

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: January 2024

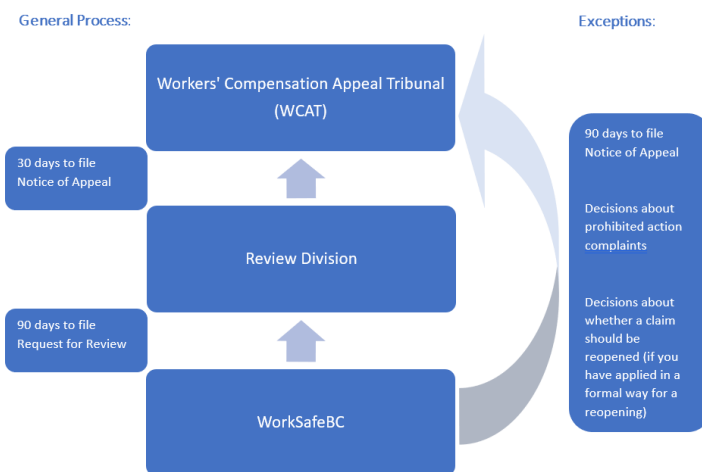
APPEALS TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL

Overview

The Workers' Compensation Appeal Tribunal (WCAT) is an independent organization that workers or employers can go to if they want to appeal a decision from WorkSafeBC. Workers and employers can appeal decisions made by WorkSafeBC about workers' compensation claims, prohibited action complaints, or occupational health and safety orders, if they disagree with the decision.

There are two levels of appeal in the workers' compensation system of British Columbia: the Review Division of WorkSafeBC provides the first level of review for most decisions, and the WCAT provides the second and final level of appeal.

Generally, a decision made by WorkSafeBC must first be reviewed by the Review Division, before the resulting decision can be appealed to the WCAT. There are some exceptions to this general rule. For example, a Review Division decision concerning vocational rehabilitation cannot be appealed to the WCAT, and decisions made by WorkSafeBC about prohibited action complaints cannot be reviewed by the Review Division but must be appealed directly to the WCAT.



Factsheet

APPEALS TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT)

What is the WCAT?

The WCAT is independent of WorkSafeBC and the Review Division. It is an appeal tribunal with the legal authority to change decisions made by WorkSafeBC about specific types of work-related matters, as described in sections 288 and 289 of the *Workers Compensation Act*.

In most cases, the decisions of the WCAT are final and conclusive. Appeals at the WCAT are decided by a Panel. Most Panels consist of a single decision maker, called a Vice Chair.

Who can appeal?

Any person who is directly affected by a decision of WorkSafeBC or a decision made by the Review Division can appeal to the WCAT. This includes workers or employers, and their representatives.

If you file for an appeal, you are the appellant and your employer at the time of your work-injury or other workers' compensation matter will be invited to participate as the respondent. If the employer appeals, it will be the appellant and you will be invited to participate in the appeal as the respondent.

Should I participate in my employer's appeal?

You should consider participating in the employer's appeal if the appeal could affect your WorkSafeBC benefits. To participate in the appeal, you must send a completed Notice of Participation form to the WCAT.

What decisions can be appealed to the WCAT?

Most decisions of the Review Division can be appealed to the WCAT. However, some Review Division decisions are final and cannot be appealed to the WCAT. These include:

- Decisions about vocational rehabilitation benefits;
- Decisions about commutations of permanent disability benefits;
- Decisions about the procedures or conduct of a "review" by a Review Officer (including the denial of a request for an extension of time);
- Decisions about some permanent disability benefits (please contact the Workers' Advisers Office for further information); and
- Decisions that result in a referral back to WorkSafeBC for investigation and a new decision (however, if there are directions provided by a Review Officer concerning the investigation or new decision, the directions that accompany the referral back to WorkSafeBC may be appealed).

Factsheet

APPEALS TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT)

Can I appeal WorkSafeBC decisions directly to the WCAT?

In general, you must go through the Review Division process before you can appeal to the WCAT. However, the following types of decisions must be appealed directly to the WCAT:

- Decisions about prohibited action complaints; and,
- Decisions about whether or not your claim will be reopened if you formally applied for the reopening.

What is the deadline for starting an appeal?

If you are appealing a Review Division decision, your Notice of Appeal must be received by the WCAT within **30 days** of the date of the Review Division decision.

If you are appealing a decision about a prohibited action complaint or decision concerning a formal application for reopening directly to the WCAT, your Notice of Appeal must be received by the WCAT within **90 days** of the date of the WorkSafeBC decision.

Our office recommends that you consider sending in your Notice of Appeal form just before the deadline. This will give you some additional time to get further evidence and prepare for the appeal, in case you need it. However, if you do this, **please be sure not to miss the deadline.** We also recommend that you immediately either request a copy of your claim file or register with WorkSafeBC for online access to your claim file.

How do I start an appeal?

To start an appeal, you need to complete a Notice of Appeal form and submit it to the WCAT so that it is received before the deadline. You can complete the form online at the WCAT's website, or a printed copy can be submitted to the WCAT by mail or fax.

The Notice of Appeal form is available on the WCAT website: <https://www.wcat.bc.ca/home/appeal-a-decision/give-notice-to-start-an-appeal/>. You can also get a form from the WCAT, any WorkSafeBC office, or any Workers' Advisers Office.

You or your representative must sign the Notice of Appeal form. If your representative signs the Notice of Appeal form on your behalf, they must attach an authorization that you have signed, unless your representative is a Workers' Adviser.

The WCAT will send you a letter confirming that your Notice of Appeal form has been received. If this does not happen within a few weeks, please call the WCAT immediately at:

Factsheet

APPEALS TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT)

- Lower Mainland: 604-664-7800
- Toll-free from anywhere in B.C.: 1-800-663-2782

You can also start your appeal by phoning the WCAT and providing your name, mailing address, telephone number, WorkSafeBC claim number(s) and Review Division decision reference number(s). You will also need the date of the Review Division decision letter that you want to appeal. If you phone the WCAT before the deadline for appeal, the WCAT will usually give you an additional 21 days to send in the completed Notice of Appeal form.

Important: When you speak to the WCAT you should ask for an appeal confirmation number as proof that you called before the deadline.

When you send in the Notice of Appeal form, the WCAT will automatically tell WorkSafeBC to send you an updated copy of your claim file.

What happens if my Notice of Appeal is late?

If the WCAT does not receive your Notice of Appeal form by the 30-day or 90-day deadline, you must request an Extension of Time. If the Extension of Time is granted, your appeal will proceed as if it was received on time.

To request an Extension of Time, you need to complete the Extension of Time to Appeal Application form and send it to the WCAT with your Notice of Appeal form. This form is also available online at the WCAT's website: <https://www.wcat.bc.ca/home/appeal-a-decision/give-notice-to-start-an-appeal/ask-for-more-time-to-start-an-appeal/>.

You will also need to send a letter explaining the special reason or reasons why your Notice of Appeal form was late. Your letter must also explain why it would be unjust not to grant your request for an extension. The WCAT has discretion not to allow your request and as a result there is no guarantee you will be granted an Extension of Time.

For more information, please see our factsheet entitled *Extension of Time Applications*.

How are appeals conducted?

Option 1: Read and Review

“Read and Review” is a written appeal process. In this type of appeal, the WCAT panel will read your file and review any arguments and evidence that you provide. It will then make a decision on your appeal without a formal hearing.

Factsheet

APPEALS TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT)

If your appeal proceeds this way, the WCAT will send you a letter telling you when the deadline is for sending your arguments for why the appeal should be allowed and any new evidence. In most cases you will get 21 days from when WorkSafeBC has notified the WCAT that you were sent disclosure of your file. If you need more time, you can ask for it. The WCAT may allow up to 45 days of extra time to send in more arguments and evidence.

For this type of appeal, you can write a letter and tell your side of the story. You can explain in this letter why you think you should get the benefits you want. This is called a written submission. You can also send the WCAT more written information and evidence to support your case, such as letters of support from a doctor or co-worker.

If your employer participates in your appeal, the WCAT will send your employer a copy of your written submission along with any new evidence and will invite your employer to respond. If your employer responds, the WCAT will send you a copy and will give you 14 days to comment on your employer's submissions and evidence.

Option 2: Oral Hearing

The second type of appeal is an oral hearing, which is an opportunity for you and your employer to present evidence in person. You can request an oral hearing on your Notice of Appeal form. If you request an oral hearing you will need to explain on the Notice of Appeal form why you think an oral hearing is necessary. If the WCAT grants your request, it will schedule an oral hearing. You can request for your oral hearing to be conducted by videoconference or in person. The WCAT conducts oral hearings in various cities around B.C. Choose the location that is closest to you from the list of places on the Notice of Appeal form.

You are allowed to have a representative attend the oral hearing with you. You are also allowed to bring witnesses. If you plan to bring a representative or witnesses, you must tell the WCAT before the oral hearing takes place. If your employer participates in your appeal, the WCAT will invite your employer to attend the oral hearing. Your employer may also bring witnesses to the hearing.

At the oral hearing you will be able to tell the WCAT panel your story. You will also be able to explain to the WCAT panel why you think the decision should be changed. If you choose, you can also give the WCAT panel a letter at the hearing that summarizes your case. Please note: you must send in any new written evidence, such as a new medical report, 21 days before the date of the oral hearing. If you cannot meet this deadline, you should contact the WCAT immediately.

What if I am not fluent in English?

If you are not fluent in English, tell the WCAT you need an interpreter at the oral hearing. The WCAT will arrange and pay for an interpreter to be present. Please note: you cannot rely on friends or family members to translate for you, and you must use an interpreter supplied by the WCAT.

Factsheet

APPEALS TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT)

What if I've incurred expenses related to the appeal?

You should make any request for reimbursement in your submission to the WCAT. If you miss work to attend the oral hearing, or if you have to travel over 20 km to a hearing, the WCAT will usually order reimbursement of your lost wages or reasonable travel expenses if you are successful with the appeal. Please note that reimbursement is generally limited to the portion of travel within British Columbia, unless the WCAT required you to attend in person. On application, the WCAT may permit parties or witnesses to attend by videoconference if attending in person is not practical.

You may also incur expenses in order to bring expert evidence or a layperson's evidence to a hearing. For example, if you bring a layperson as a witness to a hearing, that witness may have travel expenses. You might get a doctor's report to support your case, and the doctor may charge you a fee. The WCAT will usually order reimbursement regardless of the outcome of the appeal so long as the evidence helped the panel consider the appeal and you were reasonable in seeking such evidence. However, such reimbursement has limits. Travel must be done in the most economical way possible, and doctor's fees should generally not exceed the British Columbia Medical Association (BCMA) Guidelines. While exceptions can be made, you risk receiving only reimbursement to the limit set out in the BCMA Guidelines.

How long will it take to make a decision?

By law, the WCAT must make a decision on your appeal within 180 days after WorkSafeBC has provided you with disclosure. In complex cases, the panel deciding the appeal can ask the WCAT Chair for more time to complete its decision.

What happens after a decision is made?

The WCAT decision will be sent to you by mail.

If the WCAT decides the appeal in your favour (i.e. allows your appeal or varies the previous decision), the decision will be returned to WorkSafeBC for implementation.

If the WCAT does not decide the appeal in your favour (i.e. denies your appeal or confirms the previous decision), there is no further appeal within the worker's compensation system. The WCAT decision is final, subject to two other processes that are available in limited circumstances: reconsideration or a judicial review. For information on these, see the WCAT's Post Decision Guide:

<https://www.wcat.bc.ca/home/appeal-a-decision/get-a-final-decision/>

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