

## 5 HOW TO APPEAL

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There is a 30 day time limit for appealing a decision of a review officer to WCAT. There is a 90 day time limit for appealing a decision of a Board officer concerning a discriminatory action complaint [s. 153] or concerning a reopening application [s. 96(2)] to WCAT.

An appeal may be initiated by filing a notice of appeal with WCAT. A notice of appeal must [s. 242(2)]:

- (a) be made in writing or in another form authorized by WCAT's rules,
- (b) identify the decision or order that is being appealed,
- (c) state why the decision or order is incorrect or why it should be changed,
- (d) state the outcome requested,
- (e) contain the name, address and telephone number of the appellant and, if the appellant has an agent to act on their behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,
- (f) include an address for delivery of any notices in respect of the appeal, and
- (g) be signed by the appellant or the appellant's agent.

If the notice of appeal is deficient, WCAT will allow a reasonable time for it to be corrected [s. 242(3)]. If the appellant does not correct the deficiencies within the time allowed, WCAT will close the appeal as incomplete and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (s. 243(3), and items 8.2 to 8.2.4).

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### 5.1 Initiating an Appeal

#### 5.1.1 Notice of Appeal Must Be in Writing

**RULE:** An appellant may initiate an appeal in any written form which provides the information required by section 242(2). This may be done by delivering, mailing or sending by facsimile transmission (fax) to WCAT a completed notice of appeal form, letter, or other document containing the required information in English. WCAT will treat receipt of a written notice to appeal by the Review Division or by any Board office as receipt by WCAT.

Where the appeal is initiated by fax, it is not necessary to send WCAT the original document. Where the appellant also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.

An appellant must meet the requirements of section 242(2) or WCAT will not consider an appeal to be initiated.

WCAT notice of appeal forms are accessible on the WCAT website at: [www.wcat.bc.ca](http://www.wcat.bc.ca).

Once WCAT suspends an appeal under section 252(1), WCAT will notify all participating parties and clearly identify the pending decision of the Board or review officer. When an appeal is suspended, a deferral of compensation payable due to a review officer's decision continues.

At any time before the Board or review officer issues the pending decision, the appellant may ask WCAT to continue the appeal. WCAT may grant the request or may continue the suspension [s. 252(3)]. WCAT cannot continue the appeal on its own initiative or at the request of the respondent.

When the Board or review officer, as the case may be, issues their decision on the related matter, the appellant has 30 days after the date of the decision to ask WCAT to proceed with the suspended appeal [s. 252(2)]. WCAT must then reactivate and continue the appeal. If the appellant does not ask WCAT to proceed with the suspended appeal within 30 days, WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to continue the appeal [s. 252(4) and items 8.2 to 8.2.4].

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The appellant must ask WCAT to reactivate the suspended appeal within 30 days even if the appellant intends to appeal or request a review, as the case may be, of the new decision. Where the new decision was issued by the Board, the appellant may ask WCAT to re-suspend the appeal after they have filed their request for review with the Review Division.

## 8.5 Withdrawals

**RULE:** An appellant may withdraw an appeal by right at any time before the appeal has been assigned to a panel.

**After assignment, WCAT will decide whether to allow a request for withdrawal. The request for withdrawal will normally be granted.**

**Requests for withdrawal must be made in writing, or in person at an oral hearing.**

Parties to a withdrawn appeal may request reimbursement of expenses associated with obtaining or producing evidence that was submitted to WCAT with respect to the appeal. In deciding whether to reimburse the expenses, WCAT will apply the criteria set out in item 16.1.3.

WCAT's decision to accept the withdrawal of an appeal that has met the requirements of section 242(2) is final and conclusive. If the appellant later wishes to pursue the appeal, they must apply for reconsideration of the withdrawal decision (items 20.2 to 20.3.2).

Where an oral hearing is scheduled, the request for an order must be made at least 14 days in advance. Where there is no oral hearing, the request for an order must be made at least 14 days before the party's written submission is due. Otherwise, WCAT is under no obligation to consider the request in advance. The party may later repeat a request for an order to the panel.

In deciding whether to issue an order under section 247(1), WCAT will consider whether there are other means for obtaining the same evidence, the relevance of the evidence and, if applicable, the reason for the unwillingness of a witness to attend, or a person in possession of documents to provide evidence, voluntarily.

The panels will sign an order under section 247(1) in a form approved by WCAT (see Appendix 9 as modified from time to time). A person served with an order compelling their attendance at a hearing is entitled to conduct money payable at the time of service (Supreme Court Rule 40(38)). A witness is not obligated to attend if the conduct money is not paid. A person served with an order compelling the production of documents is entitled to payment of the reasonable costs of copying and delivering the documents, payable in advance.

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WCAT will be responsible for service and payment of conduct money and/or the costs of production of documents.

### 11.7.1 Depositions

WCAT may order depositions of witnesses (in or out of province) in accordance with the Supreme Court Rules [s. 247(2)].

### 11.7.2 Non-Participating Party

A party may ask the panel to issue an order compelling the attendance of another party who is not participating in the hearing. Where the employer is a limited company, an officer or employee of the company may be required to give evidence on behalf of the company.

### 11.7.3 Failure to Comply

If a person fails to comply with an order issued under section 247(1), WCAT may apply to the Supreme Court for an order directing compliance [s. 247(1.1)]. The panel may adjourn the hearing to allow for this. If a person summoned as a witness fails to attend a hearing, take an oath or affirmation, answer questions or produce the records or things in their possession, WCAT may apply to court for committal of that person for contempt [s. 49(1), ATA].

The terms of reference the panel provides will also include information required for the health professional's review. This may include parts of the claim file(s), appeal documents, WCAT-requested medical records, or audio/video evidence.

#### 12.4 Suspension Pending Health Professional's Report

WCAT will suspend an appeal from the time the panel provides the registrar's office with the completed terms of reference until WCAT receives the health professional's written report [s. 249(12)].

#### 12.5 Medical Examination

For a health professional to provide independent assistance or advice under section 249, a medical examination is not required.

If the health professional considers it necessary to examine the worker in order to provide the assistance or advice, WCAT will give written notice to the worker to attend for an examination [s. 249(8)]. Where a medical examination is conducted, the health professional may determine the form and nature of the examination.

##### 12.5.1 Expenses for Medical Examination

Where a worker is required to travel to attend an examination by the independent health professional, WCAT will direct the Board to pay for the necessary arrangements for travel and accommodation. WCAT will also direct the Board to reimburse the worker's expenses for attending the examination according to their criteria (see item 100.14 of the *Rehabilitation Services and Claims Manual, Volumes I and II (RSCM)*). Such expenses may include lost time from work, and child care.

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##### 12.5.2 Failure to Attend or Obstruction of the Examination

**RULE:** Pursuant to section 14(c) of the ATA, a written notice of examination given by WCAT is an order to the worker to appear at the time and place stipulated.

If a worker fails to attend the examination, or obstructs that examination without reasonable cause, the health professional will return the matter to the panel for direction. The panel may, after giving notice to the worker, do one or more of the following [ss. 249(9) and 246(5) WCA, s. 31(1)(e) ATA ]:

- (a) direct the health professional to reschedule the examination of the worker and give the worker notice of the rescheduled examination;
- (b) direct the health professional to provide a report without examining the worker;
- (c) decide the appeal on the available evidence;
- (d) determine that the worker has abandoned the appeal;
- (e) dismiss the appeal.

**NOTICE TO THE PERSON SERVING THE ORDER:**

The proper witness fees must be tendered when the summons is served.

1. For each day or part of a day travelling to and from or attending to give evidence at any hearing: \$20.00
2. Travel allowance, where the hearing is held at a place
  - Within 200 kilometers by road (including any ferry route within the Provincial road system) of where the witness resides, 30 cents per kilometre each way by road between his or her residence and the place of hearing; provided that no travel allowance shall be made if the distance by road between that residence and the place of hearing is less than 8 kilometers. This allowance includes ferry fares and road tolls; and
  - More than 200 kilometers from where the witness resides, the minimum return air fare by scheduled airline plus 30 cents per kilometre each way from his or her residence to the departure airport and from the arrival airport to the place of hearing.
3. A reasonable allowance for meal expenses made necessary by the witness' attendance, and where the witness resides elsewhere than the place of hearing and is required to remain overnight, a reasonable allowance for overnight accommodation.
4. A reasonable sum shall be allowed for the time employed and expenses incurred by the witness in preparing to give testimony when that preparation is necessary.
5. A person served with an order compelling the production of documents is entitled to payment of the reasonable cost of copying and delivery payable in advance by the requesting party.

**NOTICE TO THE WITNESS:**

Take notice that, pursuant to section 247 of the *Workers Compensation Act* and the Manual of Rules of Practice and Procedure, WCAT has the same power to enforce your attendance as has a court in civil cases.

If a person fails to comply with an order issued under section 247(1), WCAT may apply to the Supreme Court for an order directing compliance, pursuant to section 247(1.1) of the *Workers Compensation Act*.

Internet users are responsible for ensuring that their use of Internet access is appropriate and consistent with ethical conduct under the current applicable policy. This policy does not prohibit members from making or receiving occasional brief electronic messages or private telephone calls.

## 2.6 Accepting Gifts

Members must not directly or indirectly ask for or accept a gift, favour, service, or promise of future benefit from any individual or organization who appears before WCAT.

This provision is not intended to prohibit the normal presentation of gifts to persons participating in public functions, or the normal exchange of gifts between friends that does not amount to a real or apparent conflict of interest, or does not otherwise call into question the member's objectivity and impartiality. This provision is also not intended to prohibit infrequent attendance at lunches, dinners, or public events of a common and reasonable nature in the company of an individual or representative of an organization which regularly appears before WCAT.

If there is any doubt regarding the propriety of accepting a gift or accepting an invitation to attend an event, the member should consult with the chair.

## 2.7 Outside Activities

Members must ensure that their outside activities do not interfere with the impartial, effective, and timely performance of their responsibilities. Members must not engage in activities that bring WCAT into disrepute. Unless so authorized by the chair, members must not perform outside activities in a manner that appears to be officially supported by or connected to WCAT, or appears to represent WCAT opinion or policy. Members must not use their position in WCAT to lend weight to the public expression of a personal opinion. Members must not use WCAT letterhead for personal correspondence or non-WCAT related matters.

Members are free to engage in political activities so long as they are able to maintain their impartiality and the perception of impartiality in relation to their duties and responsibilities. Members' political activities must be clearly separated from activities related to their role as members. Members must not engage in political activities during working hours or use WCAT facilities, equipment, or resources in support of such activities.

Members will not introduce partisan politics at the local, provincial, or national levels into the workplace. This does not apply to informal private discussions among co-workers.

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