



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.

Factsheet #04
Updated: January 2013

OVERVIEW: REVIEWS & APPEALS

This Factsheet gives an overview of the procedures for reviewing or appealing WorkSafeBC decisions.

Review Division

What is the Review Division?

The Review Division is part of WorkSafeBC, but it is separate from and independent of the operational divisions of WorkSafeBC. The Review Division has two functions:

- To review individual WorkSafeBC decisions, and
- To ensure quality decision-making throughout WorkSafeBC.

Reviews are decided by Review Officers.

Who can ask for a Review?

Workers, self-employed individuals who have purchased Personal Optional Protection, dependants of deceased workers, and employers can ask for a review. If a worker starts a review, the employer will be invited to participate in the review process. If an employer starts a review on a matter which may affect a worker's claim or whether the worker was issued an order by WorkSafeBC, the worker will be invited to participate.

What decisions can be reviewed?

You can request a review of most decisions made by WorkSafeBC, including:

Claims and Rehabilitation

- Whether a claim for compensation should be allowed, the extent of compensation benefits a worker is entitled to (including vocational rehabilitation and medical assistance), and whether a claim should be reopened (if the worker has not applied in a formal way for a re-opening).

For more information:
Website: www.labour.gov.bc.ca/wab



Lower Mainland/Fraser Valley/Kootenays: 1-800-663-4261
Northern & Central Interior: 1-800-663-6695
Vancouver Island: 1-800-661-4066

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- Whether employers and independent operators must pay assessments to WorkSafeBC, and the amount of those assessments.

Occupational Health and Safety

- Whether workers or employers should be given an order documenting their failure to safely carry out work, and/or to require them to change some part of their work process;
- Whether employers have violated the prevention provisions of the Workers' Compensation Act and Regulations;
- Whether a variance should be given from a provision of a regulation;
- Whether a certificate awarded to a first aid attendant or similar person should be cancelled or suspended; and
- Whether an administrative penalty should be imposed on an employer.

Some decisions of WorkSafeBC must be appealed directly to the Workers' Compensation Appeal Tribunal, known as "WCAT".

The following Decisions cannot be the subject of a review:

- Decisions to re-open or not to reopen a claim made after a specific application from the worker(delete b/c it is misleading since it sounds as if the application for reopening has to be made to WCAT which is not the case) ;
- Decisions about discriminatory action complaints; or
- Decisions about an assessment rate of an employer or independent operator.

An appeal of these decisions must be made directly to WCAT.

What is the deadline for requesting a review?

You must ask for a review within **90 days** from the date of the decision.

What if I miss the deadline?

You can ask for an Extension of Time. An Extension of Time to file a Review is only granted in exceptional special circumstances. You must show that you were not able to file the Request for Review on time for special reasons, usually relating to circumstances outside your control. You must also show that an injustice will occur if you cannot go on with the Review. If you show both of those facts, the Chief Review Officer may choose to grant an Extension of Time, at his or her discretion.

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Disclosure

You have the right to receive a complete copy of your WorkSafeBC file when you request a review at the Review Division; this is called disclosure.

What happens in a Review?

A review is started by filing a Request for Review form. Reviews may be decided through written submissions or an oral hearing. Nearly all are decided through written submissions. You are asked to send in any new information and explain why the decision is wrong. Your employer can also send in comments and information. You are then given a chance to respond. The Review Officer will then make a decision.

How quickly will a decision be made?

The Review Division must make its decision within 150 days after the Request for Review was filed.

What if I disagree with the Review Division's decision?

You can appeal most decisions of the Review Division to WCAT. Every Review Division decision except the following can be appealed to WCAT:

- Decisions regarding Vocational Rehabilitation benefits;
- Some decisions regarding permanent disability awards, generally related to the level of a functional impairment award to which no change or only very small changes would be permitted by law and policy (consult your local Workers' Advisers Office for more information if you think this is relevant to you);
- Decisions regarding commutations of permanent disability awards;
- Decisions regarding orders issued by the WorkSafeBC, except those used to impose an administrative penalty or to cancel or suspend a certificate; or
- Decisions regarding the conduct of a Review (including a decision regarding an application for an Extension of Time).

Workers' Compensation Appeal Tribunal

Appeals of Review Division decisions and a few WorkSafeBC decisions are decided by the Workers' Compensation Appeal Tribunal (WCAT).

Important: You must start a review or an appeal within strict time limits.

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For detailed information about reviews and appeals refer to:

- Reviews of WorkSafeBC Compensation or Rehabilitation Decisions Factsheet, and
- Appeals to the Workers' Compensation Appeal Tribunal (WCAT) Factsheet.

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

WCAT is an independent appeal tribunal established under the *Workers Compensation Act*. WCAT is not part of WorkSafeBC. WCAT hears and decides appeals of most Review Division decisions and a few decisions made by WorkSafeBC.

Who can appeal to WCAT?

Workers, self-employed individuals who have purchased Personal Optional Protection, dependants of deceased workers and employers can appeal to WCAT. If a worker starts an appeal, the employer will be invited to participate. If an employer appeals to WCAT on a matter impacting a worker's claim, the worker will be invited to participate.

What is the deadline to start an appeal?

The deadline for appealing a Review Division decision to WCAT is **30 days** from the date of the Review Division decision.

The deadline for appealing a WSBC decision directly to WCAT is **90 days** from the date of WorkSafeBC decision.

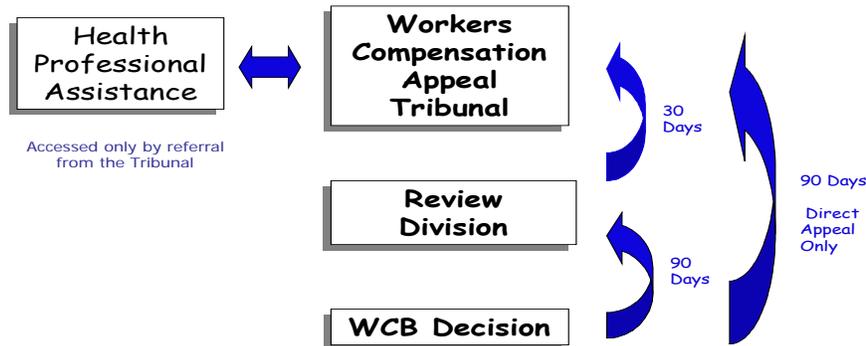
What if I miss the deadline?

You can apply for an Extension of Time, and show that special circumstances made it difficult for you to request an appeal by the deadline and that an injustice would result if your appeal were not heard. If WCAT agrees, it may grant your request.

Important: Do not confuse the two deadlines.

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APPEALS PROCESS



Disclosure

When you start an appeal, WCAT will automatically tell the WorkSafeBC to send you an updated disclosure of all new information on your file. If you do not receive updated disclosure within several weeks after filing your appeal, you may want to contact the WorkSafeBC Disclosure Department to inquire if there is anything new on your file. The Disclosure Department can be reached by telephone at the following numbers:

Vancouver: 604 279-7607
 Toll Free in B.C.: 1 888 967 5377, local 7607

What happens in an Appeal?

The appeal process is started by filing a Notice of Appeal form.

Appeals may be decided through an oral hearing or through written submissions.

WCAT will send you a letter asking you for your evidence and written submissions. If the appeal is considered at an oral hearing you are expected to send any new evidence to WCAT 21 days before the date of the hearing.

Your employer is given a chance to respond to your evidence or attend the hearing. If the employer sends a response in to WCAT, you will have a chance to provide a final rebuttal.

If you need more time you can ask WCAT for more time. You must meet any deadlines unless you are given more time.

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How quickly will a decision be made?

WCAT must make a decision on your appeal within 180 days from the date disclosure is printed. WCAT is permitted more time in complex cases.

What if I disagree with the decision?

WCAT decisions are final. In very limited circumstances, you can ask WCAT to reconsider a decision. To be granted reconsideration at WCAT, you must show that the decision was “patently unreasonable”. This means there must have been a severe or overriding error in the appeal process or decision.

You may apply for a reconsideration if you believe you have new and relevant evidence that you could not have obtained before the WCAT decision was made and which is significant enough to have altered the decision. If you think you may have a case where reconsideration may be possible, you should speak to a union representative, Workers’ Adviser or someone else knowledgeable in WCAT procedure.