

Oral Hearing Guide

WHAT IS AN ORAL HEARING?

An oral hearing is your opportunity to tell us in person why, if you are the appellant, you should win your appeal and what benefits you think you should receive. If you are the respondent, it is your opportunity to tell us in person why the appellant should not win their appeal. As a respondent, you may also support the appellant's position.

At the hearing you will have the opportunity to show new information or evidence to the vice chair, whose responsibility is to make a fair decision on your appeal. The oral hearing may take place in person, by phone, or by a mixture of the two. For example, you may attend in person while your representative participates by phone. If there is a respondent to the appeal, the appellant will be able to hear and reply to the points that they make to the vice chair regarding the appeal.

We hold 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.

Since the appeal to WCAT is your last appeal opportunity, it is a good idea to prepare yourself as fully as you can. This guide shows you how to do so.

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.

10 QUESTIONS ABOUT ORAL HEARINGS

1. How long will I have to prepare for the hearing?

We will give you at least four weeks' notice of your hearing date. You should start gathering information and evidence now because it may take you some time to get it, especially medical evidence.

2. Can I change the date you have set for the hearing?

You have an opportunity to change the hearing date within 14 days of the notice of hearing letter. After that, we only change the dates of hearings in exceptional circumstances, such as a personal emergency. If you need to request a change of date in these circumstances, please make sure we receive any documents supporting your request, such as a letter from your doctor. Exceptional circumstances do not include vacations or requests for more time to gather further evidence or information.

3. Where does the hearing take place?

We hold hearings in many towns and cities throughout the province.

4. How long will the hearing take?

Oral hearings usually take one hour. If you know that you will need more time, please tell us as soon as possible. Otherwise, if the hearing needs more time than we have scheduled, the vice chair may have to resume it later.

5. Who will be present at the hearing?

The appellant and their representative, and any participating respondent and their representative, have the right to speak to the vice chair during the hearing. Both the appellant and the respondent may bring witnesses to give evidence at the hearing. Please send us the names and addresses of the witnesses you will be bringing at least **21 days** before the hearing.

You may bring a friend or relative with you to the hearing as an observer to listen, though they cannot speak unless they are witnesses. However, we do not allow children into the hearings and do not have child-care facilities.

In some hearings, we may have security personnel present. If you have security concerns, please contact our Scheduling Department before the hearing.

6. Do I need to attend the hearing?

A hearing will generally not go ahead without the appellant. This is your opportunity to be heard.

If the appellant does not come to the hearing we may dismiss the appeal. We will send the appellant a letter giving them 14 days to provide us with a written explanation for not coming. The vice chair will then decide whether the explanation is adequate. If it is, the vice chair may reschedule the hearing or change it to an appeal by written submissions.

If the appellant does not send us a written explanation within **14 days**, the vice chair will usually dismiss the appeal.

7. Does the respondent need to attend the hearing?

A participating respondent may choose not to attend the hearing. They may still choose to send in a written submission before the hearing if they want to.

A respondent who does not attend the hearing does not have the right to receive any evidence submitted at the hearing. They will not have the right to participate further in the appeal.

8. Can I use an interpreter?

Yes, you can ask for an interpreter on the *Notice of Appeal* form or letter, or on the *Notice of Participation* form, or by contacting the Scheduling Department at least two weeks before the hearing. We will provide the interpreter at no charge to you.

You cannot use a friend or relative as an interpreter. The hearing may be rescheduled if the vice chair believes it necessary to provide an interpreter.

9. Do I need to bring an expert, like a doctor, to the hearing?

No. The vice chair will accept an expert's written report. Please send us your expert's written report at least **21 days** before the hearing.

10. What happens if I am late for the hearing?

The vice chair will wait for the appellant for 15 minutes. If the appellant is later, the vice

chair may dismiss the appeal, reschedule the hearing, or change the method of appeal to written submissions.

The vice chair will wait 5 minutes for a participating respondent before starting the hearing. A late respondent will be allowed to participate, but the vice chair may restrict the respondent's participation.

HOW THE VICE CHAIR WILL ASSIST YOU AT THE HEARING

The vice chair will read the WorkSafeBC file before the hearing. The vice chair will know about the WorkSafeBC policies that apply to the case, other WCAT decisions that involve similar issues, and WCAT rules, practices and procedures. If you want to learn more to prepare for the hearing, here are some other things you can do.

WHAT WE RECOMMEND YOU DO TO PREPARE FOR THE HEARING

Read the file

You should first read all of the material in the WorkSafeBC file. You will then know what evidence and policies WorkSafeBC or the Review Division relied on to make the decision appealed. You can then decide what new evidence you want to give at the oral hearing that you did not give at an earlier stage.

Gather your evidence

We do not translate documents. If the evidence you gather is not in English, please have it translated before sending it in to us

along with a signed translator's declaration. You cannot use a friend or relative as a translator. If you have to pay for the translation, you can ask us to order WorkSafeBC to repay you. For further information on appeal expenses, see *What appeal expenses will WCAT order WorkSafeBC to pay?* on page 12 of this Guide.

Your evidence may include witness statements, medical reports, financial records, or expert opinions. It may also include photographs, videotapes, and digital recordings. If you bring photographs, write on the back of them what they show.

For further information on obtaining medical evidence, see WCAT's *Medical Evidence Guide* on our website. You may also call us and ask us to send it to you.

Provide us with your new evidence 21 days before the hearing

You need to ensure we receive all your new written evidence, including experts' written reports, at least **21 days** before the oral hearing. This allows time to send it to other participating parties. Include your letter to the expert asking for their opinion, and the bill for that opinion. We will keep the originals of all your new written evidence.

We won't change your hearing date if you don't have your expert's opinion in time. At the hearing you can ask the vice chair to wait for it before deciding the appeal. The hearing will still proceed with all the other evidence.

If you are bringing witnesses, send their names and addresses to us at least **21 days** before the hearing date. This ensures there will be sufficient hearing time.

Bring important materials to the hearing

Bring the documents on the WorkSafeBC file that you want to refer to at the hearing. Also, bring the original and two copies of all new written evidence that you have not already sent us. You do not need to bring the whole WorkSafeBC file because the vice chair has a copy and will have read it in advance.

The vice chair will have copies of the relevant parts of the *Workers Compensation Act* and WorkSafeBC policy in the hearing room. If there are specific documents or policies that you wish to refer to, bring copies of them if you would like to. It's a good idea to mark them in some way so you can find them quickly.

Bring any relevant video or audio evidence or workplace tools that you may want to use to demonstrate workplace motions. If you want to show a video or DVD, or play a tape or CD at the hearing, contact us in advance so we can have the proper equipment available.

Bring your witnesses to the hearing. You are responsible for telling them of the date, time and place of the hearing.

If someone will not agree to attend the hearing as a witness, contact us. We have the right to order witnesses to come to a hearing. You must request an order at least **14 days** before the hearing and give us the name and contact information for the witness. Explain what

evidence the witness will give, how it is relevant to an issue under appeal, and why the witness is not willing to come voluntarily.

The vice chair will decide whether to issue this order. The vice chair will also consider whether there are other ways to obtain the same evidence, the relevance of the evidence, and the reason the witness is unwilling to come.

If you had to pay for new written evidence, and you want WCAT to order WorkSafeBC to pay you back, please bring a copy of the bill with you.

Prepare some written notes

We suggest that you prepare for the hearing by writing down important things (make notes). You may be nervous at the hearing and not remember everything you want to tell us. You do not need to read your notes to the vice chair, but they will help you remember. The vice chair will also help you by asking you questions.

If you are the appellant, you may want to write down an opening statement that sets out the issues you want the vice chair to decide and the outcome you want. Based on what you say, the vice chair will decide whether they have the power to make a decision.

You may also want to write down the important evidence you want to give and the main points you want to make. In this way you will make sure we take all your main points into account. Write down the questions you are going to ask any of your witnesses. If you are the appellant and know that the respondent is participating, write down the questions you are going to ask

them and/or any witnesses they may bring. If you are the respondent, write down the questions you are going to ask the appellant and/or any witnesses they may bring. Preparing in this way will help you make your case most effectively.

Write out the submission (argument) you will make to the vice chair. In it, tell the vice chair exactly why, if you are the appellant, you should win your appeal. If you are the respondent, tell the vice chair why the appellant should not win their appeal. As a respondent, you may also support the appellant's position. Describe all the evidence that supports the outcome you want, refer to the unfavourable evidence, and explain why the favourable evidence is better. Describe what specific WorkSafeBC policies you think apply to the appeal, and explain how they apply.

Read our noteworthy decisions on appeals like yours

You can learn how to make the best case for your appeal by looking at WCAT decisions involving issues like yours. You will find these decisions on our website under the **Preparing an Appeal** tab. You can then refer to the policies that apply to and perhaps support your appeal.

Read WorkSafeBC policies

You can find what WorkSafeBC policies apply to the appeal by reading WorkSafeBC's *Rehabilitation Services and Claims Manual* (for compensation appeals). This manual is available under the **Regulation and Policy** tab at www.worksafebc.com.

You can also use WorkSafeBC's practice directives to help you make your case. Look under the **Regulation and Policy** tab at www.worksafebc.com.

WHAT HAPPENS AT A HEARING

An oral hearing is not as formal as a court proceeding. What happens at an oral hearing depends on the circumstances of a particular appeal. This is what often happens.

All participants meet in the same room which generally has two tables in a T-shape. The vice chair sits at the top of the T at the front of the room. The appellant and their representative will sit on one side of a table. If there is a respondent participating, they and their representative will sit on the other side of the table. If there is an interpreter, they will usually sit beside the person for whom they are interpreting. Observers may also sit at the table if there is room. Witnesses will usually be asked to remain outside the hearing room until they give their evidence.

The vice chair will introduce themselves and explain the hearing process, including the fact that we will record the oral hearing. Everyone else present will be asked to introduce themselves. The vice chair will identify the decision(s) under appeal and outline the issue(s) they raise.

The appellant or their representative will be asked to briefly state what they are asking us to do. The appellant then gives their evidence, that is, tells their story. The vice chair will ask them to give their evidence under oath or

affirmation. This means that they will either swear on a holy book or promise on their conscience to tell the truth.

The appellant's representative may ask the appellant questions to help them tell their story. The respondent can then ask them questions. The vice chair may also ask the appellant questions. After the appellant has given their evidence, the vice chair will invite their witnesses into the hearing room to answer their questions. The respondent and vice chair may ask the appellant's witnesses questions.

Then the respondent may give evidence and call witnesses. The appellant or their representative may then ask the respondent and their witnesses questions.

After everyone has presented evidence, the appellant or their representative will give their submission (argument). Your submission or argument should briefly summarize all the evidence that supports the outcome you want, refer to the unfavourable evidence, and explain why the favourable evidence is better. You may also want to describe which WorkSafeBC policies you think apply to the appeal, and explain how they apply.

The respondent will then make their argument. Your submission or argument should briefly summarize all the evidence that supports the outcome you want, refer to the unfavourable evidence, and explain why the favourable evidence is better. You may also want to describe which WorkSafeBC policies you think apply to the appeal, and explain how they apply. After the respondent's argument,

the appellant will have the chance to reply to anything new the respondent raised.

CAN WCAT OBTAIN MORE EVIDENCE?

We have the right to collect information such as employment, income, and medical records. We may also request WorkSafeBC to investigate matters, including doing ergonomic and employability assessments.

We may request information or an opinion from a worker's own doctor. We may also request independent medical advice or assistance from a doctor or other health professional who is not employed by WorkSafeBC. The doctor or other health professional may ask a worker to attend for an examination.

If the vice chair obtains any additional evidence, we will send the appellant and the participating respondent a copy for comment.

Although we have the right to seek out additional information, please do not assume that the vice chair will investigate further.

WHAT APPEAL EXPENSES WILL WCAT ORDER WORKSAFEBC TO PAY?

We may order WorkSafeBC to repay you for expenses related to an appeal, such as expenses for obtaining a letter or report from a doctor, for new written evidence, for getting a document translated into English, for travelling to the hearing, or for taking time off work to come to the hearing.

If you have such expenses, give the vice chair copies of the bills. Keep your travel expense

and lost wages receipts until the vice chair makes a decision on your appeal.

Even if you are not successful in the appeal, we will generally order WorkSafeBC to repay you for your expenses for obtaining written evidence (such as a medical report) if the evidence was useful or helpful in deciding the appeal, or it was reasonable for you to have obtained the evidence for the appeal. 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*. If your bill is higher, and you want to be repaid for all your expenses, please explain the reasons why you think we should order payment of the full amount.

If the vice chair orders WorkSafeBC to pay you for your appeal expenses, please send all your bills and receipts to WorkSafeBC.

We do not order WorkSafeBC to pay for your photocopying expenses, your representative's fees, or an employer's lost wages.

CAN I PROVIDE FURTHER EVIDENCE AND SUBMISSIONS AFTER THE HEARING?

The vice chair will generally not accept more evidence or written submissions after the oral hearing unless they specifically agree to do so at the hearing.

HOW DOES WCAT MAKE ITS DECISION?

The vice chair who hears the appeal will consider the evidence on the WorkSafeBC file and the evidence and submissions the appellant and any respondent provide.

The vice chair must apply the policies of WorkSafeBC's board of directors relevant to the appeal. If the evidence is evenly balanced on a compensation issue, the vice chair must decide the issue in favour of the worker. On other issues, the vice chair will make their decision on a balance of probabilities.

The vice chair will write a decision with reasons which we will mail to the appellant and the respondent. We also send a copy of the written decision to WorkSafeBC, who will then implement our decision.

WHERE CAN I FIND MORE INFORMATION?

You will find more information about us on our website (www.wcat.bc.ca). This includes the *WCAT Manual of Rules of Practice and Procedure* which you will find under the **MRPP** tab. You will find previous WCAT decisions under the **Search Our Decisions** tab. You can then refer to the policies that apply to and perhaps support your position on the appeal. You will also find more information about the basic principles of evidence under the **Preparing for an Appeal** 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 one of these locations:

WORKERS' ADVISERS

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

VANCOUVER/LOWER MAINLAND REGION

Abbotsford

204 - 32555 Simon Avenue
Abbotsford, BC V2T 4Y2
Telephone: 604 870-5488
Fax: 604 870-5494
Toll Free within BC:
1 888 295-7781

Richmond

500 - 8100 Granville Avenue
Richmond, BC V6Y 3T6
Telephone: 604 713-0360
Fax: 604 713-0311
Toll Free within BC:
1 800 663-4261

VANCOUVER ISLAND REGION

Campbell River

205 - 1040 Shoppers Row
Campbell River, BC V9W 2C6
Telephone: 250 830-6526
Fax: 250 830-6528
Toll Free within BC:
1 888 643-0013

Nanaimo

504 - 495 Dunsmuir Street
Nanaimo, BC V9R 6B9
Telephone: 250 741-5504
Fax: 250 741-5516
Toll Free within BC:
1 800 668-2117

Victoria

403 - 3960 Quadra Street
Victoria, BC V8X 4A3
Telephone: 250 952-4393
Fax: 250 952-4399
Toll Free within BC:
1 800 661-4066

INTERIOR REGION

Kamloops

102 - 70 Second Avenue
Kamloops, BC V2C 6W2
Telephone: 250 371-3860
Fax: 250 371-3820
Toll Free within BC:
1 800 663-6695

Kelowna

101 - 1726 Dolphin Avenue
Kelowna, BC V1Y 9R9
Telephone: 250 717-2096
Fax: 250 717-2010
Toll Free within BC:
1 866 881-1188

Nelson

310 Ward Street
Second Floor
Nelson, BC V1L 5S4
Telephone: 250 354-6933
Fax: 250 354-6944
Toll Free within BC:
1 866 354-6933

Prince George

208 - 1577 7th Avenue
Prince George, BC V2L 3P5
Telephone: 250 565-4280
Fax: 250 565-4283
Toll Free within BC:
1 800 263-6066

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: 1 800 663-8783

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

Nelson

503 - 310 Ward Street
Nelson, BC V1L 5S4
Telephone: 250 354-6139
Fax: 250 354-6138
Toll Free within BC and
Alberta: 1 877 877-5524

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

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