

### WHAT HAPPENS NOW?

Your WCAT decision is final and conclusive. You cannot appeal it.

After we make a decision to allow an appeal, WorkSafeBC will implement our decision.

Please contact the WorkSafeBC officer or the department handling the claim regarding any questions you may have about how and when they will implement our decision. We do not supervise the implementation of our decision.

### CAN WE CORRECT OUR DECISION?

Yes. Although WCAT decisions are final and conclusive, we can correct any accidental errors or omissions (such as typographical or arithmetic errors) that we notice in our decision. If you notice any such errors that we may have missed, please let us know as soon as possible by writing to us and, if the vice chair agrees, we will correct these as well.

We try to make all such corrections within **90 days** of the date we send our decision to you.

### CAN WE CLARIFY OUR DECISION?

Yes. Although WCAT decisions are final and conclusive, we can clarify our decision if it is not clear. We cannot clarify our decision unless you ask us to do so in writing within **90 days** of the date we send you our decision. The vice chair will decide whether clarification is necessary.

### WHAT IF WE DID NOT DECIDE ALL THE ISSUES ON YOUR APPEAL?

If WCAT did not decide an issue contained in the appeal, please let us know by writing to us. If the panel who issued the decision agrees that it did not decide an issue contained in the appeal that it was required to decide, it will complete the decision by writing an addendum.

### CAN WE CHANGE OUR DECISION?

Yes, we can change the outcome of our final decision but only in very limited circumstances. If the decision contains a jurisdictional error or if there is new evidence that was not available when the vice chair was making the decision, WCAT may rehear all or part of the appeal and may come to a different conclusion. WCAT calls this two-step process a reconsideration<sup>1</sup>. See below for additional information about the grounds for reconsideration.

Only the appellant or the respondent (or their representatives) can apply for reconsideration of our decision.

### HOW DO I APPLY FOR A RECONSIDERATION?

Please fill out the *Application for Reconsideration* form and send it in to Tribunal Counsel Office by email, fax or mail. You will find the form on our website at [www.wcat.bc.ca](http://www.wcat.bc.ca) under the **Forms** tab. You can also telephone us and we will send you one. If your application for reconsideration is on new evidence grounds, you should send in the new evidence along with your application.

You can also apply for reconsideration by writing a letter to Tribunal Counsel Office explaining how you meet the grounds for reconsideration (see *Can we reconsider our decision?* above).

### IS THERE A TIME LIMIT TO APPLY FOR RECONSIDERATION?

There is no time limit for applying for reconsideration on the basis of new evidence or jurisdictional error.

<sup>1</sup>For ease of reference we refer to both a reopening under section 253.1 of the Workers Compensation Act (Act) and a reconsideration under section 256 of the Act as a "reconsideration".

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### WHAT IS NEW EVIDENCE?

For evidence to be new it must not have existed at the time your appeal was being decided or, if it did exist, you did not know about it and you would not have been able to find it if you had tried. That is to say, if the evidence existed you must show that you exercised reasonable diligence in trying to obtain the evidence before WCAT decided your appeal. For example, while an opinion from your doctor may be new in the sense that it was prepared after the date of WCAT's decision it may not be new for purposes of reconsideration if you could have obtained the same opinion during the appeal.

New evidence must be substantial, that is, have weight and support a different conclusion. It must also be material, that is, it must be relevant to the decision. For example, a new medical opinion based on a newly introduced medical test might be new evidence, while the opinion of a new specialist confirming a medical opinion already on the file might not.

### WHAT IS A JURISDICTIONAL ERROR (DEFECT)?

For purposes of reconsideration, WCAT will have committed a jurisdictional error if it decided a matter that WCAT had no power to decide, failed to decide a matter that WCAT was required to decide, or was procedurally unfair. WCAT has the power to cure these kinds of jurisdictional errors.

The first two kinds of jurisdictional error referenced above are matters of narrow (or "true") jurisdiction. WCAT would make a jurisdictional error of the first kind if, for example, it tried to make a binding decision about a residential tenancy matter. WCAT only has authority to determine appeals of worker's compensation matters. WCAT would make a jurisdictional error of the second kind if, for example, a worker properly appealed a decision regarding a wage rate but WCAT failed or refused to make a decision on this issue.

WCAT will also have committed a jurisdictional error if it made a patently unreasonable finding of fact or law or exercised its discretion in a patently unreasonable manner. Whether WCAT has committed one of these errors is a question of broad jurisdiction (or amounts to a "loss" of jurisdiction). WCAT does not have the power on reconsideration to cure these errors.

A procedural unfairness occurs when WCAT does not act fairly. Procedural fairness relates to WCAT's decision making process, not to the outcome of the appeal. For example, it would be procedurally unfair for WCAT to refuse to allow you any opportunity to make a submission in an appeal. To qualify for reconsideration because of an unfair procedure, you must show that WCAT did not act fairly in all the circumstances.

### HOW MANY TIMES CAN I APPLY FOR RECONSIDERATION?

You can apply for reconsideration of a WCAT decision on each ground once. This can be at the same time or at separate times if you want to apply for a reconsideration on both grounds. It is important not to apply for reconsideration until you are ready.

If more than one decision was appealed to WCAT, and we administratively joined them so that we only issued one decision, you can bring separate reconsideration applications for each appeal on new evidence grounds. But, if your new evidence is relevant to more than one of the joined appeals, you must apply for reconsideration of all of them at the same time. If you believe the decision contains one or more jurisdictional defects, you may only bring one reconsideration application regardless of whether the alleged defects relate to different appeals.

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### HOW DOES THE RECONSIDERATION PROCEED?

Tribunal Counsel Office will examine your application to see if you have set out potential grounds for reconsideration. If you have, they will send your application to our Registry. If you were the appellant, the Registry will then invite the respondent to participate in the reconsideration even if they did not participate in the appeal. If you were the respondent, the Registry will then invite the appellant to participate in the reconsideration.

The Registry will invite written submissions from the appellant and the respondent. Once submissions are complete, the Registry will forward your reconsideration application together with all written submissions to the panel. In most cases, the panel who decided the original appeal will also decide your reconsideration application. If the panel decides that it has authority to consider your reconsideration application and that grounds for reconsideration have been established, it will allow your application in a formal written decision and set aside all or part of the original decision. It may take some time for us to make a decision on this aspect of your reconsideration application because we give priority to new appeals. The panel will then rehear the appeal and issue a new decision.

### WILL WCAT ORDER WORKSAFEBC TO REIMBURSE MY EXPENSES FOR OBTAINING NEW EVIDENCE?

If your reconsideration application is based on new evidence, the reconsideration vice chair will decide whether you should be reimbursed for the expense of obtaining the new evidence. We put limits on the amount of reimbursement which you will find on our website under the **MRPP** tab in the Manual of *Rules of Practice and Procedure*, and under the **Appeal Expenses** tab. If your bill is higher, and you want to be repaid for all your expenses, please explain the reason why you think we should order payment of the full amount.

### IS THERE ANYTHING ELSE I CAN DO?

You can also apply to the Supreme Court of British Columbia for judicial review of our decision on the basis of jurisdictional error within **60 days** of the date we issued the decision. For purposes of judicial review, a jurisdictional error includes matters of narrow jurisdiction and broad jurisdiction as well as procedural unfairness.

Information about judicial reviews of WCAT decisions is available on our website and in the Judicial Review Guide which you can find under the **After an Appeal** tab. You may also call us and we will send it to you. General information about judicial reviews is also available in the *Judicial Review Guidebook* on the Supreme Court of British Columbia's website at: [www.courts.gov.bc.ca](http://www.courts.gov.bc.ca) under the **Self-Represented Litigants** tab.

### CAN I APPLY FOR RECONSIDERATION AND JUDICIAL REVIEW AT THE SAME TIME?

Yes. You can apply for reconsideration and judicial review of the same decision at the same time. In that case, we will provide the WCAT panel with the judicial review petition related documents, and any additional submissions you may have. The panel will consider the portions of those documents which are relevant to the reconsideration application and issue a decision. Normally, no further steps are taken in the judicial review proceeding until WCAT has issued its decision.

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## WHERE CAN I FIND MORE INFORMATION?

You will find more information about reconsiderations, including the Application for Reconsideration form, on our website ([www.wcat.bc.ca](http://www.wcat.bc.ca)) under the After an Appeal tab. You will find the WCAT Manual of Rules of Practice and Procedure under the **MRPP** tab. You will find previous WCAT decisions under the Search Our Decisions tab.

You will find more information about us on our website ([www.wcat.bc.ca](http://www.wcat.bc.ca)). This includes the WCAT *Manual of Rules of Practice and Procedure* which you will find under the **MRPP** tab.

For further 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 MORE HELP?

You can get free help from a workers' or employers' adviser at:

### Workers' Advisers Office

Website: [www.labour.gov.bc.ca/wao](http://www.labour.gov.bc.ca/wao)

Toll-free phone number: 1 800 663-4261

### Employers' Advisers Office

Website: [www.labour.gov.bc.ca/eao](http://www.labour.gov.bc.ca/eao)

Toll-free phone number: 1 800 925-2233

## WCAT INFORMATION GUIDES

*(available on our website – if you do not have access to the internet, call us and we will send you a copy)*

- *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

Mailing Address:

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

Telephone: 604 664-7800

Email: [appeals@wcat.bc.ca](mailto:appeals@wcat.bc.ca)

Fax: 604 664-7898

Toll Free within BC: 1 800 663-2782

Website: [www.wcat.bc.ca](http://www.wcat.bc.ca)



If you have a smart phone, scan this code to access our website.