

Note: This Guide is written for a worker appellant. If you are a participating employer respondent, you have the same right to locate and present medical evidence. This Guide will also be helpful for you.

This guide explains how to locate and present important medical evidence to support and strengthen your appeal to WCAT.

WHAT IS MEDICAL EVIDENCE?

Medical evidence is a form of expert evidence. Expert evidence consists of opinions from witnesses who have education, training, or experience regarding a particular subject. An expert could be a doctor, vocational rehabilitation consultant, occupational therapist, engineer, accountant, physiotherapist, or occupational hygienist. If a witness has no education, training or experience in a particular area, their personal belief is merely an opinion and not expert evidence.

Medical evidence can take many forms. It can include a doctor's clinical notes or records, and the forms a doctor completes and sends to WorkSafeBC on a regular basis. Medical evidence may also include first aid records, emergency room and hospital records, diagnostic testing results, CT / MRI / x-ray reports, and permanent functional impairment evaluations.

Medical evidence or a medical opinion could come from your doctor, a WorkSafeBC doctor, your specialist, or an independent health professional. Psychologists, chiropractors, occupational therapists, ergonomists, physiotherapists, or occupational hygienists may also provide medical evidence. For example, an occupational therapist may evaluate a worker's physical ability to return to work.

An ergonomist may conduct a workplace job demands analysis to help a medical professional better understand the dynamics of the worker's employment activities. An occupational hygienist may be able to provide an analysis of a worker's exposure to environmental hazards at the workplace.

Medical literature, research, and articles are not medical evidence, but they may help us understand the medical evidence. A worker's statement about their own condition is evidence, but is not expert evidence.

WHEN DO I NEED MEDICAL EVIDENCE?

You only need new medical evidence if the evidence already on your WorkSafeBC claim file is not sufficient. For example, you might submit new medical evidence when your appeal requires additional medical evidence to fully answer questions like these:

- What is the nature and extent of my injury or disease?
- Did my employment cause, activate, aggravate, or accelerate the injury or disease?
- Am I disabled from working because of the injury or disease?
- If I am disabled from working, is the disability temporary or permanent?
- If I was temporarily disabled, has the disability resolved or plateaued (stabilized)? When?
- What limitations (things a worker cannot do) and/or restrictions (things a worker must not do) arise from the injury?
- If my injury or disease is permanent, what is the nature and extent of the permanent impairment (disability)?

MEDICAL EVIDENCE GUIDE

These questions may also require the evaluation of non-medical evidence, such as the physical requirements of work duties, a worker's motivation to return to work, the availability of the work, etc. They may also require the application of WorkSafeBC policy.

Medical evidence does not always determine the outcome, but it is necessary that we consider it when deciding an appeal.

THERE IS MEDICAL EVIDENCE ON MY CLAIM FILE. WHY DO I NEED MORE?

In some cases, the medical evidence on the claim file may not fully support your position. Therefore, you may want to get new medical evidence. In other cases, evidence already on your claim file may consist of reports, but these reports do not specifically say how your injury affects your need for medical treatment or your level of disability. It is often a good idea to ask your doctor to explain, in writing, the specific relationship between your injury and your need for medical treatment or your level of disability.

WHAT SHOULD I GIVE TO A MEDICAL EXPERT TO MAKE SURE I GET A GOOD MEDICAL OPINION?

This depends on the medical issue. In all cases, however, you should explain the present situation and tell the medical expert what your goal is on the appeal.

You should provide the medical expert with copies of:

- The Review Division decision under appeal
- The WorkSafeBC decision that the Review Division reviewed
- The medical information from the claim file that relates to the matter under appeal
- Any opinions from WorkSafeBC doctors that relate to the matter under appeal

- The memo of the WorkSafeBC officer who made the decision that the Review Division reviewed, giving their reasons for the decision
- Other medical information that you may have gathered that is not on the claim file.

You should consider how you are going to tell the medical expert about the non-medical facts which they may need for the medical opinion. You could:

- Write a letter describing the matters that are relevant to the issues under appeal. For example, your letter could describe how your injury occurred, your employment activities, the physical requirements of your job, etc.
- Give the medical expert information already on the claim file about those things. For example, the risk factors involved in your employment. If the description on the WorkSafeBC file is not accurate or complete, you may want to explain or clarify, or provide further information.
- Draw a picture, take a photograph(s) or a video of your work site and/or the employment activity.
- Invite the medical expert to come and view your work site and/or employment activity.

In some cases, there is other information that you should give to the medical expert, such as:

- Medical records/documents or other information from prior WorkSafeBC files and/or other treating medical professionals.
- WorkSafeBC policy that applies to the matter under appeal. WCAT must apply the WorkSafeBC policies relevant to an appeal.

MEDICAL EVIDENCE GUIDE

For example, WorkSafeBC policy provides a list of risk factors to consider when determining whether an activity related soft tissue disorder of the limbs, such as tendinitis, is related to a worker's employment. This may help the medical expert understand what information they might need to include when answering the questions you have asked.

You can find WorkSafeBC policies in the *Rehabilitation Services and Claims Manual* at www.worksafebc.com.

In all cases, ask the medical expert specific questions to fully explain the opinion you have requested them to provide.

WHAT QUESTIONS SHOULD I ASK THE MEDICAL EXPERT?

Ask the medical expert to write a letter that:

- Describes their expert qualifications
- Explains how they know you (if they do) and how familiar they are with your case
- Gives their opinion on the specific question in issue and an explanation of the basis for their opinion
- Explains why their opinion differs from other medical opinion(s) on the file
- Provides any other information or opinions that may be helpful.

HOW WILL WCAT WEIGH THE MEDICAL OPINION I PROVIDE?

When a WCAT vice chair is deciding an appeal, they have to weigh all of the evidence, both medical and non-medical. In an appeal respecting the compensation of a worker, if the evidence supporting different conclusions on an issue is evenly weighted, the vice chair must decide the issue in favour of the worker.

A vice chair weighs the evidence and makes findings of fact, including the credibility of a witness, and applies the law and WorkSafeBC policy to these findings of

fact. The vice chair weighs the medical evidence along with all the other non-medical evidence when making findings of fact and deciding an appeal. The vice chair decides how much significance to give to a particular medical opinion.

When weighing a medical opinion, a vice chair considers the following factors:

- The expertise of the person providing the opinion. This includes their training and education as well as their qualifications. For example, the opinion of an orthopaedic surgeon may be given more weight than that of a family doctor, because the surgeon will have had more specialized training.
- Whether the subject matter of the opinion is within their expertise. For example, the opinion of an ear, nose and throat specialist or an audiologist usually has more weight than that of an orthopaedic surgeon with regard to a hearing loss claim.
- Whether the facts behind an opinion are clearly set out, accurate, and complete, with any inconsistencies carefully explained. For example, one doctor's opinion may have mentioned no specific event as triggering a worker's low back pain, whereas a second opinion may specifically point out that the worker slipped on a slippery floor and had low back pain immediately afterward.
- Whether the opinion addresses the issue(s) requiring medical input, such as the likely cause of an injury.

When there is conflicting medical evidence, the vice chair might consider the following factors when deciding what medical evidence is more persuasive:

- With respect to matters of work causation, the relative familiarities of the experts with your work duties.

MEDICAL EVIDENCE GUIDE

- If there is WorkSafeBC policy on your condition, such as an activity related soft tissue disorder, to what extent the opinions address the applicable guidelines.
- With respect to the correct diagnosis of your condition, the relative expertise of the experts and their knowledge of all the relevant medical information and investigations.
- The nature and extent of the expert's reasoning for their opinion.

DO I NEED TO PROVIDE MY EVIDENCE TO WCAT BEFORE THE ORAL HEARING?

Yes. You need to ensure that we receive any new medical evidence, including experts' opinions, at least **21 days** before the oral hearing if one is being held. This gives us enough time to send it to other participating parties and for the vice chair to review it before the hearing. You should also send in your (or your representative's) letter requesting the opinion and a copy of the expert's bill. The vice chair may accept new medical evidence at or after an oral hearing depending on your reasons for not providing it before the oral hearing.

DO I NEED TO PROVIDE MY EVIDENCE TO WCAT WITH MY WRITTEN SUBMISSION?

Yes. If your appeal is by the written submission method, include any new medical evidence and send it in together with your written submission by the deadline we give you.

DO I HAVE TO BRING A MEDICAL EXPERT, LIKE A DOCTOR, TO THE HEARING?

No. WCAT will accept written reports from a medical expert without the need for them to attend the oral hearing. We must receive the expert's opinion, at least **21 days** before

the oral hearing. We will not require a medical expert to attend an oral hearing unless the vice chair believes this is necessary to fairly decide the appeal.

CAN WCAT OBTAIN MORE MEDICAL EVIDENCE?

We have the right to collect more medical evidence. This could include your medical records, or a medical opinion from one of your doctors, or an independent health professional or, on rare occasions, a doctor employed by WorkSafeBC. The independent health professional may ask you to attend for an examination.

WILL WCAT ORDER WORKSAFEBC TO PAY MY EXPENSES?

We may order WorkSafeBC to repay you for your expenses related to an appeal, such as expenses for obtaining a letter from your doctor or specialist. If you have such expenses, ask us to order WorkSafeBC to repay you in your written submission or at the oral hearing, and give us a copy of your written request for the opinion and a copy of the doctor's bill.

Even if you are not successful in your appeal, we will generally order WorkSafeBC to repay you for your expenses for obtaining a medical report or opinion 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 in Appendix 9 in the Manual of Rules of Practice and Procedure on our website under the **MRPP** tab, 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.

MEDICAL EVIDENCE GUIDE

WHERE CAN I FIND HELPFUL MEDICAL RESOURCES?

Here are Internet websites which may assist you to better understand the medical condition(s) and terminology which may arise in your appeal. The information on these websites is not medical evidence. However, you may want to draw some of this information to the attention of the medical expert to use in preparing their written medical opinion.

WCAT does not review or endorse the accuracy of any of the information contained on these websites:

- American Association of Orthopaedic Surgeons (Patient Information)
- American College of Occupational and Environmental Medicine
- American College of Rheumatology
- BC Centre for Disease Control
- BC Cancer Agency
- BC HealthGuide Handbook / HealthLinkBC
- BC Ministry of Health–Health Related Internet Resources
- Canadian Cancer Society
- Canadian Centre for Occupational Health and Safety (CCOHS)
- Canadian Health Network (Workplace Health)
- Centre for Disease Control and Prevention
- College of Physicians and Surgeons of British Columbia (Recommended Online Resources)
- Google Scholar
- Gray, Henry.1918. *Anatomy of the Human Body*
- Health Canada – Disease and Conditions

- Health Canada – Environmental and Workplace Health
- Healthfinder.gov (United States)
- Health Information Resources (United Kingdom)
- Health on the Net Foundation
- The Merck Manual – Home Edition
- The Mayo Clinic
- MedBroadcast
- MedicineNet.com
- Medline Plus
- Multilingual Glossary of Technical and Popular Medical Terms
- National Institute for Occupational Safety and Health (NIOSH)
- National Library of Medicine
- Occupational Safety & Health Administration
- OnLine Chinese-English Medical Dictionary
- PubMed
- Royal College of Surgeons of England (Patient Information-Internet Sources)
- NHS UK Direct
- Workplace Hazardous Materials Information System (WHMIS)

WHERE CAN I GET HELP WITH MY APPEAL?

You can find more information about expert evidence in WCAT's *Manual of Rules of Practice and Procedure* which is available on our website at www.wcat.bc.ca under the **MRPP** tab. See especially item 11.6. You will also find more information about the basic principles of evidence on our website under the **Preparing an Appeal** tab.

MEDICAL EVIDENCE GUIDE

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

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