

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.

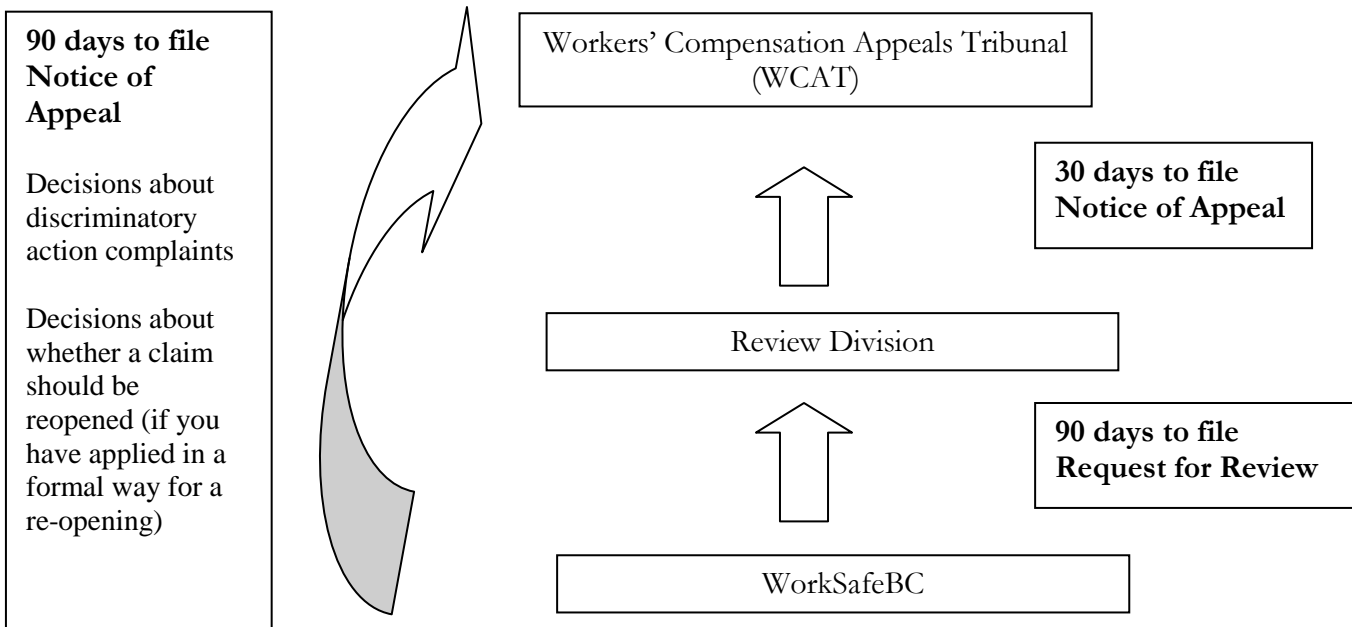
Updated: April 2016

## **APPEALS TO THE WORKERS’ COMPENSATION APPEAL TRIBUNAL (WCAT)**

### **Overview**

If you disagree with a decision that WorkSafeBC has made about your claim, you can appeal that decision. There are two levels of appeal in the workers’ compensation system. For most issues, the first level of appeal is the **Review Division** and the second level of appeal is the **Workers’ Compensation Appeal Tribunal (WCAT)**. An appeal to the Review Division is called a “Review”. An appeal to the WCAT is called an “Appeal”.

There are some exceptions to this general process. For example, decisions about discriminatory action complaints cannot be appealed to the Review Division, but must be appealed directly to the WCAT.



For more information:  
Website: [gov.bc.ca/workersadvisers](http://gov.bc.ca/workersadvisers)

# **APPEALS TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT)**

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## **What is the Workers' Compensation Appeal Tribunal (WCAT)?**

WCAT is an appeal tribunal with the legal authority to change decisions made by WorkSafeBC and the Review Division. WCAT is independent of WorkSafeBC and the Review Division.

Appeals are decided by a Panel. Most Panels consist of a single Vice Chair.

WCAT is the last level of appeal, and in most cases its decision is final and conclusive.

## **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 WCAT.

If you appeal, you are the appellant and your employer will be invited to participate as the respondent. If your employer appeals, your employer 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 your employer's appeal if the appeal could affect your WorkSafeBC benefits. In order to participate in the appeal you must send a completed Notice of Participation form to the WCAT.

## **What decisions can be appealed to WCAT?**

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

- decisions about vocational rehabilitation benefits;
- decisions about commutations of permanent disability awards;
- decisions about the procedures or conduct of a "review" by a Review Officer (including the denial of a request for an extension of time);
- some permanent disability awards (please contact the Workers' Advisers Office nearest you for further information on this); and

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- referrals back to WorkSafeBC for investigations and a new decision. (However, the directions accompany a referral back may be appealed.)

### Can I appeal WorkSafeBC decisions directly to WCAT?

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

- Discriminatory action matters; and
- WorkSafeBC 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 WCAT within **30 days** of the date of the Review Division decision.

If you are appealing a WorkSafeBC discriminatory action or reopening decision directly to WCAT, your Notice of Appeal must be received by WCAT within **90 days** of the date of the WorkSafeBC decision.

Our office recommends that you immediately either request a copy of your claim file or register with WorkSafeBC for online access to your claim file. However, we also recommend that you consider sending in your Notice of Appeal form just before the 30-day 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, **be sure not to miss the deadline.**

### How do I start an appeal?

To start an appeal you need to complete a Notice of Appeal form and send it to WCAT so that they receive it before the deadline.

The Notice of Appeal form can be obtained from WCAT, any WorkSafeBC office, or from any Workers' Adviser office. The form is also available online on the WCAT web site: [www.wcat.bc.ca](http://www.wcat.bc.ca), the WorkSafeBC web site: [www.worksafebc.com](http://www.worksafebc.com), or the Workers' Advisers Office web site: [gov.bc.ca/workersadvisers](http://gov.bc.ca/workersadvisers).

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

Within three weeks, WCAT will send you a letter confirming that your Notice of Appeal form has been received. If this does not happen, you should call WCAT immediately at:

Vancouver area:                   604-664-7800  
Toll Free in BC:                   1-800-663-2782

You can also start your appeal by phoning 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 WCAT before the deadline for appeal, WCAT will give you an additional 21 days to send in the completed Notice of Appeal form.

**Important:** When you speak to 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, WCAT will automatically tell WorkSafeBC to send you an updated copy of your claim file.

### **How do I send my Notice of Appeal form to WCAT?**

You can fax the Notice of Appeal form to WCAT at 604-664-7898.

### **What happens if my Notice of Appeal is late?**

If the WCAT does not receive your Notice of Appeal form within the 30-day or 90-day deadline, your appeal will not proceed. Instead, you will be required to request an Extension of Time.

To request an Extension of Time, you need to complete the Extension of Time to Appeal Application form and send it to WCAT with your Notice of Appeal form.

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

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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 make a decision on your appeal without holding a formal hearing.

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

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 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, WCAT will send your employer a copy of your written submission and new evidence and invite your employer to respond to your submission and send in more information. If your employer sends a response WCAT will send you a copy. WCAT will then give you 14 days to comment on your employer's submission 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 WCAT grants your request, it will schedule an oral hearing.

You are allowed to have a representative attend the oral hearing with you. You are also allowed to bring witnesses. You must tell WCAT before the oral hearing takes place if you plan to bring a representative or witnesses.

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If your employer participates in your appeal, WCAT will invite your employer to attend the oral hearing. Your employer may also bring witnesses to the hearing.

WCAT holds oral hearings in various cities around BC. You can choose the location that is closest to you from the list of places on the Notice to Appeal form. In some cases, WCAT may decide to conduct the oral hearing by telephone.

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 WCAT immediately.

At the oral hearing you will be able to tell the WCAT panel your side of the 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.

### **What if I don't speak English?**

Tell WCAT if you need an interpreter at an oral hearing and they will arrange and pay for an interpreter to be present. You must use the interpreter supplied by WCAT, you cannot rely on friends or family members to translate for you.

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

You should make any request for reimbursement in your submission to WCAT. If you have to travel over 20 km to a hearing, WCAT will usually order reimbursement of your reasonable travel expenses if you are successful on the appeal. However, this is generally limited to the portion of travel within British Columbia, unless WCAT required you to attend in person. On application, WCAT may permit parties or witnesses to attend by teleconference 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. WCAT will usually order reimbursement regardless of the outcome of the appeal so long as the evidence helped WCAT 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 BC Medical Association Guidelines. While exceptions can be made, you risk receiving only partial reimbursement.

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### **How long will it take to make the decision?**

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

### **What happens after the decision is made?**

The WCAT decision will be sent to you by mail.

If WCAT decides the appeal in your favour (allows your appeal or varies the previous decision), your file will be sent back to WorkSafeBC to do whatever WCAT instructs.

If WCAT does not decide the appeal in your favour (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: reconsiderations and juridical reviews. For information on these processes see WCAT's Post Decision Guide:

[http://www.wcat.bc.ca/research/WCAT\\_publications/appeal\\_guides/pdf/post\\_decision\\_guide.pdf](http://www.wcat.bc.ca/research/WCAT_publications/appeal_guides/pdf/post_decision_guide.pdf)

For more information, please contact the Workers' Advisers office nearest to you.