



Appealing a Review Division Decision

Employer's Guide

As an employer, you can appeal most Review Division decisions to us at the Workers' Compensation Appeal Tribunal (WCAT). This Guide shows you how to do so.

WHAT KIND OF REVIEW DIVISION DECISIONS CAN I APPEAL TO WCAT?

You can appeal most Review Division decisions to us. You need to ensure that we receive your appeal within **30 days** of the date of the Review Division decision.

Note: We cannot decide any issue or question that was not contained in the WorkSafeBC or Review Division decision. If you want a decision on something new, you must ask WorkSafeBC for it.

Here are three decision categories with some typical examples:

1. Compensation Decisions

- Whether a worker was injured on the job
- Whether a worker suffers from an occupational disease caused by the job
- How long a worker is entitled to short-term disability benefits
- How WorkSafeBC calculated a worker's average earnings or wage rate
- Most permanent disability awards
- Whether WorkSafeBC should reopen a worker's claim

2. Assessment Decisions

- Whether you should be relieved of all or part of the costs of a claim under section 39(1)(e) of the *Workers Compensation Act* (Act) because a worker had a pre-existing

disease, condition, or disability that increased his or her compensable disability

- Your assessment classification unit
- The amount of your assessable payroll
- Whether you have to pay the costs of a claim under section 47(2) of the Act because you did not send required information to WorkSafeBC or pay an assessment
- Your claims experience rating under section 42 of the Act
- Whether another employer should have to pay the costs of a claim under section 10(8) of the Act

3. Occupational Health & Safety (Prevention) Decisions

- An order that WorkSafeBC relied upon to impose a penalty for an occupational health and safety violation (see section 196(1) of the Act)
- A penalty for an occupational health and safety violation
- A decision to charge you for claim costs where a worker was injured, died, or was disabled by an occupational disease under any of these circumstances:
 - You were grossly negligent
 - You did not adopt reasonable means to prevent injuries, deaths, or occupational diseases
 - You did not comply with WorkSafeBC orders or directions (see section 73(1) of the Act)

- An order to cancel or suspend one of the following certificates:
 - A certificate of an occupational first-aid attendant or instructor
 - A medical certificate of a worker's fitness for a specific type of work
 - A certificate of a blaster or blasting instructor

(see section 195 of the Act)

WHAT MATTERS CAN'T I APPEAL?

You cannot appeal some Review Division decisions to us. Here are some typical examples of decisions you cannot appeal:

- A decision regarding vocational rehabilitation assistance
- A decision about whether or not to refer a decision back to WorkSafeBC
- A decision not to give more time to bring your review to the Review Division
- The way a review officer handled a review
- A request to make a lump-sum award (that is, to commute an award) for a permanent disability
- Your assessment rate group or industry group
- Other decisions respecting orders under Part 3 of the Act
- Conditions placed on a certificate of an occupational first-aid attendant or instructor, a worker's fitness for a specific type of work, or a blaster or blasting instructor.

WHO CAN PARTICIPATE IN MY APPEAL?

1. A *“Participating Respondent”*

A participating respondent has the right to respond fully to an appeal, including receiving a copy of the WorkSafeBC file, presenting evidence, examining witnesses at a hearing, and making verbal or written arguments.

Here are some examples of participating respondents:

- The worker or dependants of a deceased worker on compensation appeals
- A supplier, owner, union representative, or any family member of a deceased worker on occupational health and safety appeals
- Another employer or group of employers on other assessment appeals, such as employer classification and cost transfer

2. A *“Participating Person” or “Representative Group”*

- For appeals asking for relief of costs or transfer of costs, we will invite a worker to provide relevant information
- In appeals concerning penalties for occupational health and safety violations, we will invite the joint health and safety committee or the worker health and safety representative, and the worker representative named in the inspection report to provide relevant information
- In occupational health and safety and assessment appeals, we may invite WorkSafeBC to participate by providing relevant information

HOW DO I START MY APPEAL?

You have **30 days** to appeal a Review Division decision to us.

You can start your appeal in one of these ways:

1. Fill out a *Notice of Appeal* (Compensation or Non-Compensation) form at www.wcat.bc.ca. You will find the forms under the **Forms** tab. If you are not familiar with our appeal process, these forms will help you enter all the required information successfully. Print the completed form, sign it, and send it to us.
2. Print a blank *Notice of Appeal* (Compensation or Non-Compensation) form from www.wcat.bc.ca, fill it out, sign it, and send it to us. You can also telephone us and we will send you a *Notice of Appeal* form. In order to keep your appeal active, you need to ensure that we receive your completed form within **21 days**.
3. Send a letter telling us why you think the earlier decision is wrong. State the specific results you want us to determine, such as the amount of a penalty. Include your name, address, telephone number, WorkSafeBC claim or file number, the date of the decision you are appealing, and your signature.

If you have a copy of the Review Division decision available, please include the first page with your *Notice of Appeal* form or letter.

You will find our telephone, fax, and mailing address at the end of this Guide.

Note: You do not need all your information and evidence before you appeal. We will later give you the opportunity to strengthen your appeal by

providing more information and evidence, either through written or verbal submissions.

WHAT IF THE WORKER AND I DISAGREE WITH THE SAME DECISION BUT ON DIFFERENT ISSUES?

Review Division decisions often contain many issues. We usually make our decision only on the issues raised by the appellant in the *Notice of Appeal* and the written or oral submissions. You should file your own appeal (cross appeal) to ensure that we consider your issue. If a worker later drops (withdraws) their appeal, and you have not filed your own appeal, you will have to apply for an extension of time, running the risk that this might not be granted.

WHAT HAPPENS AFTER I SEND YOU MY APPEAL FORM OR LETTER?

We will send you a letter confirming that we have received your appeal and giving you an appeal number. We may also ask you for more information if your appeal form or letter does not seem complete. In order to keep your appeal active, you need to ensure that you give us all the information we request within **21 days**.

Call us if you do not receive this letter within 21 days from the date you sent in your appeal.

Depending on the type of decision you are appealing, we will notify the appropriate respondents, and other persons or groups of your appeal, and invite them to participate in it.

We will then ask WorkSafeBC to send you “disclosure” (an updated copy of the WorkSafeBC file). If a respondent is

participating in your appeal, WorkSafeBC will also send them disclosure.

You should start gathering your information and evidence now because it may take some time to get it, especially medical evidence.

WHAT IF I APPEAL TOO LATE?

If your appeal is late, you may be able to get an extension. We'll ask you if special circumstances prevented you from appealing within the time limit. You can read more about acceptable reasons for extensions on our website. See items 8.2 and following in our *Manual of Rules of Practice and Procedure* (MRPP). You will find it on our website (www.wcat.bc.ca) under the **MRPP** tab.

If you require an extension, please explain your reasons for appealing late on the *Extension of Time to Appeal Application* form or in your letter of appeal. If you don't give us an explanation, we will mail you an *Extension of Time to Appeal Application* form to fill out and return. In order to keep your appeal active, you need to ensure that we receive your completed form within **21 days**.

HOW WILL MY APPEAL PROCEED?

You will make your appeal either verbally (at an oral hearing) or in writing (through written submissions). You can ask for the method you prefer, though we will make the final decision.

Normally, we use oral hearings for appeals involving credibility, when the evidence is conflicting, or when a vice chair thinks it would provide the best way to fully understand an appeal. Oral hearings are also often used

where an appellant finds it challenging to communicate easily in written English.

The other method of appeal is by written submissions. This method is often suitable for appeals that deal with medical, legal, or policy issues.

To learn more about both oral and written submission appeals, please ask us for the relevant guide, or look for it on our website under the **Information Guides** tab.

HOW LONG WILL MY APPEAL TAKE?

You can expect us to decide your appeal within six months from the date that WorkSafeBC gives you disclosure. If your appeal is complicated, reaching a decision may take us more than six months.

If we ask you to present your appeal to us verbally, we will give you a specific time and date for an oral hearing. Please tell us immediately if you need a different date than the one we set for you.

If we ask you to give us a written submission to support your appeal, you have 21 days to send it to us. If you need more time, you may ask for up to 45 more days. If you do receive more time, any other participating party may also receive the same amount of extra time to provide their written submission.

CAN I PUT MY APPEAL ON HOLD?

You can ask us to put your appeal on hold (suspend your appeal), if there is a related matter still before WorkSafeBC, including the Review Division. Put your request to suspend your appeal in writing and we will inform you

of our decision. You can later ask us to go ahead with your appeal without waiting for WorkSafeBC's decision on the related matter.

If your appeal is still on hold when WorkSafeBC sends you its decision on the related matter, ensure that you ask us to continue your appeal **within 30 days**. Otherwise, we will assume you are satisfied with the result and close your appeal.

DO I NEED SOMEONE TO REPRESENT ME?

You may appeal on your own of course, but you might also want to ask for assistance from someone familiar with the workers' compensation system, such as a lawyer, a compensation consultant, or an employers' association.

You can get free help with your appeal from an employers' adviser (see the end of this Guide for contact information).

To protect your privacy, we will not discuss your appeal with anyone but you unless you authorize a representative on the *Notice of Appeal* form. You can also file an *Authorization of Representative* form that gives us permission to do so. You will find both forms on our website under the **Forms** tab.

HOW CAN I SPEED UP MY APPEAL?

WCAT receives thousands of appeals each year. Your appeal will proceed more quickly if you:

- Include your WorkSafeBC file number and your WCAT appeal number on everything you send to WCAT.

- Write to us if you change your address or your representative.
- Send us new evidence that supports your appeal as soon as possible.
- Answer any questions we may have about your appeal as soon as possible.
- Attend your oral hearing on the scheduled date, or send us your written submission by the deadline we give you.

WHAT IS A STAY, WHY WOULD I WANT ONE, AND HOW DO I GET ONE?

A stay is when we order a delay in the implementation of a WorkSafeBC decision (section 244 of the Act). Appealing a WorkSafeBC decision does not automatically delay its implementation. A stay is an extraordinary remedy.

You might ask us for a stay of a decision that requires your firm to pay a penalty. If we approve a stay, you would not have to pay the penalty while we are considering your appeal. You can apply for a stay on the *Stay Application* form (look for it on our website under the **Forms** tab).

We will evaluate your stay application in terms of the following factors:

- Whether your appeal shows that it has merit
- Whether you would likely suffer serious harm if the stay were not granted (such as loss of a business)
- Which party would suffer more if the stay were granted or denied

- Whether granting the stay would endanger workers

We will not process your stay application if your appeal is late, or is missing important information, or if you do not send us your written submission about the above factors, either with your stay application or within seven days after we receive your *Notice of Appeal* form.

WHERE CAN I FIND MORE INFORMATION?

You will find more information about starting an appeal, including the *Notice of Appeal* forms, on our website (www.wcat.bc.ca) under the **Starting an Appeal** tab.

For more information about a WorkSafeBC claim or a review at the Review Division, please contact:

WorkSafeBC: 1 888 967-5377
Review Division: 1 888 922-8804

WHERE CAN I GET HELP WITH MY APPEAL?

You can get free help with an appeal from an employers' adviser at one of these locations:

EMPLOYERS' ADVISERS

Website: www.labour.gov.bc.ca/eao

VANCOUVER/LOWER MAINLAND REGION

Abbotsford

207 - 32555 Simon Avenue
 Abbotsford, BC V2T 4Y2
 Telephone: 604 870-5492
 Fax: 604 870-5498
 Toll Free within BC and
 Alberta: 1 866 870-5492

Richmond

620 - 8100 Granville Avenue
 Richmond, BC V6Y 3T6
 Telephone: 604 713-0303
 Fax: 604 713-0345
 Toll Free within BC and
 Alberta: 1 800 925-2233

VANCOUVER ISLAND REGION

Nanaimo

404 - 495 Dunsmuir Street
 Nanaimo, BC V9R 6B9
 Telephone: 250 741-5500
 Fax: 250 741-5508
 Toll Free within BC and
 Alberta: 1 866 827-2277

Victoria

400 - 3960 Quadra Street
 Quadra Centre
 Victoria, BC V8X 4A8
 Telephone: 250 952-4821
 Fax: 250 952-4822
 Toll Free within BC and
 Alberta: 1800 663-8783

INTERIOR REGION

Kamloops

101 - 70 Second Avenue
 Kamloops, BC V2C 6W2
 Telephone: 250 828-4397
 Fax: 250 828-4563
 Toll Free within BC and
 Alberta: 1 866 301-6688

Kelowna

102 - 1726 Dolphin Avenue
 Kelowna, BC V1Y 9R9
 Telephone: 250 717-2050
 Fax: 250 717-2051
 Toll Free within BC and
 Alberta: 1 866 855-7575

Prince George

206 - 1577 7th Avenue
 Prince George, BC V2L 3P5
 Telephone: 250 565-4285
 Fax: 250 565-4288
 Toll Free within BC and
 Alberta: 1 888 608-8882

Trail

Room 2
 1050 Eldorado Street
 Trail, BC V1R 3V7
 Telephone: 250 364-0730
 Fax: 250 364-0731
 Toll Free within BC and
 Alberta: 1 877 877-5524

WCAT INFORMATION GUIDES

*Appealing a Review Division Decision -
Worker's Guide**

*Appealing a Review Division Decision -
Employer's Guide**

*Respondent's Guide**

*Oral Hearing Guide**

*Written Submission Guide**

*Medical Evidence Guide**

*Post Decision Guide**

Judicial Review Guide

*Legal Action Guide
(Section 257 Certificate)*

Direct Appeal Guide for Workers

Direct Appeal Guide for Employers

* These Guides are also available on our website in Punjabi, Chinese (Traditional) and Chinese (Simplified)

WCAT CONTACT INFORMATION

Website: www.wcat.bc.ca

Telephone: 604 664-7800

Fax: 604 664-7898

Toll Free within BC: 1 800 663-2782

Mailing Address:

Workers' Compensation Appeal Tribunal
150 - 4600 Jacombs Road
Richmond, BC V6V 3B1