

This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Workers Compensation Act* and the *Rehabilitation Services and Claims Manual, Volumes I and II* for purposes of interpretation and application of the law.

Updated April 2016

Extension of Time Applications

What happens if my review or appeal is filed late?

If the Review Division does not receive your Request for Review form within the 90-day deadline, your review will not proceed unless you successfully apply for an extension of time. Please note that the deadline begins to run on the eighth day after the date of the WorkSafeBC decision, giving a total of 98 days.

Likewise, if the Workers' Compensation Appeal Tribunal (WCAT) does not receive your Notice of Appeal form within 30 days of the date of a Review Division decision, plus eight days for a total of 38 days, your appeal will not proceed unless you successfully apply for an extension of time.

In the uncommon situation of an appeal of WorkSafeBC decision directly to WCAT, the 98-day timeframe applies. For information on when a direct appeal applies, please see our factsheet *Appeals to the Workers Compensation Appeal Tribunal (WCAT)*.

What steps do I need to take to start a late review or appeal?

If the deadline has passed but you still wish to review or appeal the decision, you should **immediately** complete and file the Request for Review or Notice of Appeal form. **The longer the delay, the less likely the extension of time will be granted.**

Also, you will need to complete and file a written application for an extension of time. You should do this at the same time as the Request or Notice form, or as soon as possible afterwards. WCAT has a standard form for such applications, but you may choose to write a letter to supplement or replace the standard form. It is recommended that you review and complete the WCAT Extension of Time application form:

http://www.wcat.bc.ca/research/forms/wcat_15a.pdf. The Review Division has no standard form.

EXTENSION OF TIME APPLICATIONS

What should I put in my extension of time application?

You are trying to persuade the Review Division or WCAT why they should exercise their discretion to allow your review or appeal to proceed even though you missed the deadline. The law requires that they be convinced that:

- Special circumstances precluded you from filing in time, **AND**
- An injustice result if the extension is not granted?

Therefore, your written argument should address both these points, and you should include any documents that support your application. For example, you might include hospital records to show that you were seriously ill over the period of time to file your review or appeal or that you have a physical or psychological condition that affects your ability to understand a decision and/or its consequences.

What counts as special circumstances?

Special circumstances will vary from case to case. Some common factors are:

- You have difficulty with reading and/or understanding English
- You suffer from a serious physical and/or psychological illness
- Your past experiences with WorkSafeBC and lack of experience with the appeal process
- Due to no fault of your own, you did not actually receive the decision until after the deadline passed
- WorkSafeBC or the Review Division did not notify you of your right to appeal and the time limit for doing so
- You retain a representative, and he or she neglects to file in time
- New evidence comes to light that was not reasonably available to you before the deadline

Please note that even if one or more of the above apply to your case, you will still need to show that you acted reasonably in the circumstances. For example, if you changed your address, you would likely be expected to notify WorkSafeBC or the Review Division of that change so that they can send you the decision.

What counts as injustice?

In assessing if an injustice will result, the Review Division and WCAT will consider several factors, including:

- How important is the issue at stake? A small or a large amount of money or benefit? A one-off benefit or an ongoing entitlement?

EXTENSION OF TIME APPLICATIONS

- Does the decision you seek to review or appeal contain an obvious error?
- How long was the delay in filing and what are the reasons for it? Did you file your review or appeal as soon as reasonably possible in the circumstances?

What other factors may be considered?

The factors listed above are not exhaustive, and the Review Division and WCAT have discretion to consider other factors in determining whether or not to allow an extension of time. These include:

- Does the delay prevent the other party from presenting their case properly?
- Does the delay prevent the Review division or WCAT from making a fair determination due to the loss of potential evidence?

What happens next after I complete my Extension of Time Application?

Review Division

The Chief Review Officer will assign a senior Review Officer to make a decision. There are no formal timeframes; however, the Review Division best practices will be to provide a decision usually in less than four weeks. If your extension of time application is denied you **cannot** appeal to the WCAT. However, you can request **reconsideration** by sending your Extension of Time application and specifically address it to the **Chief Review Officer**.

You will find the relevant sections in the Review Division *Practices and Procedures Manual* (paragraphs A2.4.2 through A2.4.2.6) at

<https://www.worksafebc.com/en/resources/review-appeal/guide/review-division-practices-and-procedures-bill-23>

The Review Division will consider the decision you wish to review only if your extension of time is granted.

WCAT

Upon receiving your application, the Registrar will assign your file to a Vice Chair make a decision on it. There are no formal timeframes at WCAT. The WCAT decision is final and conclusive, and there is no further right of appeal.

You will find the relevant sections in the WCAT *Manual of Rules of Practice and Procedure* (paragraph 8.2) at

<http://www.wcat.bc.ca/research/mrpp/mrpp.pdf>



EXTENSION OF TIME APPLICATIONS

WCAT will consider the decision you wish to appeal only if your extension of time is granted.

For more information, please contact the Workers' Advisers Office at 1-800-663-4261.