the decision-makers may form a view that you lack credibility, which means they will believe you are not being honest in your answers. If this occurs, your chances for success with the appeal will decrease significantly.

In addition to reviewing your file, it is important that you try to answer the questions being asked as clearly, honestly and accurately as possible. Here are a few tips for answering questions at a hearing:

- Listen to the questions carefully and make sure you understand the question being asked. If you don't understand the question, request clarification.
- Because a recording is made of the hearing, speak loudly, clearly and slowly.
- Do not ramble or feel the need to fill pauses.
- Answer questions regarding any forms or other documents in the claim file, by referring to those documents, and, if necessary, clarifying what is written.
- Stick to the facts (I saw this; I heard this, etc.) unless you're asked for an opinion.
- Do not guess at answers and do not speculate.
- If you do not know the answer to a particular question or do not recall a particular incident, say so. This will help because if you simply guess while answering questions, it again may appear that you are not being honest or credible in your answers.

Finally, you should also remember that your decision-makers are simply doing their job in trying to gather evidence and assess the file as much as possible in order to make the best decision. Although the hearing process and your previous dealings with WSIB may have been an extremely stressful and emotional process, you should do your best to remain civil and not become aggressive or threatening towards the decision-makers. If you are able to stay respectful towards the decision-maker, it will help both yourself and the decision-maker remain in a better state of mind that can allow your case to be presented and heard more effectively.

### **Cross Questioning (if employer is participating)**

If your employer is participating in the appeal, you will likely be asked questions by the employer's representative. This takes place after your questions with the decision-makers have finished. The process for preparing and answering these questions is very similar to that of answering questions directly from the decision-makers. The difference here is that your employer's representative is presenting the case from your employer's point of view, and may have opposing views compared to your own. Their questions may feel more challenging and difficult to answer, but it is important to try your best. Essentially you want to do the same as answering the decision-maker's questions, and ensure you are being clear, honest and accurate with your answers.

### **Closing Submissions**

The last step of an oral hearing is closing submissions. This is essentially your opportunity to explain why you believe the decision should be changed and the issues under appeal should be decided in your favour. For details on what you might want to include in your closing submissions, please refer to the Submissions section of this guide. The main difference to keep in mind at an oral hearing is that you will be providing your submissions verbally as opposed to in a written letter. In addition, while you are providing your submissions, you may be interrupted by the decision-maker with questions or opposing comments. If this happens, try to stay calm and respond the best you can. You can reference your file during this process as well and it is usually helpful to do so. If your employer is participating, they will also provide their own submissions as well. If your employer is not participating, only you will provide submissions. After the submissions are concluded, the decision-maker will proceed with finishing the hearing.

# Submissions

## Overview

Throughout this self-help kit there has been mention to various stages of a WSIB appeal where you can provide submissions, which is essentially your reasons for why you disagree with the WSIB's decision and believe it should be overturned. Submissions can be done in writing at all stages of a WSIB appeal and can also be done orally if you are attending an oral hearing. A submission can be a very lengthy and complex legal argument, or it can be a more simple and straight-to-the-point version of events. Either way, it is important your submissions are accurate, honest and match up well with other evidence in your file. This will give you a better chance of a successful appeal outcome.

## Consistency with Evidence

One very important thing you should remember while drafting your submissions is that you want to make sure they match up with other evidence in your file. Your version of events or arguments should be supported by other information in your file. For example, if your submissions are arguing that your repetitive job duties caused your shoulder injury, it would be helpful to ensure your submissions are referencing supportive evidence. This could include information like a medical report from your doctor that states they believe your shoulder injury resulted from your job duties. This could also include other evidence, such as your Form 6, or a memo of a phone call at the beginning of your claim where you explained the job duties you were performing at the time of the injury and how they caused your injury. If your submission references other evidence in the file that helps demonstrate why the decision is incorrect, it will help your chances of success.

In addition to evidence in your file that supports your submissions, you may also want to address evidence that would be seen to go against your appeal. In the same example for a shoulder injury, there could be a medical report in your file from a WSIB Medical Consultant, who has provided an opinion that they believe your shoulder injury is a natural age-related degenerative condition that is not related to your job duties. In your submission, you could reference this negative report from the WSIB Medical Consultant and state you believe your own doctor's opinion is more important. You could explain your own doctor has treated your shoulder and consulted with you in person on several occasions over a period of time, whereas WSIB's Medical Consultant may have just read your WSIB file once and never even spoken to you or treated you.

If you reference both supportive and negative evidence in your file and can make a convincing argument as to why the supportive evidence should be given greater weight or importance, it will help your submissions increase the chances of success in your appeal.

When preparing oral and written submissions at the WSIAT, refer to documents by the page number in the Case Record or Addendum.

## New Evidence

In addition to having your submissions be consistent and reference evidence already contained in your file, you may want to consider gathering additional evidence to provide with your submissions. Updated medical information is always a good start for additional evidence. This can include reports from your family doctor, specialists, or other health-care professionals such as psychologists, physiotherapists, and chiropractors.

It can be helpful to ask for specific reports from your treating practitioners that comment on the issues in your appeal. For example, if the issue in your appeal is about Loss of Earnings (LOE) benefits and whether you are capable of working, your doctor or health-care practitioner should provide their opinion on whether you can work. In addition to these types of reports, copies of their clinical notes and records can also be valuable to help demonstrate the extent of your injury and nature of treatments. If you have undergone any sort of radiological exams such as MRIs, x-rays or CT scans, these are also helpful. Reports from any specialists you may have seen are also a good idea to submit for your appeal. Prescriptions for medication and other treatments, as well pharmacy records, can also be important.

There can be other types of evidence that may be important for your appeal as well. Depending on the issue under appeal, getting a witness statement can be beneficial. This is often something you can try to obtain from co-workers, who can provide a third-party statement about your appeal. For example, if WSIB has denied initial entitlement because they do not believe there is enough evidence to support your injury or accident occurred at work, getting a witness statement from a co-worker who observed your injury or accident happen can be very helpful. Another example of where a witness statement could be helpful is if your appeal involves your ability to perform modified duties at work. If you attempted modified work and were struggling to do the work due to your injury, it may be helpful to have a witness statement from a co-worker, who could confirm the details of how you were struggling to do the job because of your injury. If you do get any witness statements, it is preferred that the statement be typed out and the witness provides their contact information, and explains how they know you and were involved with you to witness the activity they describe.

In addition to medical evidence and witness statements, there can be other types of evidence you may want to include. For example, if you are trying to argue that your job duties caused carpal tunnel syndrome, you may want to provide documentation that shows how often you were required to perform certain job duties that would lead to this condition, such as repetitive typing or other similar tasks. If you are trying to demonstrate you should be paid a higher LOE benefit rate, you may want to gather records of your pay stubs and tax documentation that shows you earned more money than WSIB believes you did. There is no limit on the types of evidence you can include but you should remember that the evidence should be relevant to the issues you are appealing and should be supportive of your case.

### **WSIB Policy**

Most WSIB decisions have at least one or more relevant WSIB policies. These are listed in WSIB's Operational Policy Manual and are located on WSIB's website (see the link in the section titled Useful Resources). Decision-makers will often reference a policy in the decision letter itself. It is a good idea to be aware of the relevant policies being used for the decisions in your appeal, as these policies will play an important role in the outcome of your appeal. The WSIB policies are essentially a set of guidelines that decision-makers will use for deciding the outcome of a specific issue in a WSIB file. For example, if your appeal is about entitlement to a psychological condition, there will likely be one or more policies relevant to the decisions. Common examples of policies relating to psychological conditions include Psychotraumatic Disability, Traumatic Mental Stress and Chronic Mental Stress. If your appeal is dealing with the situations covered in one of these policies,

then it would be helpful for you to obtain a copy of the relevant WSIB policy. After reviewing the policy, you could then reference it in your submissions and explain why you feel your case matches up with the requirements and guidelines listed in the policy.

### **WSIAT Decisions**

Another helpful resource for your submissions is the use of prior decisions from the WSIAT. These can be searched for free in two different publicly accessible websites. The first is from the WSIAT's website itself and the second is from an organisation called the Canadian Legal Information Institute (CANLII). Links to both sites are provided in the Useful Resources section. To effectively use WSIAT decisions as a support for your submissions, try and find previous decisions that WSIAT has issued for cases that dealt with similar issues to your appeal. For example, if you are appealing a denial of chronic mental stress, you should search for other decisions that dealt with chronic mental stress. After reading other decisions, you can see how cases similar to yours were decided.

If you find cases that are similar to yours and were approved for the worker, you can reference those cases and explain why you feel your case is similar and that your case should also be approved. If you see cases that were denied and you believe your case is different, you may also want to reference those cases and explain why you feel your case is different and should not be denied. Although using these decisions will not force your appeal to be decided in the same way, it can help make your submissions more convincing.

### **Conclusion**

In summary, your submissions are your chance to explain why the WSIB's decision was wrong and why the issues should be decided in your favour. You should remember your submission needs to be presented clearly, accurately and honestly. You should try to reference evidence in a way that supports your appeal. If possible, you can also try to reference relevant WSIB policies and WSIAT decisions in a way that will support your appeal as well.

# Checklist for WSIB Appeals

## Reconsideration

- Did you get a copy of the decision in writing?
- Are you aware of the appeals time limit for the decision?
- Do you have any additional evidence or information to provide, such as a medical report?
- Have you filled out the Intent to Object (ITO) form, including your reasons for objection?
- Have you submitted the ITO and any additional evidence or information by your time limit?
- Have you confirmed with WSIB that they received your ITO?
- Have you called the decision-maker to discuss any concerns or clarifications?
- Has your decision-maker issued the reconsideration decision in writing?

## Appeals Services Division

- Did you get your file access with an Appeal Readiness Form (ARF)?
- Have you ensured you submitted all relevant information and evidence to WSIB already?
- Do you think your appeal is appropriate for an oral hearing?
- Have you filled out the ARF in full, including whether you will request an oral hearing or not?
- Have you included detailed submissions to support your appeal?
- If you are having an oral hearing, have you prepared adequately?
- Following the hearing-in-writing or oral hearing, have you received an ARO's decision?

## Workplace Safety and Insurance Appeals Tribunal (WSIAT)

- Have you filed a Notice of Appeal (NOA) form within six months of the ARO decision?
- Has WSIAT confirmed to you in writing they received your appeal on time?
- Do you know whether your appeal will have an oral hearing or written appeal?
- If you are having a written appeal, have you provided your submissions by the deadline?
- If you are having an oral hearing:
  - Have you completed and sent in the Readiness Form?
  - Have you considered doing Alternative Dispute Resolution (ADR) or mediation?
  - Have you received your Case Record and Addendums from WSIAT?
  - Have you completed and sent in the Confirmation of Appeal (COA) by the deadline?
  - Has your hearing date been scheduled and are you available to attend?
  - Have you prepared adequately?
- After your oral hearing or written submissions, have you received WSIAT's decision?

## Useful Resources

We hope this self-help kit has provided some helpful guidance. It is important to note that appealing a WSIB decision is a complex legal process, and you may wish to find more information or assistance. The additional resources and organisations listed below may also be helpful with your WSIB appeal:

- Workplace Safety and Insurance Board (WSIB)  
[www.wsib.ca](http://www.wsib.ca)  
416-344-1000 or 1-800-387-0750 (toll-free)
- WSIB Operational Policy Manual  
[www.wsib.ca/en/policy/operational-policy-manual](http://www.wsib.ca/en/policy/operational-policy-manual)
- WSIB Appeals Information and WSIB's Appeals Services Division Practices & Procedures  
[www.wsib.ca/en/appeals](http://www.wsib.ca/en/appeals)
- Workplace Safety and Insurance Appeals Tribunal (WSIAT)  
[www.wsiat.on.ca](http://www.wsiat.on.ca)  
416-314-8800 or 1-888-618-8846 (toll-free)
- WSIAT Decision Database  
[www.wsiat.on.ca/en/decisionSearch/decisionSearch.asp](http://www.wsiat.on.ca/en/decisionSearch/decisionSearch.asp)
- Canlii's WSIAT Decision Database  
[www.canlii.org/en/on/onwsiat/](http://www.canlii.org/en/on/onwsiat/)
- Fair Practices Commission (FPC)  
[www.fairpractices.on.ca](http://www.fairpractices.on.ca)  
1-866-258-4383
- Ontario Ombudsman  
[www.ombudsman.on.ca](http://www.ombudsman.on.ca)  
1-800-263-1830 (toll-free)
- Industrial Accidents Victims Group of Ontario (IAVGO)  
[www.iavgo.org](http://www.iavgo.org)  
416-924-6477
- Workers' Health and Safety Legal Clinic  
[www.workers-safety.ca](http://www.workers-safety.ca)  
1-877-832-6090
- Injured Workers Community Legal Clinic  
[www.injuredworkersonline.org](http://www.injuredworkersonline.org)  
1-833-461-2411 (toll-free)
- Law Society Referral Service (ask for lawyers or paralegals specialising in WSIB)  
[www.lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service](http://www.lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service)  
1-855-947-5255
- Member of Provincial Parliament (MPP)  
[www.ola.org/en/members/current](http://www.ola.org/en/members/current)