Appeals Services Division

Practices and Procedures
February 2024

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Key changes to the Appeals Services Division practices and procedures

We generally review and update our practices and procedures annually or bi-annually. This updated document is effective until the date of the next review. In this version, we have re-organized the contents into sections to better reflect the dispute resolution and appeals process flow and to help you understand and navigate our appeals process.

The Appeals Services Division continues to enhance services for our clients and stakeholders by updating our appeals processes and procedures to improve our efficiency in providing timely, quality decisions and excellent customer service.

We have included updated information about the objection intake process and the method of resolution and added content on video conferences, in-person and hybrid oral hearings, as well as new guidelines on whole issue adjudication/adding issues to the appeal agenda, expedited return-to-work appeals and expanding jurisdiction. We've also clarified the process for submitting new information at an oral hearing and updated the summons process.

In addition, we've expanded on benefits flowing ruling when an Appeals Resolution Officer grants entitlement in a decision and added a frequently asked questions page for key sections of the document.

Here is more information about the issues we've updated.

Role change – Executive director: We've changed the executive director role within the Appeals Services Division to senior director. The updated role is reflected in the document where appropriate.

Objection intake: We've updated the objection intake process to include a review of new issues or significant new information on the Appeal Readiness Form that can result in the case being returned to the front-line decision-making area.

Appeals intake and triage: A new appeals intake and triage process in the Appeals Services Division where new appeal referrals are reviewed for appeal readiness before registration in the Appeals Services Division.

Appeals Services Division jurisdiction on section 120 objections to the Workplace Safety and Insurance Tribunal: New guideline explaining the Board's jurisdiction to hear an appeal issue on the merits of a case where a workplace party has objected to the allowance of the section 120 time limit extension to the Workplace Safety and Insurance Tribunal

Methods of resolution: Updated the method of resolution guideline to include hearing in writing as default method to resolve appeals and oral hearings as default for initial entitlement for chronic mental stress appeals. Added video conference oral hearings as standard format for oral hearings in the Appeals Services Division. This has been the case since the summer of 2020.

Video conference oral hearings: Added the requirements for participating in a video conference oral hearing.

In-person oral hearing: New guideline. Added the factors considered when a party requests an in-person oral hearing.

Evidence: Added statement that if the Appeals Resolution Officer accepts new information at an oral hearing, the Appeals Resolution Officer will determine how to proceed and share the information with all the parties.

Return-to-work and related appeals: New guideline. The Appeals Services Division will expedite appeals where the issue is return-to-work, modified work, a return-to-work plan, suitable work, work transition/labour market re-entry plan, suitable occupation, deemed earnings for a suitable occupation, non-cooperation or re-employment.

Adjudication of related issues: New guideline for when the Appeals Services Division/Appeals Resolution Officer will add issues to the appeal agenda for assignment to one Appeals Resolution Officer for holistic adjudication of related issues.

Jurisdiction of issues: New guideline and process aligned with the concept of whole person adjudication. The Appeals Services Division has added a new guideline on expanding the appeal issue agenda.

Section 22 – time limit to claim appeals: New guideline and process. Appeals of front-line decisions for time limit to file a claim, section 22 of the Workplace Safety and Insurance Act, will be considered on both the time limit to file issue as well as the merits of initial entitlement.

Benefits flowing: Added statement that the Appeals Resolution Officer will direct benefits flowing from their decision to the extent possible based on the information available to the Appeals Resolution Officer at the time of the hearing or at the time they are completing their decision in the interest of keeping decisions final, ensuring whole-person adjudication and to avoid fragmentation of issues.

Deemed final decisions: New process describes the purpose and process for requesting a deemed final decision of the WSIB.

Terms of use

In this document, the terms “we”, “our”, “the Board” and WSIB refers to the Workplace Safety and Insurance Board.

Where you read “employer”, this also refers to the employer representative. Similarly, the term representative can refer to the injured/ill person representative or the employer representative based on the context of the information in the guideline.

Definition of terms

Workplace party(ies) or parties: The injured/ill person, or a survivor, who has a WSIB claim and their employer.

Front-line decision maker: The individual who made the initial decision on an issue of entitlement in your claim or a decision on an employer account.

Appeals Resolution Officer: The final decision maker of the WSIB. Resolves all appeals on WSIB claims or employer accounts.

Appeals Registrar (Registrar): The primary contact for workplace parties and their representatives. Unrepresented workers and employers have more opportunity to discuss the appeals process with the appeals registrar at the beginning of the process. This role is responsible for reviewing for appeal readiness, deciding on the appeal method of resolution, addressing disclosure issues, and making time limit decisions.

Appeals Coordinator (Coordinator): Manages most of the administrative aspects of the appeal process including: registering and assigning appeals; scheduling oral hearings; coordinating details around witnesses, interpreters, travel, etc.; and ensuring submissions are shared with the workplace parties.

Objection: When you receive a decision and you don't agree with the decision, you can tell the front-line decision maker that you wish to object to the decision.

Objecting party: The person who disagrees with a WSIB decision about a claim or an employer account. This can be an injured/ill person or an employer. When you complete the Intent to Object form and the Appeal Readiness Form you are considered the objecting party.

Intent to Object form: The objecting party completes and sends us the Intent to Object form to confirm they disagree with the front-line decision and to bookmark their objection within the time required in the decision letter.

Appeal Readiness Form: We send this form to the objecting party to complete and return to us when they want to start an appeal of the WSIB decision. It allows the objecting party to make their argument about the appeal and tell us how they want to resolve the appeal, hearing in writing or oral hearing.

Appeal: The process that occurs when the objecting party has completed and returned the Appeal Readiness Form and the file is registered with the Appeals Services Division.

Participant Form: The form we send the non-objecting party inviting them to participate in the appeal. They have to complete the Participant Form and return it to us.

Participant: The non-objecting party who has completed a Participant Form and confirm they wish to participate in the appeal of the objecting party.

Respondent Form: The form we send the participant asking them to provide their written arguments and submissions to confirm their participation in the objecting party's appeal. The form gives the respondent the opportunity to respond to the objecting party's argument about the appeal and give their opinion on how the appeal should be resolved.

Respondent: The participant becomes the respondent in the appeal process after they complete and send us the Respondent Form.

Hearing in writing: An appeal resolved by the Appeals Resolution Officer based on the information in the claim file, the arguments on the Appeal Readiness Form and the Respondent Form.

Oral hearing: The objecting party and the respondent will meet with the Appeals Resolution Officer either by video conference, in-person or teleconference. The injured/ill person and any witnesses will answer questions by affirmation and oral arguments are made by the objecting party and respondent, if participating.

Employer account appeals: Those appeals dealing with decisions about an employer account, such as classification, transfer of cost, independent operator and worker status, or other revenue related issues.

Calculation of time

Time in this document, unless otherwise noted, is in calendar days. When a due date falls on a weekend or a holiday, the due date will be extended to the next weekday or the next day that is not a holiday.

Mission statement

The mission of the WSIB appeals system is to consider and reach final resolutions in claims and employer account appeals. Resolutions will be consistent with the *Workplace Safety and Insurance Act* and WSIB policy, and will be timely, transparent and fair in dealing with appeals from both injured/ill persons and employers.

The Appeals Services Division will ensure service excellence by having a responsive appeals system that is committed to providing independent and transparent decision-making services by one independent decision-maker, the Appeals Resolution Officer. The Appeals Services Division will provide two resolution methods, hearings in writing and oral hearings.

Oral hearings are held by video conference or teleconference. In certain cases, we hold oral hearings in-person at WSIB office locations throughout Ontario to make sure the workplace parties, their representatives, and any relevant witnesses have the opportunity for an accessible and inclusive hearing that meets the needs of the parties.

Accessibility

We are committed to providing our services in ways that respect the dignity and independence of people with disabilities. You can ask for an accommodation at any point in the appeals process. Please tell us about your accommodation needs as soon as possible so we can help you more effectively. To ask for an accommodation during the appeal process or for a hearing, please contact the Appeals Coordinator at 1-800-387-0750.

Statutory authority

Section 119 of the *Workplace Safety and Insurance Act* states:

- *The Board shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.*
- *If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for and against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.*
- *The Board shall give an opportunity for a hearing.*
- *The Board may conduct hearings orally, electronically or in writing.*

Section 131(1) of the Workplace Safety and Insurance Act states:

> *The Board shall determine its own practice and procedure in relation to applications, proceedings and mediation. With the approval of the Lieutenant Governor in Council, the Board may make rules governing its practice and procedure.*

Appeals Services Division Practices and Procedures

The Appeals Services Division has exercised its powers under section 131(1) of the *Workplace Safety and Insurance Act* in setting out its practices and procedures by creating this Practice and Procedures document.

For specific information regarding employer account appeals, refer to the **Practice guideline on Employer account appeals.**

This document is generally reviewed and updated on an annual basis, or as needed. The updated document will remain in effect until the date of the next review.

Key changes in this version are outlined at the beginning of the document.

If you need this Practice and Procedures document in an accessible format, please contact our Accessibility Office at 416-344-4350, by email: accessibility@wsib.on.ca, or by mail: Accessibility Office, 10th Floor, 200 Front St W., Toronto, ON M5V 3J1.

Section 1

Practice guidelines:

- Objecting to a front-line decision/Intent to object
- Objection Intake Team
- Appeals Intake and Triage
- Time limit to object
- Appeals Services Division Jurisdiction on Section 120 Objections to the Workplace Safety and Insurance Appeals Tribunal
- Frequently asked questions

Practice guideline 1.0: Objecting to a front-line decision/ Intent to object

Adverse decision

A front-line decision-maker will send you a letter explaining the decision once it's made. If you disagree with the decision, the letter explains what to do and advises of the time limit to object to the decision. See the **Practice guideline on Time Limit to Object.**

If you have questions or concerns about the decision, the decision-maker will review the concerns with you, explain the rationale for the decision and address/review any new information you may provide. If the decision doesn't change, you can proceed with your objection.

Intent to object and possible reconsideration

If the objection is to an employer account issue, see the **Practice guideline on Employer account appeals.**

For claim-related issues, you, as the objecting party, must get a blank Intent to Object form from our website, through the mail, or, upon request, by calling the WSIB at 1-800-387-0750.

This form lets you confirm your intent to object to a decision within the time limit set out in the *Workplace Safety and Insurance Act*. This form also gives you, as the objecting party, an early opportunity to provide new information that could impact the decision of the front-line decision-maker.

The Intent to Object form requires the following information:

1. Claim identifiers (worker name and claim number);
2. Identification of the objecting party;
3. General information about the objecting party;
4. Representative contact information;
5. Date of decision(s) being objected to and the issues in dispute contained in the decision letter(s);
6. Reasons for the objection or disagreement with the original decision;
7. Indication of whether there is new information or additional explanation provided;
8. Signature and date.

The completed Intent to Object form can be submitted at wsib.ca/submit or can be mailed to the WSIB within the time limit stated in the decision letter. Refer to the **Practice guideline on Time Limit to Object.**

While the WSIB prefers to receive the Intent to Object form, we will also accept a letter of objection including your name, the claim number, the date the decision you are objecting was made and which issues you disagree with. You can also include any new information you want us to consider.

Reconsideration stage in the original front-line decision-making area

When you return a completed Intent to Object form, the front-line decision-maker will make sure it's complete, review the reasons for the objection and any new information that is provided. The decision- maker will reconsider the original decision. If you raise new issues on the Intent to Object form, the decision-maker will address those issues as well. The reconsideration process generally takes 14 to 28 days, or longer if additional information is required.

If the decision is reconsidered and changes, you will get a letter with the reconsidered decision and the objection process will not continue.

If the original decision does not change, the front-line decision-maker will send you a reconsideration letter. The reconsideration letter will include the same information as the original decision excluding information on the time limit to object as the timeline would be the same as stated on the original decision letter. The front-line decision-maker will then refer the file to the Access Department to send you an Appeal Readiness Form.

Access

For a claim-related objection, the Access Department will provide the objecting party with access to the file record (in accordance with WSIB policy) along with an Appeal Readiness Form and instruction sheet. An appeal will not move forward in the Appeals Services Division until all access issues have been resolved either through consent or by order of the WSIB or by the Workplace Safety and Insurance Appeals Tribunal (on appeal).

The non-objecting party will be sent a Participant Form. If the non-objecting party is the employer, they will not be provided with access to the claim file record at this time. Access will be provided once the objecting party (the injured/ill person) has submitted the Appeal Readiness Form and has provided consent to release their health care information in the claim file. Then, the non-objecting party will be provided with a Respondent Form, along with access to the claim file, and will be granted 45 days to complete and submit the Respondent Form.

In the case of an employer account objection, access to the firm file is not provided automatically, but the employer/representative is given the opportunity to obtain access if they choose, through the firm file access area. The contents of a firm file are comprised primarily of correspondence between the WSIB and the employer, which makes the need for access to that information less likely.

For transfer of cost employers, (an employer, not the accident employer, who has been charged all or part of the claims costs due to the negligence of one of their employees), access is given to allow effective participation in the appeal process. Access to transfer of cost employers is provided in the same manner as regular employers, except the injured/ill person can object to the disclosure of any information in the claim file, not just health care information.

Appeal Readiness Form

You should return the Appeals Readiness Form when you are ready to proceed with your appeal. This tells us you are ready to start the formal appeal process with the Appeals Services Division.

If you have additional information or want the issue to be considered under another policy, and neither has been considered by the front-line decision-maker, you can provide that information/argument on the Appeal Readiness Form for the front-line decision-maker to consider. When the front-line decision-maker has fully considered all issues, the appeal will be referred to the Appeals Services Division.

You should only submit the Appeal Readiness Form once:

1. you have gathered all of the information related to your appeal;
2. you have all your written information in support of your appeal ready for submission along with the Appeal Readiness Form;
3. you have resolved any issues with access to copies of the health care information in the claim file; and,
4. you are available to attend an oral hearing within 90 days, if that is the method of resolution you have requested.

The Appeal Readiness Form must be fully completed and can be submitted though our website, mailed or faxed to the WSIB.

Practice guideline 1.1: Objection Intake Team – Appeals Intake and Triage

Objection intake

The Objection Intake Team receives and tracks the Appeal Readiness Form and reviews it for administrative completeness. The Objection Intake Team will refer all Appeal Readiness Forms to the front-line decision-maker's manager for review of the decision and approval to proceed with referral to the Appeals Services Division.

In cases where the front-line decision-maker's manager has decided that the file is not appeal ready due to missing information or when new information has been provided that needs to be considered, they will advise you and the respondent and ensure that reconsiderations, where needed, are completed in a timely manner.

When the Objection Intake Team is notified the appeal is ready to proceed, they will send you and the respondent a letter confirming the appeal referral to the Appeals Services Division and register the appeal.

Appeals Intake and Triage

The Appeals Services Division has introduced a new intake and triage process that ensures incoming appeal referrals from the front-line decision-making area are appeal ready before they are registered in the Appeals Services Division. The review considers the following:

1. jurisdictional issues
2. decision quality/evidence of appropriate reconsideration
3. substantive issues

If we identify any of the above issues during the intake and triage process, we will return the file to the front-line decision-making area to complete the necessary action(s) within five business days. Once the required action(s) is completed and if an appeal referral is still required, the front-line decision-maker's manager will refer the file back to the Appeals Services Division for registration.

Practice guideline 1.2: Time limit to object

Overview

Section 120 of the *Workplace Safety and Insurance Act* sets the time limits to object to WSIB decisions. There is a 30-day time limit to object to a WSIB decision about:

- return-to-work
- re-employment
- labour market re-entry plan (currently return-to-work plan) made on or after January 1, 1998

There is a six-month time limit to object to any other WSIB decision made on or after January 1, 1998, including employer account decisions.

The WSIB will default to the six-month time limit if you are objecting to two different decisions with two different time limits. For example, if you are objecting to both a return-to-work plan with a 30-day time limit, and a loss-of-earnings decision with a six-month time limit, you have six months to object to both decisions.

Completing the Intent to Object Form

When the WSIB issues a decision, the decision letter will include the applicable time limits for objecting to the decision. In order to meet the Section 120 time limits, the WSIB must receive your completed Intent to Object form, or a letter of objection, within the time limit set out in the decision letter.

Please note, there is a separate Objection Form for employers who object to a decision about their account. See Employer account appeals for more information.

If you want to object to a decision after the time limit has expired, the WSIB may extend the time limit based on certain criteria. You must write to the front-line decision-maker to request an extension and let them know why you did not meet the time limit. The decision-maker will consider your request for an extension. They will notify you in writing of their decision.

Criteria for extending time limit to object

These are the criteria we use to consider a time limit extension request:

1. Whether there was actual notice of the time limit in the decision you received. This acknowledges that as of January 1, 1998, decisions specifically refer to the time limits but prior to that date, they do not;
2. You have experienced serious health problems;
3. Someone in your immediate family has experienced serious health problems;
4. You had to leave the province/country due to an illness or death of a family member;
5. You have a condition that prevents you from understanding the time limit and/or meeting the

time limit;

6. There is information in the claim file that you objected to a particular issue, even though you did not submit an Intent to Object form or an objection letter;
7. You have objected to other closely related issues within the time limit and those other related issues are so intertwined with the issue that was not objected to within the time limit that the appeal cannot be reasonably resolved without waiving the time limit
8. Whether the decision was issued between March 16, 2020 and September 13, 2020 when the Ontario Government temporarily suspended time limits due to the pandemic state of emergency?
9. From February 22 to March 16, 2023 there was a delay in people receiving letters from us because of a printing issue. Because of this delay, we extended the appeals timeframe to September 30, 2023 for any decisions dated between February 22 and March 16, 2023.

Note: the criteria for extending the time limit to object that were in place at the time of the front-line decision-making area decision will be applied. Appendix A includes the criteria and relevant time frames associated with those criteria.

Appealing time limit rulings

Any of the workplace parties may appeal a Section 120 time limit decision that either denies or allows any workplace party's request for a time limit extension. The objecting party to the time limit decision must submit a completed Intent to Object form in order to proceed with their Section 120 time limit appeal. An Appeal Readiness Form is not required in these appeals.

Once the front-line decision-maker receives the completed Intent to Object form, they will complete an Appeals Branch Referral Memo indicating time limit appeal and place the memo on file. The front-line Manager will forward the Appeals Branch Referral Memo to the Appeals Services Division. The front-line Manager will send a letter to the parties notifying them that the Section 120 time limit appeal has been referred to the Appeals Services Division.

When the Section 120 time limit appeal is received in the Appeals Services Division, the Registrar will review the file to ensure it is appeal ready. If the Registrar confirms it is appeal ready, they will refer the appeal to the Appeals Coordinator to register the appeal. The Appeals Coordinator will then send a letter to the parties giving them 30 days to send in any further information about the time limit issue.

Once we receive everyone's information, or when the deadline has passed, the Registrar will make the time limit decision and send the parties the decision within 30 days. The Registrar is the final WSIB decision maker for time limit appeals.

If we decide to give you the time limit extension, the file will be returned to the front-line decision-making area. You can then start your appeal about the decision that needed the extension. To do this, contact the original front-line decision-maker who will start the Access/Appeal Readiness Form process. **See our Practice guideline.**

If we do not grant your time limit extension, our letter will tell you about any next steps you may take, including how to appeal to the Workplace Safety and Insurance Appeals Tribunal.

Appeals Services Division Jurisdiction for Section 120 Time Limit Objections to the Workplace Safety and Insurance Appeals Tribunal

If a workplace party objects to a Registrar's decision that allows a time limit extension and the party provides the WSIB with a copy of their Notice of Appeal to the Registrar's decision filed with the Workplace Safety and Insurance Tribunal, the WSIB will not have jurisdiction to move forward on the substantive issue in the decision associated with the time limit extension.

For example, the Registrar allows the injured/ill person's time limit extension appeal to object to a Case Manager's decision that denied the injured/ill person initial entitlement to a right shoulder injury. The Registrar's decision allows the injured/ill person to proceed with their objection to the denial of initial entitlement to the right shoulder injury. Prior to the injured/ill person's initial entitlement appeal proceeding in the Appeals Services Division, the employer provides the Appeals Services Division with a copy of their notice of appeal to the Registrar's decision filed with the Workplace Safety and Insurance Appeals Tribunal. The Appeals Services Division will not have jurisdiction to hear the injured worker's appeal to the decision denying initial entitlement to a right shoulder injury because the employer's notice of appeal filed with the Workplace Safety and Insurance Appeals Tribunal objecting to the Registrar's decision extending the time limit on the initial entitlement decision is directly related to the injured/ill person's appeal at the Appeals Services Division.

Frequently asked questions about objecting to a front-line decision/ intent to object and time limits to object

How do I know for sure what my time limit to object is?

When we write a decision letter, it will always include the time limit for objecting.

I asked for an extension and was denied. Can I appeal this?

Yes. If a decision maker denies your request for an extension, you can appeal the time limit decision.

I have a claim for a workplace injury or illness. Will my employer know that I am objecting to a decision?

Yes. We will send your employer a Participant Form. This lets them know that you are objecting to our decision. If they want to be involved in the appeal, they will need to complete and return this form to us.

If I object to a WSIB decision, who will get to read the claim file?

We provide access to claim file information to the workplace parties when there is an issue in dispute. When we receive a notice of objection from an employer, or when the employer has a right to access because they decide to participate in the injured/ill person's objection, we will only release the relevant claim file information to the employer, including health care information relevant to the issue in dispute. This helps to make sure the employer as a participant in the appeal has the information they need to participate in the appeal.

What happens if I don't want my employer to see my health care information?

We will not share your health care information with anyone without your permission. See our Disclosure of Claim File Information (Issue in Dispute) Policy for more information.

We release health care information, which we consider relevant to the issue in dispute and that was used by our decision-makers to make decisions on entitlement to benefits in your claim.

If you refuse to let us share the relevant health care information in your claim file, we must refer the disagreement to the Workplace Safety and Insurance Appeals Tribunal. This could add to the time it takes to resolve your appeal.

The Workplace Safety and Insurance Appeals Tribunal will also consider what health care information is relevant to the issue in dispute and was used by our decision-maker to make decisions in your claim.

Section 2

Practice guidelines:

- The roles in the appeals process
- Code of conduct for representatives
- Late representation/participation
- Role of the Appeals Coordinator/Appeals Registrar
- Role of the Appeals Resolution Officer
- Frequently asked questions

Practice guideline 2.0: Role of appeal participants

Objecting party

The objecting party is the person (injured/ill person, their employer) or their representative who disagrees with the decision made by the front-line decision-maker and starts an objection (appeal) to a WSIB decision by first completing an Intent to Object form.

If the front-line decision-maker does not change the decision after reviewing the Intent to Object form, the objecting party is then sent an Appeal Readiness Form. There is no time limit for completing and returning the Appeal Readiness Form. The objecting party completes and sends us the Appeal Readiness Form when they are ready to start the appeal process.

Non-objecting party (respondent)

The non-objecting party is the other person involved in the appeal. They are a participant in the appeal when they have confirmed on the Participant Form that they want to participate in the appeal. In the appeals process, the non-objecting party becomes the Respondent.

It is important that the Participant Form is completed and returned as soon as possible to ensure you are included in the appeal process.

If the non-objecting party has chosen not to participate on the Participant Form or does not return the Participant Form to the Appeals Services Division, we will not include that party in the appeal proceedings; however, they will be sent a copy of the Appeals Resolution Officer's decision.

Third parties may be included in the appeal in certain circumstances (for example, successor employers and/or associated employers or multiple workplace exposures involving more than one employer). If an employer is no longer in business and their WSIB account has been closed, we usually do not include them in the appeals process. However, we may still ask for information from the former officers or employees of the company if we need it to help make a decision.

Practice guideline 2.1: Representatives

Right to representation

A representative is a person who helps either the objecting party or the respondent during the appeal process. Your representative can be a lawyer, a paralegal, a union representative, or a friend or family member who is helping you for free. All parties have a right to a representative of their choice.

The WSIB needs written authorization from you to release claim information to your representative.

For employer account appeals, we also need written authorization from the employer to release account information to their representative. Please visit the WSIB website to download, complete and return the following:

- Direction of Authorization - Claims
- Authorization for access to business account information

Licensing requirements

In order to provide legal services related to WSIB matters, representatives must have a license issued by the Law Society of Ontario (formerly Law Society of Upper Canada). The only exceptions are those persons who are exempt from the licensing requirements either under the *Law Society Act* or as a result of a bylaw passed by the Law Society of Ontario (LSO).

A common exemption is that of a friend, which the Law Society of Ontario describes as a person not in the business of providing legal services that occasionally provides assistance to someone for no fee.

The WSIB will not accept unlicensed representatives who are not exempt from the licensing requirement.

Additional information on licensing requirements is available on our website, and on the Law Society of Ontario website.

Requests for representation

The WSIB does not require the workplace parties to have a lawyer or a representative to have an appeal in the Appeals Services Division.

If you plan to have a representative handle your appeal, please do so as early as possible in the appeals process, preferably before completing the Appeal Readiness Form.

Generally, we will not suspend the appeals proceedings in order for an objecting party or respondent to obtain representation. See the **Practice guideline on Late representation and participation.**

Please see the Intent to Object form instruction sheets for information regarding organizations that provide free advice and representation.

Practice guideline 2.2: Code of conduct for representatives

We expect representatives to make good faith attempts to resolve issues in dispute with the front-line decision-maker, and to be ready to proceed once an appeal is registered in the Appeals Services Division.

The Appeals Services Division recognizes and enforces the Code of Conduct established by the WSIB for representatives. The WSIB Code of Conduct can be found on the WSIB's website at https://wsib.ca/en/repconduct.

Appeals Services Division Code of Conduct for Representatives

Because there is greater interaction with representatives at the appeals level, there are additional standards of behaviour at this level. When interacting with the Appeals Services Division, representatives are expected to:

1. be aware of and comply with the Appeals Services Division *Practices & Procedures* document;
2. be prepared to comply with the disclosure requirements set out in the Appeals Services Division *Practices & Procedures* document;
3. be knowledgeable concerning the relevant legislation (the *Workplace Safety and Insurance Act*, and/or the *Workers' Compensation Act*);
4. be courteous and respectful to the opposing party, witnesses, and Appeals Services Division staff;
5. respect the confidentiality of the file information and related information submitted in the appeals process;
6. respect the privacy of the individuals involved in the appeals process;
7. provide submissions/responses by date required/requested;
8. be available to attend the hearing for the hearing date and time stated in the hearing notice letter; and,
9. be on time when attending oral hearings.

Please also see the Law Society of Ontario *Rules of Professional Conduct* on the Law Society of Ontario website.

Practice guideline 2.3: Late representation and participation

General

The Appeal Readiness Form makes clear to the objecting party that they should not be completing this form if they are seeking representation. The Participant Form provides a timeline for non-objecting parties to declare their interest in participating. Therefore, we expect that late notice of representation and/or participation will be rare.

We may grant a reasonable pause in appeal proceedings in cases of late notice of representation and/or participation in the circumstances set out below.

Late participation

Hearing in writing

1. If the appeal has not yet been assigned to an Appeals Resolution Officer to complete a hearing in writing and we receive a late Participant Form or Respondent Form, we will pause the appeal for up to 30 days from the date we receive the late Participant or Respondent Form. The respondent will have 30 days to provide their written submission.

Oral hearing

1. If the case has not yet been assigned to an Appeals Resolution Officer because an oral hearing date has not been scheduled and we receive a late Participant Form or Respondent Form, we will pause scheduling of the oral hearing for up to 30 days. The respondent must be available to attend an oral hearing within 90 days.
2. If an oral hearing date has been scheduled, and the respondent provides notice of late participation, we will allow them to participate in the appeal but they must accept the oral hearing date that has already been set. They will not be permitted to add any new issues to the hearing agenda.

Late representation or late change in representation

Hearing in writing

1. If the case has not yet been assigned to an Appeals Resolution Officer to complete a hearing in writing, we will pause the appeal for up to 30 days from the date of notification that either the objecting party or respondent have obtained representation or need to change their representation. Both parties must provide their written submission within the further 30 days after the clock has restarted. The objecting party may also choose to withdraw the appeal, in which case the withdrawal consequences set out in the **Practice guideline on Withdrawals** will apply.

Oral hearing

1. If the case has not yet been assigned to an Appeals Resolution Officer because an oral hearing date has not been set, we will pause scheduling of the oral hearing for up to 30 days. Both parties must be available to attend an oral hearing within 90 days once contacted by the Coordinator. The objecting party may also choose to withdraw the appeal, in which case the withdrawal consequences set out in the **Practice guideline on Withdrawals** will apply.
2. If an oral hearing date has been set and it is the objecting party who has obtained new representation, the oral hearing may be postponed for a maximum of 30 days. If a hearing date cannot be set (agreement of objecting party and respondent) within the extra 30 days, the appeal will be withdrawn from active status in the Appeals Services Division and the withdrawal consequences set out in the **Practice guideline on Withdrawals** will apply.
3. If an oral hearing date has been scheduled, and it is the respondent who has obtained new representation, we will postpone the oral hearing for a maximum of 30 days. If a hearing date cannot be set within the extra 30 days (agreement of objecting party and respondent) the oral hearing will proceed on the originally scheduled date.

This pause in proceedings will allow us to provide file access to the new representative or participant.

The Registrar will consider requests from a late participant or new representative regarding witnesses or when the parties provide new information, if the file has not yet been assigned to an Appeals Resolution Officer. If the appeal has been assigned to an Appeals Resolution Officer, the Appeals Resolution Officer will handle any new requests. The Registrar or the Appeals Resolution Officer will consider:

1. if they find the witness(es) relevant to the appeal;
2. if both parties agree, and
3. if the hearing will be able to be completed within the timeframe scheduled.

For both late participation and late representation, if a decision on the method of resolution is already made at the time of late participation or representation, that method of resolution will not generally be changed, even if the late participant or representative has requested a different method of resolution on the Respondent Form.

Practice guideline 2.4: Role of Appeals Coordinator and Appeals Registrar

Role of the Appeals Coordinator

The Coordinator is responsible for all pre-hearing activities of a file prior to assignment to a Registrar or an Appeals Resolution Officer and for scheduling oral hearings. Files that have been registered in the Appeals Services Division will be assigned to a Coordinator. The Coordinator will review the Appeal Readiness Form and all attached submissions.

Appeals Coordinators are responsible for assigning claim-related appeals to the Appeals Resolution Officers.

For employer account appeals, the Coordinator will refer to an Appeals Resolution Officer to decide the method of resolution. Refer to **Practice guideline on Employer account appeals.**

When the objecting party or respondent have requested an oral hearing, the Coordinator will refer these cases to the Registrar. The Registrar will make a decision on the method of resolution. If the Registrar allows an oral hearing, the Coordinator will schedule the oral hearing and assign the case to an Appeals Resolution Officer. Refer to **Practice guideline on Hearing scheduling.**

Coordinators will coordinate and ensure the sharing of submissions when there is a respondent. Refer to **Practice guideline on Rules of disclosure and witnesses.**

Coordinators will also address all pre-hearing issues surrounding summonses, interpreters, travel, etc.

Role of the Appeals Registrar

The Registrar is the primary contact for the workplace parties and their representatives. The Registrars are available to discuss the appeals process with the workplace parties. The Registrar reviews the file for appeal readiness, decides on requests for witnesses, and makes time limit decisions. They also review if issues should be added to an appeal and handle the disclosure process.

The Registrar also makes the administrative decision on the method of resolution. This function can be delegated to another decision-maker in the Appeals Services Division.

If the Registrar denies your request for an oral hearing and decides that a hearing in writing is a more appropriate method to resolve the appeal, they will advise you, and the respondent, in writing and give you and the respondent 30 days to provide written submissions. The Registrar will return the file to the Appeals Coordinator who will assign the file to an Appeals Resolution Officer at the end of the 30 days, whether written submissions from the workplace parties have been received. The Appeals Resolution Officer will not accept late submissions after the appeal has been assigned to them.

Any of the workplace parties (objecting party or respondent) may ask the Registrar to reconsider their decision on the method of resolution. **However, this does not stop the 30-day submission clock.** The party must send their reconsideration request in writing within 30 days of the Registrar's decision directly to the Registrar.

If a reconsideration request is received within 30 days, the Registrar will reconsider the decision and send their written reconsideration decision to the parties within 10 days. If the Registrar does not change their decision and a hearing in writing is confirmed, their decision letter will give the parties an additional 14 days to provide written submissions on the issue(s) in the appeal.

The appeal will be assigned to an Appeals Resolution Officer at the end of the 44 days (30 days + 14 additional days), whether or not written submissions from the workplace parties have been received. The Appeals Resolution Officer will not accept a late submission after the appeal is assigned to them.

If the Registrar reconsideration decision results in a reversal of the decision and an oral hearing is granted, the Registrar will confirm this in a letter to the parties and also tell them that the appeal has been forwarded to the Coordinator to contact the parties to schedule the oral hearing.

The Registrar will also make a decision about what witnesses will be authorized for the oral hearing and also decide on the hearing format (video conference, teleconference or in-person), and if required, the location of the in-person hearing.

If, on reconsideration, the Registrar approves an oral hearing, either the objecting party or respondent may request a reconsideration of the decision made regarding witnesses. Any concerns surrounding the number and nature of witnesses allowed will not delay the scheduling of the oral hearing, but the Registrar may review any reconsideration request about witnesses at any time up to assignment to the Appeals Resolution Officer.

Practice guideline 2.5: Role of the Appeals Resolution Officer

All appeals accepted by the Appeals Services Division are dealt with by Appeals Resolution Officers, with the exception of Section 120 time limit appeals*. Decisions are reached using one of two resolution methods, Hearing in Writing or Oral Hearing, which are decided by based on the issue under appeal. The method of resolution will be decided by the Registrar. In the case of an employer account appeal, the method of resolution will be decided by an Appeals Resolution Officer.

Appeals Resolution Officers are responsible for resolving appeals. In performing their duties, Appeals Resolution Officers will comply with the following code of conduct:

1. Act in a fair and impartial manner and avoid any conflicts of interest.
2. Be diligent and conscientious in the performance of their duties.
3. Treat all parties and participants in the appeal process with courtesy, dignity and respect.
4. Approach every appeal with an open mind, capable of fairly assessing and weighing evidence and avoid doing or saying anything that would cause a party to think otherwise.
5. Conduct enquiries that are necessary to properly resolve the appeal, and ensure appropriate protection for unrepresented parties, while respecting the non-adversarial nature of the WSIB's adjudication system.
6. Reach decisions based on objective and independent assessments of fact in accordance with the *Workplace Safety and Insurance Act* and WSIB policy.

*Section 120 time limit appeals will be dealt with by the Registrar. Refer to the **Practice guideline on Time Limit to Object.**

Frequently asked questions about people involved in your appeal

Do you ever include third parties in an appeal hearing?

Occasionally we may include third parties in an appeal hearing. For example, if you have been exposed to dangerous substances at more than one workplace, we may want to include all of the employers involved. If an employer is no longer in business and their WSIB account is closed, we usually do not include them in the appeal process. However, we may still ask them for information if we need it to help make a decision.

Do I have to use a representative in my appeal?

No. It's your choice whether or not to use a representative.

Who can represent me in an appeal?

In most cases, your representative must have a license issued by the Law Society of Ontario. If your representative is a friend or family member who is not in the business of providing legal services, they do not have to have a license. You can find more information about licensing requirements on the Law Society of Ontario website.

I can't afford a lawyer – how can I get a representative?

Our Intent to Object Form instructions for people with claims and employers have information about organizations that provide free advice and representation.

What do I need to do once I have chosen a representative?

You must give us written permission before we can release your claim file or employer account information to your representative. If you have a work-related injury or illness, you must complete and return a Direction of Authorization - Claims Form. If you are an employer and would like a representative for the claims appeal, you must also complete and return the same form. You can find these forms at wsib.ca.

If you are an employer appealing an employer account decision and have a representative, there is a separate authorization form for employer account issues.

Can I get a representative after I send in the Appeal Readiness Form?

Late notice of representation should be rare. If you are planning to use a representative, you should have them in place before you complete and send in your Appeal Readiness Form. **Refer to Practice guideline on Late representation.**

What if I do not want to participate in the appeal process?

If you do not want to participate in the appeal process, you do not need to complete and return the Participant Form. We will not include you in any further activity around the appeal process including any information sharing. Whether or not you choose to participate, we will send you a copy of the Appeals Resolution Officer decision.

Section 3

Practice guidelines:

- Determining method of resolution
- Hearings in writing
- Oral hearings
- Frequently asked questions

Practice guideline 3.0: Determining method of resolution

Legislative requirements

Section 119 (3) states:

The Board shall give an opportunity for a hearing.

Section 119 (4) states:

The Board may conduct hearings orally, electronically, or in writing.

To fulfill legislative requirements, we provide two methods of resolution:

- a hearing in writing, the default method of resolution; or
- an oral hearing

Oral Hearings in this guideline include hearings by video conference, teleconference and in-person.

NOTE: Employer account appeals are managed differently. If you are looking for information on an employer account appeal, please refer to **Practice guideline on Employer account appeals.**

The WSIB is committed to meeting the accessibility needs of the workplace parties. Any party requiring an accommodation to participate in an appeal or an oral hearing please contact the Coordinator at 1-800-387-0750.

Process for deciding the method of resolution

The objecting party will have the option of requesting an oral hearing or a hearing in writing on the Appeal Readiness Form. The respondent can also make their request for an oral hearing or a hearing in writing on the Respondent Form.

Oral hearing

In certain cases, we will consider an oral hearing (video conference, teleconference or in-person) as the method of resolving the appeal. For example, an oral hearing is the default method of resolution for initial entitlement to Chronic Mental Stress appeals. For a complete list of the type of issues that may be resolved through an oral hearing, please see the **Oral Hearings** list.

The Registrar will review the issue(s) in dispute written on the Appeal Readiness Form to decide if the issue(s) falls under the default oral hearing method of resolution. You can find the **Oral Hearings list.**

Each request for an oral hearing, whether by the objecting party or the respondent, is decided on a case-by-case basis. This is to ensure that a fair decision can be made on each issue that is being appealed.

Factors considered when deciding the method of resolution

If the answer is "yes" to one or more of the following questions, the Registrar will likely decide an oral hearing is the best method of resolution for the appeal:

1. Is direct testimony (making statements under affirmation) needed from the objecting party or witnesses? For example, direct testimony may be required if one party's information disagrees with the other party's information about the accident date, time, place, location, etc.
2. Does the case have significant factual issues in dispute? For example, surveillance video is presented as evidence, and the parties interpret this differently.
3. Is there a reason that a person who does not have a representative cannot make a submission in writing? For example, a person with a learning, communication disability or a significant language barrier and an interpreter is needed.
4. Is the information about an injured/ill person's non-organic functional abilities or limitations minimal or inconsistent? Some examples of these are: activities of daily living, persistent fears or issues associated with the accident, ability to perform common workplace tasks, and ability to interact with others both in and outside of the workplace.
5. Is there significant conflicting information and/or there is an issue with the reliability and consistency of the evidence?

An oral hearing is not necessary:

1. for an injured/ill person to describe their level of impairment and/or pain to an Appeals Resolution Officer;
2. when there is a disagreement between the injured/ill person and their employer about the nature and timing of a job offer.

Written statements from the injured/ill person and their employer may be provided and the Appeals Resolution Officer would weigh the information and make a finding of fact.

Objecting party requests an oral hearing

1. You must include your arguments about the issue(s) you are appealing on the Appeal Readiness Form. Your reasons should match the criteria on the **Oral Hearings list** for requesting an oral hearing.
2. When explaining why you are requesting an oral hearing, you should be as specific as possible in explaining why you want the oral hearing and how it is related to the issue(s) under appeal. For example, you should explain if there is any missing information, differences in statements, inconsistencies in medical reports and conflicting information between the injured/ill person, employer, co-workers and any witnesses.
3. When we receive the Appeal Readiness Form, the Coordinator will look to see if there is a completed Participant Form in the claim file. If there is, we will send the participant a Respondent Form. Like the objecting party, the respondent should provide a detailed explanation as to why they are requesting an oral hearing and include their arguments on the issue(s) under appeal.

4. If there is no completed Participant Form in the claim file, the Registrar will only consider the Appeal Readiness Form when deciding the method of resolution.

5. The Registrar will review the Appeal Readiness Form and the Respondent Form, if completed and returned by the due date, together.

If either party has requested an oral hearing but the issue is not on the oral hearings list, the Registrar will still consider your request by reviewing the **"Factors considered when deciding the method of resolution"** that would require an oral hearing.

Hearing in writing

In the Appeals Services Division, hearing in writing is generally the default method of resolution to hear an appeal. This means that, in most cases, the Appeals Resolution Officer assigned the appeal will make their decision by reviewing the information in the claim file and any written submissions on the Appeal Readiness Form and the Respondent Form. The issues for a hearing in writing appeal are largely medical, legal or policy-based. Testimony would not add to, or clarify further, the information already in the claim file.

Objecting party requests a hearing in writing

1. You must include your arguments about the issue(s) you are appealing and the resolution you want on the Appeal Readiness Form.
2. When an appeal is resolved through a hearing in writing, there is no additional opportunity for you or the respondent to provide submissions (make your arguments) as the appeal is assigned directly to an Appeals Resolution Officer to make a final decision on the issue.
3. The Registrar reviews the Appeal Readiness Form and the Respondent Form together. If the respondent has requested an oral hearing, the Registrar reviews the reasons for this request. If the reasons for the request do not meet the criteria on **oral hearings list**, the method of resolution remains a hearing in writing.
4. If you request a hearing in writing, but the issue is on the **oral hearings list** (for example, chronic mental stress), the Registrar will decide it as an oral hearing.
5. When reviewing the claim file, the Registrar will decide if there are other factors that would make an oral hearing the best method of resolution.

Notification of the method of resolution decision

After the decision is made about the method of resolution, here is what you can expect to happen next:

If both parties request a hearing in writing:

1. Appeals staff will not contact the parties to let them know the decision on method of resolution.
2. The Registrar will review the Respondent Form and any attached submissions to decide if the

respondent's submission contains new evidence or an argument that is so significant that the objecting party should be granted time to respond to the submission. If so, the Registrar will send a letter and the respondent's submission to the objecting party and give them 21 days to provide a written submission responding to the respondent's submission. The case will be assigned to an Appeals Resolution Officer once the objecting party's response has been received, or once the 21 days have passed, whichever happens first.

3. In all other circumstances, a hearing in writing appeal is assigned directly to an Appeals Resolution Officer to decide on the issue being appealed. The Appeals Resolution Officer will make a decision based on the submissions made on or attached to the Appeal Readiness Form and Respondent Form, as well as the information in the claim file. The Appeals Resolution Officer will usually make a decision within 30 days.

If an oral hearing is requested by the objecting party and/or respondent and allowed:

1. The Registrar will send the parties a letter confirming that an oral hearing has been allowed and confirm the appeal issues.
2. The hearing will usually take place within 90 calendar days from the date of oral hearing confirmation letter.
3. The Registrar will then refer the file to the Coordinator who will contact the parties to schedule the oral hearing.

If an oral hearing is requested by the objecting party and/or respondent and denied:

1. The Registrar will send the parties a letter letting them know that the method of resolution will be a hearing in writing.
2. The Registrar's letter will give the objecting party and the respondent 30 days to make their arguments in writing on the issue under appeal.
3. The Registrar will review the Respondent Form and any attached evidence or submissions and decide if the respondent's submission contains new evidence or an argument that is so significant the objecting party should be granted time to respond to the submission. If so, the Registrar will send a letter and the respondent's submission to the objecting party and give them 21 days to provide a written submission responding to the respondent's submission. The case will be assigned to an Appeals Resolution Officer once the objecting party's response has been received, or once the 21 days have passed, whichever happens first.

Reconsiderations on the method of resolution

The WSIB decision on method of resolution is an administrative decision made by the Registrar. You can request a reconsideration of this decision to the Registrar. If the Registrar denies your request for reconsideration, your final request for reconsideration can be made to the Appeals Manager. The method of resolution decision is not subject to further appeal beyond the final request for reconsideration to the Appeals Manager. The senior leadership in the Appeals Services Division will not consider reconsideration requests on the issue. For more information on the role of the Registrar, refer to **Practice guideline on Role of Appeals Coordinator and Appeals Registrar.**

Oral hearings criteria list

B1. Initial entitlement: disablement where there is evidence of factual dispute related to the worker's job duties and/or there is insufficient information about the worker's job duties

B2. Initial entitlement (generally two party): chance event where there is contradictory information and/ or testimony would add to the information already in the case material

B3. Initial entitlement: Chronic Mental Stress

B4: Complex occupational disease

B5. Complex non-organic conditions

B6. Job suitability with or outside of injury employer: factual dispute

B7. Job suitability: information about the offered job(s) and worker's functional information is either not on file or is incomplete, and the parties disagree about job suitability

B8. Co-operation in return-to-work

B9. Co-operation in work transition (Labour market re-entry)

B10. Work transition plans

B11. Re-employment (where the threshold for re-employment has been met)

B12. Complex final loss of earnings review: factual dispute

B13. Recurrence: 1 year or more from the date of injury/illness or 12 weeks or more of loss of earnings

B14. Survivor benefits: complex decisions of who is a spouse/dependent

B15. New organic condition where entitlement does not rest on medical compatibility

B16. Secondary conditions where entitlement does not rest on medical compatibility

B17. Transfer of cost

B18. Independent operator and worker status

Frequently asked questions about method of resolution

What happens if both of the participants in the appeal ask for a hearing in writing?

If both participants ask for a hearing in writing, we will assign the hearing directly to an Appeals Resolution Officer. We will not contact you to let you know that we are using a hearing in writing.

The Appeals Resolution Officer makes a decision based on the information in the Appeal Readiness Form and Respondent Form (including any attachments), as well as the information in the claim file. They will usually make a decision within 30 calendar days.

I asked for an oral hearing, but I did not get one. What happens next?

You and the respondent will get a letter to let you know that you will have a hearing in writing and the reasons why. This letter will also give you both 30-calendar days to provide us with written submissions for your appeal.

I asked for an oral hearing but did not get one. Will I get a chance to respond to any new information that the respondent provides?

If the respondent sends us significant new information, we will share it with you and give you a chance to respond. You will have 21 calendar days to respond to the new information.

What happens if I want a hearing in writing, but you usually decide on my type of appeal with an oral hearing?

If the defined criteria for an oral hearing is met, the issue will be decided by an oral hearing.

What happens if the respondent and I do not agree on what type of hearing we want?

When deciding on the type of hearing, we review both the Appeal Readiness Form and the Respondent Form together. We review each person's reasons and make the decision based on what we think is the best method of resolution to resolve the appeal.

If you decide my appeal needs an oral hearing, what happens next?

We will call everyone involved in the appeal to arrange the date, time and, if applicable, location of your hearing. We then send a letter confirming this information and any other details you need. The hearing usually happens within 90 calendar days from the date of the Registrar's decision granting the oral hearing.

Is there a way that I can ask you to reconsider the type of hearing that I will have?

If you disagree with the type of hearing we choose, you can write to the Registrar who made the decision and request a reconsideration. In your letter, you must tell us why you think we should change the type of hearing we have chosen. As indicated earlier, you may also request that the Appeals Manager, reconsider the decision on the method of resolution.

Section 4

Practice guidelines:

- Oral hearings by videoconference, teleconference or in-person
- Hearing scheduling
- Frequently asked questions about oral hearings
- Rules of disclosure, witnesses and surveillance material
- Summons and production of documents
- Frequently asked questions about evidence, witnesses & summonses
- Return-to-work and related appeals
- Adjudication of related issues
- Jurisdiction of issues
- Interpreters
- Frequently asked questions about interpreters
- Raising an Ontario Human Rights Code or Canadian Charter of Rights and Freedom question
- Downside risk
- Returns to front-line decision-making area post Appeals Services Division registration
- Withdrawals
- Pre-hearing postponements and security

Practice guideline 4.0: Oral hearings by videoconference, teleconference, in-person, or hybrid

Video conference, teleconference oral hearings

We are committed to providing our services in ways that respect the dignity and independence of people with disabilities. You can ask for an accommodation for an oral hearing and at any point in the appeals process. Please tell us about your accommodation needs as soon as possible so we can help you more effectively. To ask for an accommodation during the appeal process or for a hearing, please contact the Coordinator at 1-800-387-0750.

If we decide that an oral hearing is needed to resolve your appeal, the oral hearing will generally be done by video conference.

When your hearing is scheduled, the Coordinator will send you a Hearing Notice letter. The letter will confirm the type of hearing (video conference, teleconference, or in-person), and provide you with the date and time of the hearing, and location if in-person.

Before we hold a hearing by video conference or teleconference, we will ensure that:

1. everyone involved in the hearing has access to the technology needed to participate
2. everyone attending the hearing has an updated copy of the claim file and all relevant information prior to the hearing
3. no one involved in the hearing will face any significant prejudice
4. any credibility issues that may be part of the appeal can be addressed, and
5. any accommodation needs are met.

For video conference hearings, we will send you and your representative an email/calendar invitation that will contain a link to the scheduled video conference and instructions on how to use that link to join the video conference at the scheduled date and time.

You should be available 30 minutes prior to the scheduled hearing time to ensure everyone's video conference equipment is working and that there are no connectivity issues.

Who may attend a hearing?

1. The objecting party and their representative
2. The respondent and their respective representative
3. Witnesses approved by the Registrar or the Appeals Resolution Officer.

In-person oral hearing

We take a flexible approach to requests for in-person hearings. The Registrar will review the **oral hearings list**, the claim file information, and the circumstances of the case and will decide if an in-person hearing is the best method to resolve the appeal.

The following are some of the factors that the Registrar will consider when they decide if an in-person oral hearing is the best method to resolve the appeal:

1. Conducting a full and fair hearing in accordance with the principles of natural justice.
2. Individual needs of the parties, including accommodations.
3. The nature of the case and the issues.
4. The appeal hearing is expected to be lengthy, a full day hearing or multi-day hearing.
5. Timeliness and avoidance of unnecessary delays.
6. Any other relevant considerations, flexibility is the key.

Note: If the objecting party or respondent is temporarily unavailable to discuss the scheduling of an oral hearing for reasons beyond their control, such as the sudden and serious illness of the party or the need to leave the country to deal with an emergency, the appeal will not be withdrawn immediately. In these cases, the appeal will remain with the Coordinator who will place the case on administrative hold until the situation has resolved. If the party is unavailable for more than 30 days, we will decide whether to withdraw the case.

Hybrid hearing

We also offer appeal hearings through a hybrid format when a workplace party may not be able to attend an in-person hearing but can attend the hearing through video conference or teleconference. You must tell the Coordinator during scheduling if you are unable to attend in-person and let the Coordinator know which is your preferred option, video conference or teleconference. The Coordinator will ensure you are provided with the necessary information to participate in the hearing by either video conference or teleconference.

Hearing date has been scheduled

Once a hearing date has been scheduled, the Coordinator will send a Notice of Hearing letter to the parties setting out the date and time of the video conference or teleconference hearing. In cases where an in-person oral hearing is approved, the Notice of Hearing letter will include the date, time and place for the hearing. Generally, in-person hearings will be held in the city where the claim file is administered or the city closest to that location where hearings are generally held. In the case of an employer account appeal, the hearing will be held in the city where the employer's account is administered, or the city closest to that location where hearings are generally held.

You should discuss any accessibility or accommodation needs, including if you need an interpreter, with the Coordinator when scheduling the hearing. You should also let the Coordinator know if you need

to request a summons, or if you have any video evidence that will be submitted. Refer to **Practice guideline on Rules of disclosure, witnesses and use of surveillance material .**

Practice guideline 4.1: Hearing scheduling

Oral hearings in this guideline include hearings by video conference, teleconference and in-person

Initial scheduling

Once the Registrar decides that an oral hearing is needed, the Registrar will refer the file to the Coordinator who will contact the parties to schedule a hearing date. The parties are expected to be available to attend a hearing within 90 days from the date of the Registrar's oral hearing confirmation letter.

If one or more of the parties are not available within the 90-day timeframe, the Coordinator will provide a one-time exception and allow a further 30 days to secure a suitable oral hearing date. If the objecting party is available within 120 (90 + 30) days and the respondent is unavailable within that time period, the oral hearing will be scheduled based on the objecting party's preferred date. **Beyond the timeline extension noted, the parties will be expected to accept the first available date offered by the Coordinator.**

Situation	Timing	Consequence	Requirement for availability
Objecting Party is granted request for oral hearing	Within 90 days		Oral hearings will generally be scheduled within 90 days of the letter confirming an oral hearing is approved.
Objecting Party unavailable within 90 days	Within 120 days	Further discussion with the Coordinator will occur	Objecting Party **must** be available within the first 30 days after the 90-day time period.
Objecting Party unavailable within the 120 day time period	Can reapply in 30 days	The appeal is with-drawn. The objecting party will have to wait 30 days to re-submit an Appeal Readiness Form.	Objecting Party must be available within 90 days of the re-submitted Appeal Readiness Form.
Objecting Party unavailable within 90 days after re-submitted Appeal Readiness Form	Can reapply after 90 days	The appeal is withdrawn and the objecting party will have to wait another 90 days before they can re-submit an Appeal Readiness Form.	After 90 days, the Objecting Party can re-submit an Appeal Readiness Form but they **must** be available within 60 days of the re-submitted Appeal Readiness Form.

Situation	Timing	Consequence	Requirement for availability
Objecting Party unavailable within 60 day after re-submitted Appeal Readiness Form		The case is withdrawn for a third time and the objecting party must write to the Senior Director of the Appeals Services Division to ask for a return to the Appeals Services Division to have their appeal resolved.	

Frequently asked questions about oral hearings

When will my oral hearing take place?

If an oral hearing is needed, we will schedule it within 90 calendar days of deciding to use an oral hearing. We call everyone involved in the appeal to help us arrange the date. We then mail you a letter confirming the type of hearing (video conference, teleconference or in-person) the date, time and location of the oral hearing. The letter will also provide you with other important information you may need about attending the oral hearing.

What happens if I am not available when my oral hearing is scheduled?

The Appeal Readiness Form requests that you are available to move forward with an Oral Hearing. If you're not available within the 90-calendar day timeframe, the Coordinator will provide a further 30 calendar days to secure a suitable oral hearing date. If the objecting party is available within 120 (90 + 30) calendar days and the respondent is unavailable within that time period, the oral hearing will be scheduled based on the preferred date of the objecting party. If the objecting party is not available within 120 calendar days, we will withdraw the appeal **(please see the information about Withdrawals waiting periods).**

What happens if I am not available to discuss the scheduling of my oral hearing?

If an objecting party or respondent is temporarily unavailable to discuss the scheduling of an oral hearing for reasons beyond their control, such as a sudden and serious illness or the need to leave the country to deal with an emergency, we will not withdraw the appeal immediately. The Coordinator will place the case on administrative hold until the situation has resolved. If you are unavailable for more than 30 calendar days, we will decide whether to withdraw the case.

How long will the oral hearing take?

The length of the oral hearing depends on many factors, such as the number of issues under appeal, how complex they are, and how many witnesses there are. They can range from one hour to one day in length. In rare, very complex cases, it might take more than one day.

I am nervous about my oral hearing. Will it be like going to court?

We try our best to make oral hearings fair and courteous. One important difference between an appeal hearing and being in court is how the participants at the hearing interact with each other and with witnesses.

We allow the participants in the appeal (or their representatives) to ask each other, and any witnesses, questions to help clarify information that is relevant to the case. This is called cross-questioning. The Appeals Resolution Officer makes sure that the questions are relevant to the issue that is being appealed.

Our oral hearings are less formal and confrontational than being in court, where lawyers can use cross-examination, an aggressive approach that may intimidate people in the courtroom. This type of questioning will not be allowed in the oral hearing.

Practice guideline 4.2: Rules of disclosure, witnesses and surveillance material

Oral Hearings in this guideline include hearings by video conference, teleconference and in-person.

Section 131 of the *Workplace Safety and Insurance Act* allows the WSIB to determine its own practice and procedure.

Section 132 of the *Workplace Safety and Insurance Act* allows the WSIB to summon witnesses and require parties to provide documents and items that the WSIB considers necessary to make a decision.

The purpose of the rules set out below is to ensure that all participants and the Appeals Resolution Officer have the same information so they can determine the issues under appeal, identify any additional information that may be required, and prepare for the oral hearing.

Hearing in writing disclosure process

When both workplace parties request a hearing in writing, they should include any submissions/arguments on or attached to the Appeal Readiness Form or Respondent Form. They will not have any further opportunity to argue the merits of the appeal with anyone in the Appeals Services Division before the file is assigned to an Appeals Resolution Officer to make a decision.

If the Registrar decides, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or argument that is so significant that the objecting party should be granted time to respond, the Registrar will send a letter to the objecting party giving them 21 days to respond to the respondent's submission.

Alternatively, if one or both parties request an oral hearing, and the Registrar decides the appeal will be resolved through a hearing in writing, the Registrar will give both parties a further 30 days to make their detailed written submission. **The parties must provide a copy of their written submission to the other party.** The Registrar will again review the respondent's submission to decide if there is new significant evidence or argument that needs to be provided to the objecting party for response. If yes, the Registrar will follow the same process as listed above.

Once the objecting party has provided their response, or the 21 days have passed, whichever happens first, the hearing in writing disclosure process is concluded. The Coordinator will then assign the hearing in writing case to an Appeals Resolution Officer.

Oral hearing stage

If, at the time of scheduling, we receive a written request from the objecting party to obtain outstanding information, the case will be withdrawn as this would contradict the declaration of appeal readiness made when signing and sending in the Appeal Readiness Form. If it is the respondent making such a request, the case will proceed unless the outstanding information is so important that

to proceed with the hearing would impact the Appeals Resolution Officer's ability to make a decision based on the merits and justice of the case.

The parties are responsible for making sure that their approved witnesses will be available at the hearing.

Evidence

Evidence that did not exist

Once a file is registered in the Appeals Services Division there may be rare circumstances where the objecting party and/or the respondent submits to the Appeals Resolution Officer, either at the oral hearing or prior to the oral hearing, relevant evidence that did not exist when the Appeal Readiness Form or the Respondent Form were submitted. The Appeals Resolution Officer will only accept this evidence if the party provides a reasonable argument why the evidence was not available at the time they submitted the Appeal Readiness Form or the Respondent Form.

Where evidence is submitted prior to the oral hearing, and the other party has not been copied, the Coordinator is responsible for ensuring that access to these documents is provided to the other party.

Evidence that did exist

For evidence that did exist at the time the objecting party and/or the respondent submitted the Appeal Readiness Form or Respondent Form, but was either missed by the representative(s) or was not provided to them by their client, the evidence will be accepted by the Appeals Resolution Officer, either before or at the oral hearing, if:

1. the Appeals Resolution Officer thinks it is relevant;
2. the parties involved in the appeal agree, and
3. the hearing will be able to be completed within the timeframe scheduled.

If the Appeals Resolution Officer accepts new evidence at the hearing, they will decide how to ensure fairness to the party receiving the additional documents at the oral hearing. This may include:

1. delaying the start of the hearing to give the representative an opportunity to review and discuss the documents with the party and/or witnesses;
2. offering the party to provide post-hearing submissions on any of the documents submitted;
3. postponing the hearing where the unfair disadvantage to the receiving party is so significant that no other procedure can overcome the disadvantage.

Public information

We recognize there is public reference material that an objecting party or respondent might discover in preparation for an oral hearing. These include:

1. WSIB policies
2. Workplace Safety and Insurance Appeals Tribunal decisions
3. Workplace Safety and Insurance Appeals Tribunal Medical Discussion Papers
4. Published Appeals Resolution Officer decisions

The oral hearing participants can present the material at the time of the oral hearing. The party providing the public document(s) should ensure that a copy is provided to the Appeals Resolution Officer and to the other party, if applicable.

Witnesses

The workplace parties are expected to include on their Appeal Readiness Form/Respondent Form a list of their witnesses, along with a "will say" statement for each witness.

A "will say" statement is a brief summary of the evidence that each witness (other than the injured/ill person or employer) will provide at the hearing.

One person from the employer, known as a resource person, may attend the hearing, consult with their representative during the hearing, and testify. If the employer resource will also be a witness, a "will say" statement is required.

The Appeals Services Division expects that only one witness is needed to testify on the same or similar evidence. If a party believes that more than one witness is necessary to address the same or similar evidence, they must explain why the other witness needs to testify instead of providing a written statement. We will take a balanced approach on the number of witnesses for both the objecting party and respondent in both claims and employer account appeals.

Once the Registrar has made their decision on the witnesses who will attend the hearing, we will only allow additional witness in exceptional circumstances, such as late participation, late representation, or a late change in representation. Refer to **Practice guideline on Late representation and participation.**

The workplace parties must advise the Appeals Services Division and the other party if they remove a witness from the witness list at least seven days prior to the scheduled oral hearing date.

The Appeals Resolution Officer will consider requests for the payment of expenses for the injured/ill person, the injured/ill person's witnesses and any summoned witnesses. Refer to **Practice guideline Oral hearings fees/expenses.**

Professional witness

We generally accept professional witnesses, such as doctors, psychologists or physiotherapists to provide medical reports to the Appeals Resolution Officer. Professional witnesses will only be approved to appear at an oral hearing in unique circumstances where the evidence they intend to bring forward can only be effective if it is provided in person. We may pay for a professional report

or for a professional witness to give testimony at a hearing. Refer to **Practice guideline Oral hearings fees/expenses.**

Surveillance material

We may accept video evidence from the objecting party, the respondent or from the WSIB's Stakeholder Compliance Division. The video evidence must be submitted with your Appeal Readiness form or Respondent Form. We accept a variety of media formats, as long as everyone involved in the appeal can view the video evidence. The video evidence must be relevant and provide new or more complete information than what is already on the claim file. WSIB policies 11-01-08, Audio/Visual Recordings and 22-01-09, Surveillance explain how we use this type of evidence.

In all cases, the video evidence must be authenticated, through a signed statement from the person that made the video confirming the date, time and location of the video, that it has not been altered, and that the video is a true representation of its subject. If we receive video evidence that is not accompanied by a signed statement of authentication, we will return the evidence and ask that it be authenticated and re-submitted.

If the decision under appeal is based in whole or in part on surveillance evidence but the identity of the subject of surveillance is contested, a detailed investigation by the WSIB's Stakeholder Compliance Division can be undertaken at the request of the Appeals Services Division.

If the video evidence is to be used in an oral hearing, the Appeals Resolution Officer will view the evidence in advance of the hearing and ask for agreement from the workplace parties about what sections of the video are most relevant. The Appeals Resolution Officer will also ask for agreement from the workplace parties if viewing the video during the hearing is necessary and if so what sections will be viewed. Sometimes, an agreement can be reached that if the workplace parties have all viewed the video in advance, it will not be necessary to view it again in the oral hearing.

If you have video evidence to be used in an oral hearing, you must tell the Coordinator at the time of scheduling the hearing. If you need more information about video formats, please contact the Coordinator.

In exceptional circumstances, we may allow the respondent to provide new video evidence at least 30 calendar days before a scheduled oral hearing date. The respondent must give the objecting party a copy of the video evidence at the same time they give it to the Appeals Services Division, and it must meet the authentication requirements.

Medical reports

When a party or their representative provides an opinion medical report obtained on their own initiative, the party must provide the Appeals Services Division with a copy of the letter or memo sent by the party or representative to the doctor asking for their opinion, along with a copy of the medical report received.

The objecting party must provide/attach all medical reports they intend to rely on at the time they submit the Appeal Readiness Form. The respondent is expected to provide any medical reports they intend to rely on at the time they provide their submission.

We will allow the workplace parties to provide medical reports/records either prior to or at the oral hearing if the reports relate to medical assessments/procedures that occurred between the date of submission of the Appeal Readiness Form/Respondent Form and the date of the oral hearing.

The Appeals Resolution Officer will accept, either before or at the oral hearing, a medical report that does not relate to medical assessments/procedures that occurred between the date of submission of the Appeal Readiness Form/Respondent form and the date of the oral hearing, if:

1. the Appeals Resolution Officer thinks it is relevant;
2. everyone involved in the appeal agrees, and
3. the hearing will be able to be completed within the timeframe scheduled.

Practice guideline 4.3: Summonses and production of documents

General

A summons is a document that requires a person to attend an oral hearing on a certain date to give testimony. A summons can also require a person to provide a document important to the appeal.

Section 132(1) of the *Workplace Safety and Insurance Act* gives the WSIB the power to summon and enforce the attendance of witnesses at a hearing in the same way as a court.

The objecting party or the respondent may request a summons. A summons request must be in writing. The party requesting a summons should include information about the request on the Appeal Readiness Form or the Respondent Form. The following information should be provided:

1. the name, current address and telephone number of the witness;
2. a brief statement outlining why the testimony is necessary for the appeal;
3. a brief statement indicating whether the witness is willing to attend;
4. a brief statement explaining why the summons is required.

The party requesting the summons must provide address information for the witness that is specific enough to allow us to locate the person to serve the summons. We will notify the requestor if the address information is not sufficient. We cannot serve a summons to addresses that only contain post office boxes or rural routes. We will make no efforts to locate the witness where the information provided is not sufficient.

In the case of documents, the request must identify the document(s) and indicate who has possession of the document(s). The request should also state the relevance and likely significance of the document(s). When documents are in the control of one of the workplace parties, the parties are required to explore the release and exchange of documents rather than requesting a summons.

Criteria

We will review all summons requests to determine whether we will issue a summons. All requests are reviewed based on the facts of the particular case. When reviewing a request, we will consider the following factors:

1. whether the evidence is relevant to the issue(s) in dispute;
2. whether the evidence is likely to be significant to a decision of the issue(s) in dispute;
3. whether the request to summon a witness will be used for the bona fide purpose of giving evidence before the proceeding or whether it will likely be used to harass or inconvenience the witness;
4. whether the oral or written evidence can be obtained in a more reasonable manner. For example, in situations involving physicians or return-to-work service providers it is generally more appropriate to obtain necessary information or clarification through written questions;

5. whether the summons request is being used for the purpose of “fishing” in the hopes of obtaining relevant information;
6. whether the person receiving the summons has access or control of information/documents, relevant to the case. The summons should be issued to the person with custody of the necessary documents;
7. whether the prospective witness is compellable in the proceedings (Section 180 (1) of the *Work-place Safety and Insurance Act* has established that our employees are not compellable wit-nesses and other statutes limit the compellability of certain witnesses).

Procedures

At the time the Registrar is deciding the method of resolution, the Registrar will also review the Appeal Readiness Form and the Respondent Form and if either party in the appeal requests a summons, the Registrar will make a decision on whether a summons is required.

If the Registrar approves the summons, we will prepare and issue the summons through a Process Service Provider.

Where the Registrar decides that the document or the proposed witness is not essential to a decision on the issue in dispute, the Registrar will communicate this to the parties in writing.

If the parties do not request a summons for a witness or a document on the Appeal Readiness Form or the Respondent Form, but one is requested later on, the parties must request the summons through the Coordinator at the time the oral hearing is being scheduled. The request should be at least 30 days prior to the scheduled hearing date. The Appeals Resolution Officer assigned to the hearing will review the request. If the appeal has not yet been assigned to an Appeals Resolution Officer and we receive a request for a summons, the Registrar will review the request.

If a request for a summons comes less than 30 days prior to the scheduled date, we will withdraw the appeal. The usual consequences associated with a withdrawal without good reason will be applied. Refer to **Practice guideline on Withdrawals.**

The Process Service Provider will arrange for the summons to be served and provide the Appeals Services Division with an Affidavit of Service that is duly witnessed by a Commissioner.

At the oral hearing, if the summoned document is not produced or the witness does not attend, or where the Registrar denied the summons request, the Appeals Resolution Officer may:

1. proceed without the evidence or the witness if it is determined that the evidence in question is not essential to the disposition of the issue(s) in dispute;
2. proceed with the oral hearing, indicating that a decision on the need for the production of evidence or attendance of a witness will be reserved until the conclusion of the hearing;
3. where, at the conclusion of the hearing, the Appeals Resolution Officer decides that the evidence in question is essential, the Appeals Resolution Officer will direct the information be obtained by other means, or direct that the hearing be re-convened and that appropriate summonses be issued;
4. decide at the outset that the summons should be issued and postpone the oral hearing for that

purpose. This course of action should only be taken where the evidence in question is so critical as to make proceeding to hear the available evidence unreasonable.

If the summoned witness does not attend the hearing and the Appeals Resolution Officer is satisfied the evidence to be given is essential, then the Appeals Resolution Officer may decide to re-issue the summons with instructions to the Process Service Provider to communicate to the witness the necessity of attending a future hearing. The Appeals Resolution Officer may also recommend that we proceed with contempt proceedings against the witness. The Appeals Resolution Officer will make this decision in consultation with management and the WSIB's General Counsel.

Frequently asked questions about evidence, witnesses and summonses

What if I have important evidence that did not exist when the appeal started, and I want to include it in the appeal now?

Occasionally, new evidence comes up after everyone has submitted their Appeal Readiness Form or Respondent Form. You can ask the Appeals Resolution Officer to consider this information, but you must make a reasonable argument for why the information was not available when you originally submitted your Appeal Readiness Form or Respondent Form.

You must give a copy of any new information to the other person involved in your appeal. If you don't do so, there may be delays while we arrange for them to get the information.

Can I submit evidence that existed when the appeal started, but was not included with my Appeal Readiness Form or Respondent Form?

The Appeals Resolution Officer will only consider evidence that existed but was not submitted with these forms, if:

1. they think it is relevant,
2. everyone involved in the appeal agrees, and
3. the hearing can still be completed within the timeframe scheduled

You must give a copy of any new information to the respondent. If you do not do so, there may be delays while we arrange for them to get the information.

Can I have a new witness approved for an oral hearing if they were not listed on my Appeal Readiness Form or Respondent Form?

The Appeals Resolution Officer may consider approving a new witness if:

1. they think it is relevant,
2. everyone involved in the appeal agrees, and
3. the hearing can still be completed within the timeframe scheduled

I am a late participant and/or a new representative, and I disagree with the type of hearing chosen by the objecting party. Can I ask that the hearing type be changed?

The method to resolve the appeal will not be changed unless the person provides a compelling reason.

What happens if the objecting party or the respondent asks the Appeals Services Division to obtain outstanding information when they are scheduling an oral hearing?

If the objecting party makes this request, we withdraw the appeal. We do this because they told us they were ready to move forward with their appeal when they signed the Appeal Readiness Form, when they actually were not ready.

If the respondent makes this request, we continue with the appeal, unless the outstanding information is significant and helps us to make a decision based on the real merits and justice of the case.

What if there is video evidence, but you cannot tell who is in the video?

If an Appeals Resolution Officer thinks the evidence is crucial to their decision and the people involved in the appeal do not agree about who is in the video, the Appeals Resolution Officer may ask the WSIB's Stakeholder Compliance Services to contact the person who provided the video to get more information. This will happen before they use it in their decision-making.

How much of the video evidence do you show in the oral hearing?
The Appeals Resolution Officer will watch the video before the hearing and call the people involved in the appeal to get agreement about what sections of the video are most relevant to the appeal and what will be shown during the hearing.

How do I know for sure that I have seen all of the information from the other person involved in the appeal?

If we choose to resolve the appeal through a hearing in writing, the Registrar will determine if there is significant new evidence or arguments provided by the respondent. In these cases, (prior the file being assigned to the Appeals Resolution Officer) we will share this new information with the person who is objecting. They will be given 21 calendar days to respond to it.

Who decides whether or not a summons is needed?

The Registrar reviews the Appeal Readiness Form and Respondent Form and decides whether a summons is needed before assigning the file to an Appeals Resolution Officer. If they are not sure, they may ask a manager to help them make the decision.

What if I ask for a summons after I submit my Appeal Readiness Form or Respondent Form?

If you do not tell us on the Appeal Readiness Form or the Respondent Form that you need to summon a witness or a document, you must ask us for the summons when we are scheduling the oral hearing.

If you make your request at least 30 calendar days before the scheduled hearing date, we will make every effort to decide whether we need the summons and process it. If you request a summons less than 30 calendar days prior to the scheduled date, we will withdraw the appeal.

What happens if the summoned witness does not come to the oral hearing or the Appeals Resolution Officer does not get the summoned documents?

If the summoned witness does not attend the oral hearing or the summoned documents are not received, and the Appeals Resolution Officer decides if the witness' evidence or the documents are essential, the Appeals Resolution Officer may decide to re-issue the summons. See **Practice Guideline** **Summons and Productions of Documents.**

Practice guideline 4.4: Return-to-work and related appeals

Section 120 of the *Workplace Safety and Insurance Act* sets out the time limits to object to WSIB decisions. There is a 30-day time limit to object to a WSIB decision about Return-to-Work, or a Labour Market Re-entry (including a return-to-work plan with training or work transition plan) plan made on or after January 1, 1998.

In consideration of Section 120, the Appeals Services Division will prioritize expediting Return-to-Work and related appeals when the following issues are listed on the Appeal Readiness Form:

1. modified work;
2. a return-to-work plan;
3. suitable work;
4. suitable occupation;
5. determined earnings related to a suitable occupation;
6. labour market re-entry plan, return-to-work plan with training, or work transition plan;
7. non-cooperation in return-to-work; or
8. re-employment.

Return-to-work and related appeals expedited process

We will expedite return-to-work and related appeals as follows:

1. The front-line manager will review the Appeal Readiness Form and flag return-to-work appeal referrals with the above issue(s) to the Appeals Services Division.
2. The appeals intake and triage function will review the Appeal Readiness Form to confirm the appeal issue falls under one of the above noted return-to-work issues and decide if the file is appeal ready.
3. If the file is appeal ready, the Objection Intake Team will register the appeal on priority.
4. For single party, hearing in writing, appeal ready cases, the appeal will be assigned to an Appeals Resolution Officer on priority.
5. For dual party hearing in writing cases, the Coordinator will expedite the share and disclose process. Once the share and disclose process is completed and the file is appeal ready, the appeal will be assigned to an Appeals Resolution Officer on priority.
6. For return-to-work appeals where the Registrar has decided an oral hearing is required, the oral hearing will take place within 45 days from the date the Registrar allowed the oral hearing.

Practice guideline 4.5: Adjudication of related issues

In our efforts to improve efficiencies and ensure complete, holistic adjudication and decision-making, the Appeals Services Division will look to bundle appeals together, whenever possible. This means that:

1. If there is an active appeal(s) waiting to be assigned to an Appeals Resolution Officer and a new appeal is registered in the Appeals Services Division for the same claim, the Coordinator will pause assigning the active appeal(s) until the newly registered appeal is ready to be assigned, at which time all appeals will be assigned at the same time to one Appeals Resolution Officer.
2. If the active appeal was to be resolved by hearing in writing and the Registrar decides the new appeal will be resolved by oral hearing, both appeals will be heard by oral hearing. The Registrar will issue an updated hearing confirmation letter identifying all the appeal issues.
3. There is an open appeal (not yet ready to assign) in our appeals inventory and we identify a new Appeal Readiness Form in the claim file, the new Appeal Readiness Form will be actioned on priority by the Objection Intake Team who will refer the Appeal Readiness Form for priority review by the front-line decision-making area manager. Once the manager completes the review and the Appeal Readiness Form is ready to be referred for registration to the Appeals Services Division, the Appeal Readiness Form will be referred and registered on priority.
4. The Coordinator will be notified that a new appeal has been registered that has to be bundled with an open appeal. The Coordinator will hold all open appeals until all of the appeals are ready to be assigned and then all appeals will be assigned to one Appeals Resolution Officer.

For active appeals that are already assigned to an Appeals Resolution Officer when a new appeal is registered or a new Appeal Readiness Form is identified, the following will apply:

Hearing in writing cases

1. The new appeal will not be bundled.
2. If, upon review of the file, the Appeals Resolution Officer decides that the issue(s) on the new Appeal Readiness Form that has come to file is intertwined with the issue already assigned to them, the Appeals Resolution Officer will contact the workplace parties to advise that the new Appeal Readiness Form issue(s) will be added to the appeal agenda. The Appeals Resolution Officer will contact the Coordinator to request to expedite the new Appeal Readiness Form. The appeal already with the Appeals Resolution Officer will be put on pause until the new appeal is ready to be assigned to the Appeals Resolution Officer. The Coordinator will request that the Objection Intake Team action the new Appeal Readiness Form as a priority.

Oral hearing cases

1. If the oral hearing date is two weeks or more in the future, the Appeals Resolution Officer will contact the workplace parties to advise that the new Appeal Readiness Form issue(s) will be added to the hearing agenda and a revised a hearing agenda will be sent to the workplace parties.

2. If the oral hearing date is less than two weeks away, the Appeals Resolution Officer will contact the workplace parties to advise that the new Appeal Readiness Form issue(s) will be added to the hearing agenda. If any party indicates that they need more time to prepare for the hearing due to the addition of the new issue(s), the Appeals Resolution Officer will get agreement to postpone the hearing and re-schedule within 30 days. The Appeals Resolution Officer will attempt to get a new hearing date from the parties, but if not possible, the Appeals Resolution Officer will notify the Coordinator to contact the parties to re-schedule the hearing within 30 days.

Practice guideline 4.6: Jurisdiction of issues

The WSIB has a legislated obligation to resolve appeals within their jurisdiction. The scope of an appeal is generally addressed based on the issue/decision that is under dispute. However, there are circumstances where whole person adjudication (related-issue adjudication) of an appeal and the expansion of the issue agenda is required. In so doing, the Appeals Services Division has exercised its powers of determining its own practices and procedures under section 131 of the *Workplace Safety and Insurance Act*. The Appeals Resolution Officer's decision to expand jurisdiction in an appeal is an administrative decision and is not subject to the usual appeal rights.

Principles of whole person adjudication:

1. Supports the statutory purpose of the *Workplace Safety and Insurance Act* and is in accordance with the WSIB's jurisdiction and the Appeals Services Division's authority to determine its practices and procedures.
2. Resolve appeals by considering all relevant aspects of a claim at the same time – reduce fragmentation and sequential appeals of issues to achieve complete, fair, timely and quality outcomes without duplication of effort and through efficient use of resources.
3. Achieve fair, timely and quality outcomes holistically for injured or ill people to move forward.

The following guidelines outline how the Appeals Services Division will determine expanding jurisdiction in an appeal.

1. Are there sequential issues?
2. What is the express language of the decision\issue under appeal?
3. Are the issues intertwined/interconnected?
4. Does the decision require benefits flowing to be determined?

Sequential issues

Sequential decision-making is the need to resolve a number of issues in a particular sequence to decide an appeal. Factors we will consider when exercising discretion to take on sequential issues include:

1. the parties' wishes;
2. the potential complication of the proceedings;
3. the sufficiency of the evidence;
4. the potential to prolong the decision-making process for no practical purpose;
5. the merits and justice of the case;
6. whether the issue is novel, contentious or requires special expertise such that it should be considered in the first instance by the front-line decision-maker;
7. whether there has been an opportunity for submissions.

An example of sequential issues is where an injured/ill person claims a recurrence for a right knee injury. The front-line decision denied the recurrence on the basis the medical information did not support a deterioration. The Appeals Resolution Officer decides that there is clinical evidence of a deterioration. The Appeals Resolution Officer also notes the worker has seen a specialist and will be undergoing a right knee arthroscopic surgery in relation to the deterioration. The front-line decision-maker did not address entitlement to the surgery. However, it is a sequential issue and the Appeals Resolution Officer could expand the appeal agenda to include entitlement to the surgery, and if possible, any benefits flowing from the surgery, as appropriate.

Express language of the decision\issue under appeal

We will consider the following circumstances when reviewing the express language of the decision\issue under appeal:

1. Is there express language in the front-line decision – what was stated as being decided?
2. If not expressly stated, is the issue to be included in jurisdiction implicitly decided? In order to decide the issue within jurisdiction, it may be necessary for the Appeals Resolution Officer to consider evidence about an underlying matter.

   For example, the front-line decision on maximum medical recovery/permanent impairment (MMR/PI) indicates that the work-related low back injury resolved and the ongoing problems are due to the underlying degenerative disc disease (DDD) and disc bulges. The injured/ill person's representative argues that the underlying problems were exacerbated by the work incident and the injured/ill person continues to experience low back pain and an ongoing impairment. In this case, the Appeals Resolution Officer considers expanding jurisdiction to include exacerbation of the underlying DDD and disc bulges because the MMR/PI decision implicitly decided that there was no entitlement to the underlying DDD and disc bulges.

Issues intertwined/interconnected

When considering whether it is appropriate and necessary to expand jurisdiction in an appeal, the Appeals Resolution Officer will also look at whether the issues are intertwined/interconnected. This means there is another issue that impacts the adjudication of the issue under appeal.

For example, the Case Manager completes the injured/ill person's 72-month loss of earnings benefit review and their decision is that the injured/ill person is to receive partial loss of earnings benefits based on the earnings of the suitable occupation. The Case Manager's decision only addressed the level of benefits at the 72-month date.

The injured person's representative argues that the suitable occupation was never suitable and the injured person is competitively unemployable and should receive full loss of earnings benefits until age 65.

In this case, the Appeals Resolution Officer must be aware of whether there are any prior Appeals Resolution Officer or Workplace Safety and Insurance Appeals Tribunal decisions that confirmed the suitable occupation and the level of loss of earnings benefits. If there are prior Appeals Resolution Officer or Workplace Safety and Insurance Appeals Tribunal decisions confirming the suitable

occupation and the level of loss of earnings benefits, the Appeals Resolution Officer cannot review the suitable occupation or the injured person's employability again.

Unless there is a jurisdiction barrier as noted above, or the suitable occupation was not objected to within the time limit, the Appeals Resolution Officer may proceed with a holistic final LOE benefit review decision addressing the suitable occupation and the issue of employability. The Appeals Resolution Officer can take on the jurisdiction of the suitable occupation and employability because these factors encompass what should be considered in a final loss of earnings benefit review decision.

Expanding jurisdiction of issues process

The Appeals Services Division has exercised its powers of practice and procedures under section 131 of the *Workplace Safety and Insurance Act* in adopting this guideline on expanding jurisdiction. The Appeals Resolution Officer's decision to expand the jurisdiction in an appeal is an administrative decision and is not subject to the usual appeal rights.

We will use the following process when considering expanding jurisdiction:

1. Once the appeal is assigned to an Appeals Resolution Officer, the Appeals Resolution Officer will make the decision on whether to expand the issue agenda and will consult with the parties prior to doing so.
2. If the Appeals Resolution Officer expands the issue agenda, they will provide a reasoned analysis for expanding the issues, having considered the above noted factors, whether time limits have been met, and the participation of the parties. The Appeals Resolution Officer will notify the parties verbally and in writing that they are expanding the issue agenda and will give the parties an opportunity to make submissions on the expanded issue(s).
3. The parties will be given 30 days from the date of the Appeals Resolution Officer's written notification to provide written submissions on the expanded issue(s). The appeal will be put on pause.
4. If a non-participating party chooses to participate in the appeal because of the expanded jurisdiction, they will be allowed to participate in the appeal. The Coordinator will arrange for updated access, and manage the share and disclose process.
5. If an oral hearing requires re-scheduling, the Coordinator will contact the parties for re-scheduling.

Section 22 appeals – time limit to claim

We will expand jurisdiction for section 22, time limit to claim appeals (whether it implicitly or explicitly co-exists with an initial entitlement decision appeal or vice-versa) in order to provide fair, quality and timely and holistic outcomes and not create sequential appeal issues.

The Appeals Resolution Officer will expand the issue agenda to include both the section 22 time limit to claim issue as well as the initial entitlement issue regardless of the lead appeal issue, where appropriate and within the guidelines to do so. The facts of each issue overlap and a holistic review of the appeal provides better outcomes for all parties involved in the appeal.

1. The Appeals Resolution Officer will review the objecting party's Appeal Readiness Form submission and the respondent's submission, if there is a respondent, to decide if the parties included a submission on the merits of the case or on either issue.
2. The Appeals Resolution Officer will notify the parties verbally and in writing that they are expanding the issue agenda to include either the section 22 issue or the merits on initial entitlement and invite the parties to provide submissions on the merits, if required – if they did not include arguments on the merits on their Appeal Readiness Form or respondent submission.
3. If required, the parties will have 30 days from the Appeals Resolution Officer's written notification to provide their written submissions. The appeal will be put on pause.
4. If a non-participating party chooses to participate in the appeal because of the inclusion of the merits on initial entitlement, they will be allowed to participate in the appeal. The Coordinator will arrange for updated access, and manage the share and disclose process.

Practice guideline 4.7: Interpreters

When a workplace party requests an interpreter, we will arrange for an independent and objective interpreter to be in attendance at an oral hearing. The party requesting the interpreter should include the following information about the request on the Appeal Readiness Form or the Respondent Form:

1. the need for an interpreter
2. the language spoken
3. the specific dialect

If the parties do not indicate they need an interpreter on the Appeal Readiness Form or the Respondent Form, but one is subsequently requested, their request must be made to the Coordinator at the time the oral hearing is scheduled. If the request is at least 14 days prior to the scheduled hearing date, the Coordinator will make every effort to obtain an interpreter. If an interpreter cannot be arranged, or if the request comes less than 14 days prior to the scheduled hearing date, the appeal may be withdrawn and the usual consequences associated with a withdrawal without good reason, will be applied. Refer to **Practice guideline on Withdrawals.**

For parties who are unrepresented, if the Appeals Resolution Officer decides that an interpreter was not requested due to language difficulties, the Appeals Resolution Officer may postpone the oral hearing without consequence. The hearing will be re-scheduled with an interpreter attending.

Friends and relatives of appeal participants generally are not permitted to interpret evidence at an oral hearing.

Interpreters are expected to provide word-for-word interpretation of testimony unless they are directed to do otherwise by the Appeals Resolution Officer. This alternative direction will occur only if and when the Appeals Resolution Officer and the parties agree that the individual providing testimony requires only occasional assistance from the interpreter instead of word-for-word interpretation.

If the interpreter is unable to translate a word or phrase in testimony, or does not understand the testimony, the interpreter must inform the parties in the oral hearing and await further instructions after a discussion between the parties and the Appeals Resolution Officer.

If an interpreter does not arrive for the oral hearing or if, mistakenly, an interpreter was not arranged, it will be up to the Appeals Resolution Officer and the parties to determine whether it is appropriate to proceed with the hearing without an interpreter or if the hearing must be adjourned and re-booked.

When these circumstances are beyond the control of the objecting party or respondent, the parties will have a further 90 days to re-schedule the oral hearing but will be encouraged to be available at their earliest convenience.

Practice guideline 4.8: Raising an *Ontario Human Rights Code or Canadian Charter of Rights and Freedoms* question

If a workplace party raises a human rights or constitutional question on their Appeal Readiness Form or Respondent Form submission, the Appeals Resolution Officer will first make the decision on the substantive issue(s) under appeal by applying the relevant section of the *Workplace Safety and Insurance Act* and/or the applicable policy (merit review).

If the Appeals Resolution Officer's decision allows your appeal on the substantive issue, the Appeals Resolution Officer will not rule on the human rights or constitutional question.

If the Appeals Resolution Officer denies your appeal on the substantive issue, the Appeals Resolution Officer will address the human rights or constitutional question.

Ontario Human Rights Code

The Appeals Services Division has the jurisdiction to consider a question under the *Ontario Human Rights Code* (Code) pursuant to the *Supreme Court of Canada* decision in *Tranchemontagne v. Ontario*.

When a party intends to raise a human rights question under the Code, the party must file a written notice with the Appeals Services Division providing:

1. a detailed explanation of the human rights question being raised along with the material facts;
2. the section of the Code relied on, or the legal basis for the argument;
3. the desired remedy; and,
4. the contact information for the party's representative, if any.

Canadian Charter of Rights and Freedoms

The Appeals Services Division has the jurisdiction to consider a question under the *Canadian Charter of Rights and Freedoms* (Charter) pursuant to the *Supreme Court of Canada* decision in *Nova Scotia (Workers' Compensation Board) v. Martin*.

When a party intends to raise a question under the Charter, with respect to the legislation or WSIB policy, the party must comply with s.109 of the *Courts of Justice Act*. Section 109 requires a party to serve a notice of constitutional question to the Attorney General of Canada and the Attorney General of Ontario. The notice must be served as soon as the circumstances requiring it become known. A copy of the notice of constitutional question must also be provided to the Senior Director of the Appeals Services Division and all parties to the appeal.

The notice should be similar to the form provided in the *Ontario Rules of Civil Procedure*. The notice must contain:

1. a detailed explanation of the Charter question raised along with the material facts;
2. the section(s) of the Charter relied on, or the legal basis for the argument (constitutional principles to be argued);
3. the desired remedy; and
4. the contact information for the party's representative.

Parties to these appeals must comply with the same requirements as established in the **Practice guideline on Rules of disclosure and witnesses.**

The Appeals Services Division will notify WSIB Legal Services that you have raised a constitutional question.

Written submissions and evidence regarding the human rights or constitutional question will not be required until we are ready to deal with those issues.

Failure to follow procedure

If the above procedures are not followed, the party will not be permitted to raise the human rights or constitutional question in any proceeding before the Appeals Services Division.

Practice guideline 4.9: Downside risk

Downside risk means that an Appeals Resolution Officer, when reviewing the claim file, may recognize an error in the adjudication of an issue that is so significant it cannot be overlooked and must be dealt with in order to decide the issue(s) under appeal. This could result in the reversal of a prior decision(s).

An example of a downside risk to an injured/ill person is an appeal for a higher non-economic loss (NEL) benefit. An Appeals Resolution Officer could decide that the injured/ill person should receive a lower benefit than they currently receive, or perhaps is not entitled to a NEL benefit at all. For employers, an example is an employer appeal for an increased level of Second Injury and Enhancement Fund (SIEF) relief; the Appeals Resolution Officer could decide that the employer is entitled to less relief than they currently receive, or that they are not entitled to SIEF relief at all.

The objecting party will be allowed to withdraw their appeal once the Appeals Resolution Officer identifies a downside risk. There will be no documentation placed on the claim file beyond the indication that downside risk was discussed and the objecting party chose to withdraw.

If the objecting party chooses to proceed with the appeal, the objecting party and the respondent, if any, will be granted 30 days from the date the Appeals Resolution Officer advised the parties of the downside risk, to make a submission on the downside risk issue.

Practice guideline 4.10: Returns to front-line decision-making area post Appeals Services Division registration

General

Once an appeal has been registered in the Appeals Services Division the claim should only be returned to the front-line decision-making area in exceptional circumstances. For example, where activity occurring between the time of reconsideration in the front-line decision-making area and the date the case is assigned or before an oral hearing occurs has:

1. led to a situation where it is not possible for the Appeals Resolution Officer to conclude on the appeal issue(s) due to either a significant deficit in the information that cannot be reasonably resolved through testimony; or,
2. other issues have been raised by a workplace party that may reasonably impact the issue in dispute and that have not yet been ruled on by the front-line decision-making area.

Procedures

The Appeals Resolution Officer will not return a case to the operating area without first discussing it with the parties. When a return does occur, the Appeals Resolution Officer will complete a memo outlining the reasons for the return. The return memo will be sent to the front-line decision-making area and a copy will be sent to the parties/representatives.

When the required action is completed by the front-line decision-making area, and there is still an issue in dispute, the case can be referred back to the Appeals Services Division once the objecting party completes and returns a new Appeal Readiness Form. A new Appeal Readiness Form is necessary because the appeal issues may have changed and it is necessary for both the objecting party and the respondent, if there is one, to have updated claim file information.

Practice guideline 4.11: Withdrawals

General

Once the objecting party has submitted an Appeal Readiness Form indicating that they are ready to proceed and available within the timelines for an oral hearing to be scheduled, appeal withdrawals should be rare. When withdrawn appeals do re-enter the Appeals Services Division they will not be given priority status.

Consequences of withdrawals

If a case is registered in the Appeals Services Division but the objecting party withdraws the case, there will be different consequences depending on if it is the first, second or third withdrawal.

First withdrawal: The case will be withdrawn and the party will have to wait 30 days to re-submit an Appeal Readiness Form.

Second withdrawal: The case will be withdrawn and the party will have to wait 90 days to re-submit an Appeal Readiness Form.

Third withdrawal: The party must write to the Senior Director of the Appeals Services Division to ask to return to the Appeals Services Division to have their appeal resolved.

Note: If the objecting party or respondent is temporarily unavailable to participate in the submission and disclosure process for reasons beyond their control, such as the sudden and serious illness of the party or the need to leave the country to deal with an emergency, the appeal will not be withdrawn immediately. The appeal will remain with the Coordinator, who will put the case on administrative hold until the situation has resolved. If the party is unavailable for more than 30 days, the Appeals Services Division will determine whether to withdraw the case or proceed with the appeal.

If the objecting party asks for a withdrawal during an oral hearing, the Appeals Resolution Officer will decide if they can still address any issues that are not related to the reason for withdrawing the appeal. If the Appeals Resolution Officer decides not to move forward with the hearing, they will ask the party to state the reason for the withdrawal on the record. If the appeal is re-opened in the future, this will help us make sure that everyone involved in the appeal is aware of the discussion leading up to the withdrawal.

Practice guideline 4.12: Pre-hearing postponements

Hearings in this guideline include both video conference, teleconference and in-person hearings.

A postponement means the hearing will not go ahead on the date it was scheduled and will need to be re-scheduled for another date.

The objecting party and respondent are required to declare, when signing the Appeal Readiness Form and Respondent Form, that they are ready to attend a hearing within 90 days of the date the Registrar allowed the hearing. Hearings are scheduled in consultation with the workplace parties, and the Appeals Services Division is as flexible as possible in providing a number of potential dates to the workplace parties. Therefore, we expect the parties to be prepared for the hearing and ready to attend once a date is set.

Once a hearing date is scheduled, postponement requests should be made only in exceptional circumstances. The criteria set out below establish what is considered “exceptional”, for the purposes of this guideline.

Pre-hearing requests for postponement: Exceptional circumstances

The Coordinator will deal with all pre-hearing requests for postponements and has the authority to grant a postponement request where it meets one of the following criteria:

1. sudden illness of the injured/ill person or their representative;
2. sudden illness of the injured/ill person’s representative and no replacement is reasonably available;
3. sudden illness of the employer where the employer is to act as the representative and there is no one else who could reasonably represent the employer at the oral hearing;
4. sudden illness of the employer’s representative and no replacement is reasonably available;
5. death of one of the workplace parties or a member of his/her immediate family;
6. death of the representative or a member of his/her immediate family and no replacement is reasonably available; and,
7. unusual adverse weather conditions on the day of the hearing or one of the parties is involved in an accident while on the way to the hearing.

If a postponement just prior to the hearing is granted for one of the above exceptional criteria, the Coordinator will notify the workplace parties and if applicable, the interpreter, and will contact the parties to re-schedule the hearing. The workplace parties must inform their own witnesses that the scheduled hearing has been postponed.

The workplace parties are expected to be available for the re-scheduled oral hearing within 90 days of the date of the initial hearing. At any stage of this process, requests for postponement must be made to the Coordinator. For more information on the consequences of late participation/ representation, refer to **Practice guideline on Late representation and participation.**

Pre-hearing requests for postponement: Other than exceptional criteria

If either the objecting party or respondent requests a postponement at any time after the hearing date has been set, and the reason does not meet the exceptional criteria set out above, a postponement may be granted but the request must:

1. be made in writing and sent directly to the Coordinator using the WSIB document upload tool on the WSIB website, or by mail to the WSIB address, Attention: Appeals Services Division;
2. set out the reason for the request; and
3. be sent to the other party and/or representative, asking the other party to consent to the postponement.

*Please note a telephone call alone will not be sufficient. A telephone call must be followed by a written request.

After reviewing the above, the Coordinator will decide if the postponement request will be granted or if the case will be withdrawn.

If a postponement request is granted for reasons other than the exceptional criteria set out above, the party requesting the postponement is expected to be available for an oral hearing date within 45 days of the date the postponement is approved.

If the objecting party requests the postponement, the case will be withdrawn if they are not available within 45 days of the postponement being approved. If the objecting party requests the postponement and is available within 45 days, but the respondent is not available within 45 days, the Coordinator will set the hearing date based on the objecting party's availability.

If the respondent requests the postponement, and if a mutually convenient date within the 45-day period cannot be found, the Coordinator will set the hearing date based on the objecting party's availability.

Section 5

Practice guidelines:

- Conducting oral hearings
- Failure to attend an oral hearing
- Postponement at the hearing
- Recordings/transcripts
- Benefits flowing
- Resolution stage

Practice guideline 5.0: Conducting oral hearings

Oral Hearings in this guideline include hearings by video conference, teleconference and in-person.

The circumstances of each case will determine the extent to which all procedures will be followed.

Receiving evidence

The Appeals Resolution Officer can receive evidence at the time of the oral hearing according to the rules in the **Practice guideline on Rules of disclosure and witnesses.**

Oral hearing procedures

Purpose

The purpose of an oral hearing is to gather information in a thorough, fair and courteous manner. In doing so, every effort is made to create and maintain a non-adversarial atmosphere.

Before going on the record, the Appeals Resolution Officer will:

1. outline the purpose of the hearing and how it will proceed (the order of presentations);
2. discuss/confirm with the workplace parties the issues to be dealt with and confirm the information or facts that are already established from the evidence and the specific areas of enquiry which will be needed in order to deal with the issues under objection;
3. clarify with the workplace parties which witnesses will be called and the nature of their testimony. The Appeals Resolution Officer should not hear from witnesses whose evidence is irrelevant to the issue under objection or relates to matters of fact already accepted by the Appeals Resolution Officer;
4. if multiple witnesses are being called to provide the same information, the Appeals Resolution Officer should get agreement from the workplace parties with respect to the facts from the witnesses;
5. explain that the information received from the witnesses will be given under affirmation;
6. indicate that the Appeals Resolution Officer will be using a recording device to record everything that is said during the hearing, but that the workplace parties are not permitted to record hearings using cell phones or other personal recording devices;
7. decide whether or not observers will be allowed to be present at the meeting. Oral hearings are held “in camera”, which means they are not open to the public. However, we will generally allow observers to attend when all parties agree, unless there are reasons for excluding observers (for example, sensitive factual issues, and potential security concerns). The Appeals Resolution Officer will advise observers that they cannot participate in the hearing or record the hearing;
8. if an interpreter is present, explain that the interpreter is not an employee of the WSIB, and explain how the interpreter will be used; and

9. if the workplace parties request to have a mediation (or agreement) discussion with the Appeals Resolution Officer, the Appeals Resolution Officer must first advise if an agreement cannot be reached, the Appeals Resolution Officer will make a decision.

If a question is raised as to whether or not the case should be returned to the front-line decision-making area, withdrawn, or postponed, the **Practice guidelines on Returns to the front-line decision-making** area, **Withdrawals**, and **Postponements** at the hearing will apply.

The oral hearing

Opening the hearing: Going on record

The oral hearing will proceed in the following manner:

1. the Appeals Resolution Officer will start the recording device (go on the record) and state for the record the date and location of the oral hearing, the name of the Appeals Resolution Officer, the name of the injured/ill person, the claim or firm number, the date of decision being objected to and the person objecting;
2. the Appeals Resolution Officer will identify for the record all persons in attendance at the hearing and their role;
3. the issue(s) under objection will be confirmed;
4. explain that witnesses will be excluded from the hearing until they have to give testimony. This does not apply to the injured/ill person and/or an individual designated by the employer as its resource person. An employer is permitted to have one designated resource person. This individual is allowed to remain in the hearing room throughout the proceedings, unless they are also giving testimony as a witness;
5. the Appeals Resolution Officer will determine if any additional written documents provided by the parties will be accepted. Refer to **Practice guideline on Rules of disclosure and witnesses.**
6. any documents accepted will be marked as an exhibit. Exhibits are numbered and each will have, in the case of a claims objection, the injured/ill person's name, claim number, date received and the initials of the Appeals Resolution Officer. In the case of an employer account appeal, the employer's name, firm number, date received and the initials of the Appeals Resolution Officer. The Appeals Resolution Officer will have to decide the appropriate procedures to ensure fairness to the party receiving the additional documents at the oral hearing. This may include delaying the start of the hearing to give the representative an opportunity to review and discuss the documents with the party and/or witnesses. The Appeals Resolution Officer may also offer an opportunity to make post-hearing submissions on any of the documents submitted. The Appeals Resolution Officer may also consider postponing the hearing where the unfair disadvantage to the receiving party is so significant that no other procedure can overcome the disadvantage. This will constitute an exceptional reason for postponement; refer to **Practice guideline on Postponement** at the hearing**.**
7. the Appeals Resolution Officer will ask the workplace parties if there are any preliminary issues to be raised and the Appeals Resolution Officer will receive submissions and make rulings with

respect to such matters. The Appeals Resolution Officer may also reserve ruling on any preliminary issues where a decision does not have to be made in order for the hearing to proceed. A request that a summons be issued, for example, may be deferred by the Appeals Resolution Officer until after all evidence has been heard, at which time the need for the information in question may be clearer. If a preliminary issue raised causes the Appeals Resolution Officer to conclude that it is not appropriate to proceed with the hearing, the hearing may be postponed. Since it is expected such matters should be presented prior to the date of the scheduled oral hearing, this would not constitute an exceptional reason for postponement. Refer to **Practice guideline on Postponement** at the hearing**.**

Presentations

In cases where the appeal participants are represented, the Appeals Resolution Officer will receive the presentations in the following order:

1. Each party/representative will be given an opportunity to make a brief opening statement, which will be a summary of their respective positions, starting with the objecting party, followed by the respondent party.
2. The objecting party will be affirmed and give evidence through questioning by their representative, the responding representative and then the Appeals Resolution Officer. Following the Appeals Resolution Officer's questions, the respondent and the respondent's representative will have an opportunity to ask follow up questions. The respondent will ask questions based on the questions asked by the Appeals Resolution Officer while the objecting party's representative will have an opportunity to ask questions also based on the questions of the Appeals Resolution Officer and the responding representative.
3. If the objecting party is the injured/ill person and their representative concludes that they do not wish to call the injured/ill person as a witness, the injured/ill person will be required to answer any questions asked by the respondent and the Appeals Resolution Officer. If the injured/ill person refuses to testify, the Appeals Resolution Officer may take a negative inference from that refusal.
4. After the objecting party has testified, the other witnesses for the objecting party will be called, affirmed and questioned in the same order as above.
5. The respondent will then be given an opportunity to present information through its witnesses. The respondent/representative will ask questions first, followed by the objecting party/representative, followed by the Appeals Resolution Officer, with follow up questions after that. It should be noted that for an employer's appeal, the decision on whether or not to call the resource person first is to be made by the employer's representative. If that individual is not called first and remains in the hearing room while the other witnesses testify, the Appeals Resolution Officer should advise that their presence will be considered when weighing their testimony.
6. In the case of an injured/ill person's appeal, where the employer resource person is also going to provide testimony, the employer resource person will be asked to testify before the injured/ill person testifies. If the employer representative submits that the injured/ill person should testify first, the employer resource/witness will be allowed to remain in the room while the injured/ill person testifies but will be advised by the Appeals Resolution Officer that in the

event that credibility is an issue, their presence will be considered when weighing their testimony.

7. Each witness will be affirmed when they enter the hearing and before questions are asked.
8. The Appeals Resolution Officer will ensure that the questions asked of the witnesses are relevant to the issues under appeal and will refuse to permit questioning in relation to matters considered to be irrelevant. Cross-examination is not permitted although cross-questioning is allowed. The distinction between cross-examination and cross-questioning is discussed later in these guidelines.
9. In certain cases, based on the nature of the issue, the Appeals Resolution Officer may suggest to the workplace parties that, having reviewed the contents of the file, the Appeals Resolution Officer wishes to clarify certain information to focus the enquiry. If the workplace parties agree to this approach, the Appeals Resolution Officer will question the injured/ill person/witnesses first. The workplace parties/ representatives will then follow with additional questions as may be necessary. If the workplace parties/representatives disagree with this approach, the Appeals Resolution Officer will follow the normal oral hearing protocol set out above.
10. Witnesses are dismissed from the hearing (except the injured/ill person and the employer) after giving testimony.
11. After all testimony is received, the Appeals Resolution Officer will invite closing statements from each representative/party with the objecting party first, followed by the respondent.
12. Each representative may want to respond to the other representative's closing statements. This is permissible as long as the representatives do not rehash old arguments and limit themselves to responding to the specific areas covered by the other side that were not addressed in their own final statements. The objecting party has the last opportunity to respond to the closing statements of the respondent.

An unrepresented party(s) will also make opening statements and closing statements and the Appeals Resolution Officer will likely be the only one asking questions.

Recesses: Going off the record

When the hearing continues for more than one to two hours, the Appeals Resolution Officer may pause the hearing so the parties can take a break.

Where possible, breaks should not occur in the middle of a witness' testimony. Where this is unavoidable, the Appeals Resolution Officer should advise the witness to refrain from discussing their testimony with anyone during the break.

When, for any reason during the hearing, it is necessary to go off the record (turn off the recording device), the Appeals Resolution Officer should state at the outset the reason for going off the record and, when back on the record, disclose the nature of any discussions or activities that occurred off the record.

Closing the hearing

The Appeals Resolution Officer will conclude the hearing as follows:

1. explain that all evidence presented at the hearing as well as the information on file will be considered in reaching a decision;
2. explain that a written decision will be made within 30 days and sent to all parties and representatives;
3. thank the parties for their attendance and advise them “the hearing is closed”.

Cross questioning vs. cross-examination

It is a long-standing practice of the WSIB not to permit cross-examination at hearings. Cross-examination is an integral part of the adversarial approach relied upon in the court system, but is not consistent with the enquiry-based adjudication approach of the WSIB.

Rules of procedural fairness and the need to determine the merits and justice of the case require that an opposing party/representative be given an opportunity to question witnesses with adverse interests. The opposing party/representative is limited, however, to questions which seek to clarify information relevant to the case. The process of clarification is done through cross-questioning.

Cross-examination represents a more adversarial approach to questioning which is reflected in efforts to badger, attack or argue with the witness. This approach may intimidate parties and witnesses from coming forward with information and participating in the proceedings. It also creates an atmosphere which is more formal and more confrontational and can result in a significant disadvantage to individuals who are unrepresented.

Disruptive behaviour

In cases where one or more of the workplace parties or representatives conduct themselves in a disruptive manner that prevents the reasonable conduct of the hearing, the Appeals Resolution Officer will put the individual(s) on notice that their behaviour is unacceptable and advise them of the Appeals Resolution Officer’s authority to exclude them from the hearing room if the behaviour continues. If the behaviour does continue, the Appeals Resolution Officer has the authority to order the exclusion of the individual.

Where an exclusion order is made against one of the representatives, and to avoid prejudice to the affected party, the Appeals Resolution Officer has the authority to adjourn the oral hearing to a later date. It is up to the Appeals Resolution Officer to determine if this is necessary to permit the party whose representative has been excluded to obtain a new representative.

Security

At the request of the Appeals Resolution Officer, WSIB security or outside security may attend an in-person oral hearing without the consent of the workplace parties. The parties will be notified in advance that security officers will be present at the hearing. Requests by the workplace parties for the presence of security at an oral hearing should be confirmed with the Coordinator at the time the hearing is being scheduled.

Requests for security must be based on real and substantial concerns.

Practice guideline 5.1: Failure to attend an oral hearing

The workplace parties and their representatives are expected to arrive for the oral hearing at least 15 minutes prior to the scheduled time. The hearing will start at the time stated on the hearing notice.

If an unforeseen circumstance/emergency causes a party to arrive late for the oral hearing or not to be able to attend at all, the party must contact the Appeals Resolution Officer or the Coordinator as soon as they are aware they will be late/absent and definitely prior to the time the hearing is scheduled to commence.

The Appeals Resolution Officer has discretion, after discussion with the party who is in attendance, to decide whether the oral hearing will be delayed or cancelled and then re-scheduled.

If the respondent has not contacted the Coordinator, or the Appeals Resolution Officer, by the time of the scheduled hearing, the Appeals Resolution Officer will wait another 15 minutes and then proceed with the oral hearing. If the respondent arrives after the start of the hearing, they will be permitted to join the hearing in progress but there will be no obligation on the part of the Appeals Resolution Officer to restart the proceedings.

If the objecting party has not contacted the Appeals Resolution Officer or the Coordinator within 30 minutes of the scheduled time of the oral hearing, the hearing will be cancelled and the appeal will be withdrawn. The consequences set out in the **Practice guideline on Hearing scheduling** will apply, unless the party provides reasons in writing to the Coordinator, for both the failure to attend and the failure to contact the WSIB within 30 minutes of the scheduled time.

If you have any of the following reasons, the Coordinator may reactivate the appeal and reschedule the hearing within 90 calendar days:

1. your sudden illness;
2. sudden illness of your representative, if no replacement is reasonably available;
3. death of a member of your immediate family;
4. death of your representative or a member of their immediate family, if no replacement is reasonably available; and/or
5. severe weather on the day of the hearing, or an accident while coming to the hearing.

If we receive your written explanation for not attending the hearing and the Coordinator decides one of the above reasons are met, the Coordinator will reactivate the appeal and the hearing will be rescheduled within 90 days.

If the representative of either party arrives at the oral hearing with instructions to proceed without their client, the Appeals Resolution Officer will proceed.

Practice guideline 5.2: Postponement at the hearing

Postponement requests at the hearing

The Appeals Resolution Officer will rule on postponement requests made at the hearing after the workplace parties/representatives have presented their reasons for the postponement.

The Appeals Resolution Officer will verbally give their reasons for granting or denying requests for postponement to the workplace parties at the time of the hearing.

The Appeals Resolution Officer will consider the following criteria in deciding whether to grant a postponement request.

1. was adequate and sufficient notice of the hearing date provided to the parties requesting the postponement;
2. was the hearing date arranged by mutual consent;
3. are the reasons for the postponement compelling and reasonable;
4. is the postponement due to the intentional actions or neglect of the party/representative requesting the postponement;
5. will either of the workplace parties be prejudiced if the request is either allowed or denied;
6. how long has the party requesting the postponement been aware of the situation requiring the postponement and what steps did they take prior to the hearing to resolve the situation and to inform the WSIB;
7. is there any other solution, such as delaying the start time of the hearing, that will minimize or eliminate the prejudice of not granting a postponement; and
8. whether the party requesting the postponement has a history of previous postponements in this case or other cases dealt with in the Appeals Services Division.

If the Appeals Resolution Officer denies the postponement request at the time of the hearing, the hearing will proceed. However, if the objecting party does not wish to proceed, the appeal will be withdrawn and all of the consequences set out in the **Practice guideline on Withdrawals**, will apply.

If a postponement is granted at the oral hearing, the party requesting the postponement is expected to be available for an oral hearing date within 45 days of the date the postponement is approved.

If the objecting party requests the postponement, they must be available within 45 days of the date the postponement is approved. If they are not available, the appeal will be withdrawn and all of the consequences set out in the **Practice guideline** on **Withdrawals**, will apply.

If the respondent requests the postponement, if a mutually convenient date within the 45-day period cannot be found, the Coordinator will set the date based on the availability of the objecting party.

Practice guideline 5.3: Recordings/transcripts

The *Workplace Safety and Insurance Act* does not require oral hearings to be recorded; however, the WSIB generally makes audio recordings of oral hearings. In case of technical difficulties with the digital recording equipment*, the hearing will continue despite the inability to record the proceedings. The Appeals Services Division cannot guarantee the quality of audio recordings, as in rare circumstance, they can be damaged or not reproducible.

Under no circumstances are parties permitted to record their oral hearings whether in person or through teleconference or videoconference.

The *Workplace Safety and Insurance Act* does not require that the WSIB provide transcripts of hearings and the WSIB does not generally produce or use transcripts of its hearings.

Once a decision has been reached, parties to an appeal may request a copy of the audio recording of the oral hearing. In order to obtain a copy of the recording, a party to an appeal must submit a written request to the Appeals Services Division.

A copy of the oral hearing is considered personal information under the F*reedom of Information and Protection of Privacy Act* (FIPPA) and the release and use of this information is governed by Sections 58 and 59 of the *Workplace Safety and Insurance Act*.

Parties wishing to obtain a written transcript of the oral hearing will need to make their own arrangements to have this done once they receive a copy of the recorded hearing.

*Digital recording equipment is now being used in the Appeals Services Division. CD copies are not available for previous oral hearings that were recorded on cassette tapes.

Frequently asked questions about the oral hearing

How long will the oral hearing take?

The length of the oral hearing depends on many factors, such as the number of issues under appeal, how complex they are, and how many witnesses there are. They can range from one hour to one day in length. In rare, very complex cases, it might take more than one day.

Can I ask for a break during the oral hearing?

If the hearing lasts for more than one to two hours, the Appeals Resolution Officer may arrange for a break. We try to avoid taking breaks when a witness is in the middle of answering questions. The Appeals Resolution Officer will stop recording the oral hearing during the break and will tell the participants not to talk about what they have heard in the hearing.

What if I decide at the oral hearing that I need to withdraw my appeal?

If you ask for a withdrawal during an oral hearing, the Appeals Resolution Officer will decide if they can still address any issues that are not related to your reason for withdrawing the appeal.

If they decide not to move forward with the hearing, they will ask you to state the reason for the withdrawal on the record. If the appeal is re-opened in the future, this will help us make sure that everyone involved in the appeal is aware of the discussion leading up to the withdrawal.

What happens if I did not ask for an interpreter because I did not understand that I could ask for one?

If you do not have a representative, the Appeals Resolution Officer may decide that your language needs prevented you from asking for an interpreter. If this happens, the oral hearing may be postponed to arrange for an interpreter, rather than proceeding without one.

What if I suddenly cannot attend an oral hearing or I am going to be late?

If there is a sudden emergency that makes you late for the oral hearing, or if you will not be able to attend, you must contact the Appeals Services Division as soon as possible. If you can, contact us before the scheduled start time of your hearing. Call 1-800-387-0750 and ask to speak with a Coordinator. Refer to **Practice guideline Failure to attend an oral hearing.**

What if the interpreter does not show up for the oral hearing?

If an interpreter does not arrive for the oral hearing, the Appeals Resolution Officer and the people involved in the oral hearing will decide whether it is appropriate to carry out the hearing without an interpreter. If not, the Appeals Resolution Officer will stop the hearing and we will rebook it within 90 calendar days. When this happens, we encourage participants to reschedule as soon as possible.

The Appeals Resolution Officer recorded the oral hearing. Can I get a copy of the recording?

Yes. Please upload a written request using the WSIB document upload tool on our website, (include the claim number). If you have a WSIB claim and you have signed up for online services, you may also

login to email your request. To request a recording of an oral hearing for an employer account appeal, please email appeals@wsib.on.ca.

Practice guideline 5.4: Benefits flowing

In the interest of decision finality, to ensure whole-person adjudication and to avoid fragmentation of issues, the Appeals Resolution Officer will direct benefits flowing from their decision to the extent possible based on the information available to the Appeals Resolution Officer at the time of the hearing or at the time they are completing their decision. The Appeals Resolution Officer will consider the merits and justice of the case and the evidence when making a decision on benefits flowing.

At the outset of the hearing, or on the Appeal Readiness Form, the parties should outline their proposed remedy for benefits flowing. The parties should ensure the requisite information is available for the Appeals Resolution Officer to make a benefits flowing ruling.

In all cases, the benefits that flow from a decision will be considered part of the issue agenda and included in the Appeals Resolution Officer's decision. The Appeals Resolution Officer will be responsible for ruling on benefits only to the extent that reliable information is either contained in the file or readily available to the Appeals Resolution Officer. This means that where the Appeals Resolution Officer accepts entitlement for an impairment or for a period of impairment/disability, the Appeals Resolution Officer will also make a decision about the nature, level and duration of benefits based on the information that is available to them.

Even if the objecting party or respondent requests that "benefits flowing" from a decision not be addressed by the Appeals Resolution Officer, the Appeals Resolution Officer will rule on benefits flowing to ensure there is decision finality as per the **Practice guideline** on Jurisdiction of Issues. There is no requirement that both parties must agree before the Appeals Resolution Officer rules on benefits flowing from a decision.

Practice guideline 5.5: Resolution stage

Decisions

Appeals Resolution Officers decisions will be written in a clear and concise manner using plain language and will generally be written in an anonymized style.

Where findings are made on the basis of reliability, the Appeals Resolution Officer will provide reasons for accepting or rejecting the reliability of a statement made by an individual. Where findings are made on the basis of the weighing of medical evidence, the Appeals Resolution Officer will provide reasons explaining why more weight was placed on one medical report as opposed to another.

The written decision will include:

1. the method of resolution
2. the issues under objection;
3. a brief description of how the issues arose;
4. the applicable authority/policy reference;
5. the analysis: the evidence considered and how it was weighed; and
6. the conclusion reached.

Decisions will not include lengthy summaries of information found in the file record and will focus instead on the information the Appeals Resolution Officer has found relevant to the issue(s) before them.

The Appeals Resolution Officer will issue their decision within 30 days of the oral hearing date, or in the case of a hearing in writing appeal, within 30 days of the appeal being assigned to the Appeals Resolution Officer. The Appeals Resolution Officer issues a signed copy of their decision to the workplace parties. The Appeals Resolution Officer will place a copy of their decision on the claim or firm file and send a copy to the front-line decision-making area.

In the covering letter sent with the decision, we tell the parties of the relevant time limit for appealing the Appeals Resolution Officer decision to the Workplace Safety and Insurance Appeals Tribunal.

Agreements

Agreements are reached when the participating parties and the Appeals Resolution Officer agree on an outcome. The Appeals Resolution Officer will advise the workplace parties at the time of the resolution that the agreement constitutes a final decision of the WSIB.

The Appeals Resolution Officer will confirm the agreement in a written decision. It will cover the same information as a noted above under paragraph #3 under “Decisions” and show how the agreement is consistent with the *Workplace Safety and Insurance Act* and WSIB policy.

In the covering letter, the Appeals Resolution Officer will advise the workplace parties of the relevant time limit for appeals to the Workplace Safety and Insurance Appeals Tribunal.

Publication of Appeals Resolution Officer decisions

We publish some Appeals Resolution Officer decisions on the Canadian Legal Information Institute website. We do this to educate the public about our decision-making, and to be open and transparent about our decision-making process.

Published Appeals Resolution Officer decisions are anonymized and do not include any personal identifying details.

We will not publish decisions in circumstances where there exists a risk of identification or where the issues are of such a sensitive nature that it would not be appropriate to do so.

Please see Canadian Legal Information Institute website for published decisions.

Practice guideline 5.6: Requesting final decisions of the WSIB from the Appeals Services Division

Section 123(1) (a) of the *Workplace Safety and Insurance Act* states that the Workplace Safety and Insurance Appeals Tribunal has exclusive jurisdiction to hear and decide all appeals from final decisions of the WSIB.

Deeming a decision final is not described in WSIB policy. We have developed this administrative practice using the powers granted to the WSIB under s. 131 of the *Act*.

Deemed final decision process

Requests for a deemed final decision will be reviewed for these criteria:

1. A copy of the hearing notice letter from the Workplace Safety and Insurance Appeals Tribunal;
2. A copy of the WSIB operating area decision to be deemed final;
3. Notice provided to the other party (respondent);
4. A Workplace Safety and Insurance Appeals Tribunal hearing date within three months from the deemed final decision request;
5. Whether the Workplace Safety and Insurance Appeals Tribunal will add the issue(s) to their hearing agenda; and
6. The statutory time limit to object has been met.

A deemed final decision request will not be granted if: criteria 4, 5 and 6 listed above are not met.

Process for dual party or dual objection appeal:

1. The WSIB will contact the respondent (by letter or phone call) if they are not copied on the deemed final decision request;
2. The respondent confirms (by letter or phone call) if they agree with the final decision request;
3. Decision made by the Appeals Services Division Senior Director, or delegate, if the respondent (dual objection or dual appeal) disagrees with deeming decision final but the above criteria are met.

Section 6

Practice guidelines:

- Reconsiderations

Practice guideline 6.0: Reconsiderations in the Appeals Services Division

Authority

Section 121 of the *Workplace Safety and Insurance Act* states the WSIB may reconsider any decision made by it and confirm, amend or revoke the decision. WSIB Policy 11-01-14, Reconsiderations of Decisions, confirms this authority and gives the decision-maker and the decision-maker's Manager the right to reconsider.

Principles

An Appeals Resolution Officer decision is the final decision-maker of the WSIB. In an enquiry-based system, the information gathering activities leading up to the final decision engage the workplace parties in the process. This allows every opportunity for the parties to provide information and evidence in support of their respective positions.

A reconsideration is not an appeal or another level of appeal. A reconsideration will not be granted because a party disagrees with an Appeals Resolution Officer decision, or for a party to simply re-argue the case. A reconsideration will only be granted in certain circumstances.

The first level of reconsideration is at the Appeals Resolution Officer level, after which, if necessary, the parties can request a reconsideration from the Appeals Manager, and the Senior Director.

Requests for clarification

There may be cases where the workplace parties or other WSIB staff believe that the Appeals Resolution Officer decision is unclear, incomplete or has an obvious error (e.g., a typographical error that does not impact the decision). In these cases, you can request a clarification from the Appeals Resolution Officer.

In a clarification request the substance of the decision is not being called into question. Rather, the parties believe that there is a misstatement in the Appeals Resolution Officer decision, or the decision is unclear, more than an obvious typographical or technical error.

You should not use the clarification request as a challenge of the Appeals Resolution Officer decision or as a way to have the Appeals Resolution Officer decide an issue that was not part of the original appeal issue agenda.

The request for clarification must be made in writing directly to the Appeals Resolution Officer who made the decision. If the Appeals Resolution Officer is no longer in the Appeals Services Division, the request should be sent to the Appeals Manager. The Appeals Resolution Officer, or Manager if applicable, will complete the clarification within 30 days of receipt of the request.

The Appeals Resolution Officer may issue an addendum to clarify their decision, correct a date, or complete an incomplete decision. This may be done where the decision did not correctly reflect the Appeals Resolution Officer's intent or did not include a decision on all the issues that were properly before them.

Criteria for reconsideration

The criteria for reconsidering of an Appeals Resolution Officer decision are:

1. a significant defect in the decision or the decision-making process that may reasonably affect the outcome;
2. failure to properly apply the Workplace Safety and Insurance Act or approved WSIB policy;
3. significant new evidence that did not exist* at the time the Appeals Resolution Officer decision was made, and that is relevant to the issue(s) under appeal; or
4. a typographical error that impacts the decision.

**NOTE: ***Exist vs. available: Material that was available but was not provided to the Appeals Services Division at the time the Appeals Resolution Officer decision was made will not trigger the reconsideration process.

Request for reconsideration from the workplace parties

A request for reconsideration from any of the workplace parties must be submitted in writing, first to the Appeals Resolution Officer and if necessary, to the Appeals Resolution Officer's Manager, and finally, to the Senior Director of the Appeals Services Division. The submission must state the reasons for the request and which of the reconsideration criteria have been met. The request for reconsideration request should be detailed and comprehensive.

Procedure for reconsiderations from front-line decision-making areas

If the front-line decision-making area is submitting the request, it too must be made in writing, outline clearly the reasons for the request and state which reconsideration criteria have been met. The front-line decision-making area must inform the workplace parties of the internal reconsideration request, by providing the parties a copy of the detailed reconsideration request memo at the same time they are referring the request to the Appeals Services Division. The internal reconsideration request memo must be signed by the Director of the front-line decision-making area and must be forwarded to the Senior Director of the Appeals Services Division.

Reconsideration process general rules

The reconsideration process involves two steps. First, the Appeals Resolution Officer must decide whether it is necessary to reconsider their decision by deciding if one of the reconsideration criteria have been met. This is the threshold test.

If the threshold test has been met, the Appeals Resolution Officer then decides whether the reconsideration would result in the decision being changed in a substantive way. This is referred to as the substantive review.

If the Appeals Resolution Officer's review decides that there are no grounds to warrant a reconsideration, that is, if the threshold test has not been met, the Appeals Resolution Officer will advise the parties in writing, with rationale and explanation provided.

If the threshold test is met and the substantive review suggests a reconsideration is needed, the Appeals Resolution Officer will notify the workplace parties that the threshold has been met, and establish the procedures to be followed in conducting the reconsideration. The Appeals Resolution Officer has the ultimate authority to decide how best to conduct the reconsideration.

In most cases, a reconsideration will be addressed through written submissions. Generally, we will provide 30 days to make a written submission.

Following a reconsideration by the Appeals Resolution Officer, the parties may also ask the Appeals Manager or Senior Director to reconsider the decision. The additional levels of reconsideration will not occur automatically or at the same time. Reconsideration requests to the Appeals Manager or the Senior Director must be in writing and identify the reconsideration criteria that have been met and the reasons for the request. The Appeals Manager and the Senior Director have the authority to reconsider and change a decision on the same grounds as noted above and will follow the same procedures as the Appeals Resolution Officer for dealing with reconsideration requests. However, this is not an additional level of appeal and is not intended to be used simply to substitute management's judgment for the judgment of the Appeals Resolution Officer.

Regardless of who in the Appeals Services Division is reconsidering a decision, at the completion of the reconsideration review, we will notify the workplace parties, their representatives (if any), and the front-line decision-making area of the outcome in writing, with reasons provided.

For reconsiderations requested in the usual manner related to the criteria of significant new evidence, typographical error, failure to apply WSIB policy, or a defect in the decision or decision-making process, the Appeals Resolution Officer decision will:

1. remain valid on its face;
2. remain on the claim file; and,
3. will be implemented by the front-line decision-making area, if the Appeals Resolution Officer has directed action.

If the reconsideration results in a full or partial overturning of the decision, implementation will be reversed.

De Novo decisions

When we recognize that there has been a significant procedural flaw that has made the appeals process fundamentally unfair to a workplace party, we will consider the Appeals Resolution Officer

decision voidable, which means the defect in the Appeals Resolution Officer decision can be corrected.

When an Appeals Resolution Officer decision is considered voidable, we will:

1. remove the original Appeals Resolution Officer decision from the claim file temporarily and replace it only after a second Appeals Resolution Officer decision has been made and communicated to the workplace parties;
2. conduct a “de novo” oral hearing or hearing in writing by a second Appeals Resolution Officer; and
3. take no steps to interfere with the implementation of the original Appeals Resolution Officer decision, pending the outcome of the de novo process.

An example of a case where an appeals decision is considered voidable is where a party who has returned a completed Respondent Form is mistakenly excluded from the appeals process.

The original Appeals Resolution Officer decision will be implemented pending the outcome of the de novo reconsideration process, subject to exceptional circumstances.

In cases where a fundamental process flaw has occurred and a de novo process is initiated, we are committed to resolving these cases in a timely manner. Based on this, the timelines associated with the appeals process will apply. This will include timelines for the provision of forms and submissions, as well as the scheduling of oral hearings, if required.

Exceptional circumstances

There may be certain exceptional cases where we may need to either place the implementation of the original Appeals Resolution Officer decision on hold or reverse the implementation because failure to do so would be very detrimental to the injured/ill person or the employer.

The injured/ill person or the employer must submit a written request to the Senior Director of the Appeals Services Division outlining why implementation of the original Appeals Resolution Officer decision should be put on hold or reversed. The submission should outline the following:

1. What is or will be the significant harm to the party if the implementation of the original Appeals Resolution Officer decision is not put on hold or reversed?
2. Is the significant harm immediate or likely to occur at some future date? Because the de novo process will be actioned on a priority basis, we will not likely to consider this criterion an exceptional circumstance if the harm is likely to occur at a time where the de novo process is likely to have been completed.
3. Is the party prepared and ready to move expeditiously to participate in the de novo process? If not, why not?

Examples where we may direct that the implementation of the original Appeals Resolution Officer decision be put on hold or reversed are:

1. An injured/ill person is scheduled for a 1-2 year college program in the near future and a de novo reconsideration cannot be completed prior to the start of the college program.
2. An injured/ill person is experiencing urgent financial issues, such as bank foreclosure or eviction proceedings.

3. An injured/ill person is scheduled for surgery in the near future and needs loss of earnings benefits, but the original Appeals Resolution Officer decision denied entitlement for surgery.

Limit on reconsideration requests

Generally, each party at each level of reconsideration (the Appeals Resolution Officer, the Appeals Resolution Officer's Manager and the Senior Director) should make only one reconsideration request. We will not grant a further request for reconsideration from the same party made to the same individual unless there are exceptional circumstances (e.g., the failure to grant a subsequent reconsideration would result in a serious procedural or substantive unfairness to a party).

Reconsideration time limit

We will not reconsider a decision after more than two years have passed since the date of the Appeals Resolution Officer decision. Reconsideration requests made after two years will be considered only in exceptional circumstances. These requests must be directed to the Senior Director, Appeals Services Division.

Examples of exceptional circumstances include:

1. the party requesting the reconsideration provides compelling reasons why the two-year time limit was not met;
2. in the opinion of the Senior Director, significant new evidence has been provided, significant evidence was overlooked by the original decision-maker, or there was a significant jurisdictional error committed, that would likely have changed the outcome of the decision.

Section 7

Practice guidelines:

- Premium rate adjustments: Experience rating adjustments exceptional circumstances (based on appealable decisions before January 1, 2020)
- Premium rate adjustments: Experience rating adjustments (based on appealable decisions made on or after January 1, 2020)

Practice guideline 7.0: Premium rate adjustments: Experience rating adjustments exceptional circumstances (based on appealable decisions made before January 1, 2020)

Retroactive experience rating adjustments may be presented as a "stand alone" issue in an appeal after Second Injury and Enhancement Fund cost relief has been granted.

As a result, it is important for decision makers to be aware of the experience rating window when deciding if Secondary Injury and Enhancement Fund cost relief is to be applied.

However, there may be circumstances where retroactive adjustments to Secondary Injury and Enhancement Fund cost relief occur after the closure of the experience rating window.

WSIB policy outlines that adjustments outside of the experience rating window can occur if the WSIB has made an error. Errors are defined as:

1. Clerical (typographical)
2. Data processing (computer generated)
3. Omission (decision made but not acted upon)

It is important to distinguish the above circumstances from delays that result from the appeals process. The fact that an Appeals Resolution Officer grants Secondary Injury and Enhancement Fund cost relief on appeal outside of the experience rating window does not in itself make it a WSIB "error" that would give rise to an experience rating adjustment.

We developed the following guideline when considering employer appeals where exceptional circumstances may exist.

Circumstances that may constitute "exceptional circumstances" include but are not limited to:

1. Whether the employer pursued Secondary Injury Enhancement Fund relief within a reasonable period after the employer knew or ought to have known the worker's recovery period was prolonged or enhanced by a pre-existing condition.
2. Whether there was a delay in identifying a pre-existing condition.
3. Whether undue delay in the decision-making process caused the decision to grant Secondary Injury Enhancement Fund relief to fall outside the experience rating window.
4. The length of time between the closure of the experience rating window and the Secondary Injury Enhancement Fund decision. It would be expected that discretion be extended in cases where the period is relatively short (i.e., less than six months).

When an Appeals Resolution Officer is deciding on the experience rating adjustment as part of a Second Injury and Enhancement Fund appeal, the Appeals Resolution Officer must be aware of the appeal time limit for the experience rating adjustment, if a decision has been made by Operations

relating to that issue. In cases where the above rule of practice is applied, the Appeals Resolution Officer will send a copy of their decision to the Manager of Experience Rating.

Practice guideline 7.1: Premium rate adjustments: Experience rating adjustments (based on appealable decisions made on or after January 1, 2020)

The WSIB may make premium or premium rate adjustments based on the circumstances and time-lines outlined in the Employer Premium Adjustments policy (14-02-06). The current version of this policy applies to all adjustments with a notification date on or after April 1, 2023. If you need the 2020 version of policy 14-02-06, you can send an email directly to the Operational Policy Branch at: opb@wsib.on.ca, or call 1-800-387-0750.

Any adjustments to experience rating bulk issue refunds or surcharges requested by employers, or identified by the WSIB, on or after January 1, 2020, will be processed as outlined in the Employer Premium Adjustments policy (14-02-06). However, as outlined in the New Experimental Experience Rating Plan (NEER) policy (13-02-02) the limitations below apply:

1. If the adjustment impacts a period considered by a 2019 and/or 2020 experience rating bulk issue, the WSIB may adjust the relevant 2019 and/or 2020 bulk issue rebate or surcharge.
2. If the adjustment impacts a period considered prior to a 2019 experience rating bulk issue, the WSIB will generally not adjust earlier experience rating bulk issue rebates or surcharges.
3. If the adjustment is requested by the employer, or identified by the WSIB after December 31, 2021, adjustments to experience rating bulk issue rebates or surcharges will generally not be allowed.

Section 8

Practice guidelines:

- Employer account appeals

Practice guideline 8.0: Employer account appeals

This guideline is provided for the purposes of outlining any differences in the *Appeals Services Division Practices and Procedures* document specifically related to employer account appeals. Unless differences are referenced specifically throughout this document, the regular guidelines will apply.

Adverse decision

When a front-line decision-maker makes an adverse decision regarding an employer account issue, they will communicate that decision verbally and in writing. The written decision will invite the workplace party that received the adverse decision to provide any additional information that might alter the decision and will also advise the party of the time limit to object to the decision. Refer to **Practice guideline on Time limit to Object.**

If the party raises concerns about the decision, the front-line decision-maker will review the concerns with the workplace party, explain the rationale for the decision and address any new information that may be provided. If the decision is not changed, the party can then proceed with their objection.

Objection form

The workplace party is required to complete an Objection Form (Employer Account) that is issued to them by the front-line decision-maker, and return it to the decision-maker if they choose to proceed with an objection. Note: the Objection Form (Employer Account) for employer account appeals is different than the Intent to Object Form used for claim appeals.

The completed Objection Form (Employer Account) must specify reasons why the decision is considered to be incorrect, any new information not considered by the front-line decision-maker, and a summary of what is requested related to the Employer's account. If the Objection Form (Employer Account) is not completed in full, the referral to the Appeals Services Division may be delayed.

Once the Objection Form (Employer Account) is completed, the front-line decision-maker forwards an Appeals Referral Memo to the Appeals Services Division.

Access

Your account file mostly contains correspondence between you and the WSIB. We do not automatically send you your account file. Firm file access is provided upon request through the firm file access area. Refer to the **Practice guideline on Objecting to a front-line decision.**

Appeal registration and review stage

Once we receive your appeal, we will:

1. register your appeal;
2. review your Objection Form to ensure it includes all the information we need; and
3. send out a Hearing Request Form.

The hearing request form

When you receive the Hearing Request Form, you will need to complete it and send it back to us within 30 calendar days. The Hearing Request Form will tell us what issue you are appealing, and what type of hearing you want and why.

If you do not return the Hearing Request Form within 30 calendar days, we will withdraw your appeal. If you want to restart your appeal, you will have to call the front-line decision-maker and ask for a new Objection Form (Employer Account); you will have to wait at least 30 calendar days before you can start your appeal again.

A hearing in writing is the default method of resolution to hear an appeal. This means that, in most cases, the Appeals Resolution Officer assigned the appeal will make their decision by reviewing the information in the account file and any written submissions on the Objection Form (Employer Account).

In certain cases, where warranted, we will consider an oral hearing (video conference, teleconference or in-person, if required) as the method of resolving the appeal. Please see the **(Oral hearings lists).**

1. A hearing in writing involves the Appeals Resolution Officer making a decision based on a review of the information in your account file and any new information submitted. This is the type of hearing we generally use to resolve employer account appeals. If you request a hearing in writing, you should also include any additional information that you would like the Appeals Resolution Officer to consider when you submit your Hearing Request Form.
2. An oral hearing by video conference, teleconference, or if needed, in-person, may be used for appeals that involve transfer of cost or independent operator/worker status issues, as these issues may be more complex, and involve more than one person or company. We try to schedule oral hearings within 90 calendar days from the date the Appeals Resolution Officer decides an oral hearing is necessary. We will send you a Hearing Notice letter with the date, time of the hearing, and location, if an in-person oral hearing is needed.

Method of resolution

The WSIB decision on method of resolution is an administrative decision made by the Appeals Resolution Officer. A request for reconsideration of this decision may be made to the Appeals Resolution Officer. There will be no opportunity to request reconsideration by an Appeals Manager, or the Senior Director, Appeals Services Division.

The Appeals Resolution Officer reviews the Hearing Request Form to see what type of hearing you have requested. If you requested a hearing in writing, the Appeals Resolution Officer will proceed with making the decision based on the information in your account file and any new information you provided on the Hearing Request Form and/or the Objection Form.

If you asked for an oral hearing, the Appeals Resolution Officer will review the issue you are appealing and why you want an oral hearing. The Appeals Resolution Officer chooses the type of hearing they will use to resolve your appeal and will send you a letter explaining their choice. If you do not agree with the Appeals Resolution Officer, you can write to the Appeals Resolution Officer to ask them to reconsider. In your letter, you must tell them why you think they should change the type of hearing they have chosen. If they do not change the type of hearing they have chosen, there is no further opportunity to object.

If the Appeals Resolution Officer chooses a hearing in writing, even though you asked for an oral hearing, you will have 30 calendar days to send in any additional information you want them to consider when making the appeal decision.

The Appeals Resolution Officer will usually complete their decision within 30 days of the appeal being assigned to them for a hearing in writing, or in the case of an oral hearing, within 30 days of the scheduled oral hearing date.

Section 9

Practice guidelines:

- Oral hearing fees and expenses

Practice guideline 9.0: Oral hearing fees and expenses

When an oral hearing occurs, the Appeals Resolution Officer considers requests for the payment of expenses for the injured/ill person, the injured/ill person's witnesses and any summoned witnesses. Travel, meal and accommodation expenses are paid to injured/ill person, their witnesses and summoned witnesses who are required to attend in-person hearings outside their area of residence or employment. All witnesses who are not summoned by us must have their attendance pre-authorized by us if they wish to be paid. Such requests should be made on the Appeal Readiness Form/ Respondent Form.

Employers and their witnesses are not entitled to the payment of hearing fees and expenses.

Travel expenses are limited to the equivalent of travel within Ontario borders. We may pay for a portion of travel costs outside of the province. Generally, we will pay only from Winnipeg in the west and Montreal in the east, to the location of the in-person oral hearing. If travel is from destinations farther away than either of these two cities, the travel costs will be limited to the equivalent of: the actual travel costs, or the cost of a return flight from either Montreal or Winnipeg and the oral hearing location, whichever is less.

Appeals Resolution Officers will attend to the various potential expenses/payment requests either during the preliminary discussion at the oral hearing or once the oral hearing has been closed.

Travel and related expenses

Allowances for travel, meals and accommodation expenses are paid at the prevailing rates established in the WSIB policy 17-01-09, Travel and Related Expenses.

Non-professional witness fees

If the person with a claim, or any of their witnesses, loses wages to attend an oral hearing, we may pay a witness fee. We do not pay witness fees for employers or their witnesses. If you qualify for a witness fee, we will pay you up to $66.20 for a half-day or $132.40 for a full day. We do not pay a witness fee if:

1. you are receiving full WSIB benefits for that day;
2. your employer is paying for the lost time; or
3. you will not lose any wages by attending the oral hearing.

You must fill out a standard expense form, which you must sign and give to the Appeals Resolution Officer.

Professional witness fees

We have a set fee for professional witnesses. Professional witnesses include, among others, medical doctors, psychologists and physiotherapists. It is generally sufficient for the above

individuals to provide medical reports to the Appeals Resolution Officer. We will only approve professional witnesses to appear at an oral hearing in unique circumstances where the evidence they intend to bring forward can only be effective if it is provided in person.

Witness fee schedule

Non-professional witnesses: $132.40 for a full day/ $66.20 for a half day

Professional witnesses: $600 for a full day/$300 for a half day

Payment for medical reports

We will pay for medical reports at the approved WSIB fee schedule, if the report is provided as an attachment to the Appeal Readiness Form, and only if the report is considered by the Appeals Resolution Officer to be significant in the decision-making process.

The approved fee schedule is set out in WSIB Policy 17-02-03, Payment of Clinical Assessments/Reports Requested for Adjudication.

Section 10

Appendices:

- Appendix A – Application of time limit extension criteria
- Appendix B – Special alternative dispute resolution projects

Appendix A: Application of time limit extension criteria

Criteria between January 1, 2008 and January 31, 2013

(For Employer Account Appeals this applies from January 1, 2008 to June 30, 2016)

The length of the delay. Broad discretion to extend will be applied where appeals are brought within one year of the date of the decision. Additional criteria to be considered for longer delays include:

1. Whether there was an actual notice of time limit in the decision you received. This acknowledges that as of January 1, 1998, decisions specifically refer to the time limits but prior to that date, they do not;
2. You have experienced serious health problems;
3. Someone in your immediate family has experienced serious health problems;
4. You had to leave the province/country due to the illness or death of a family member;
5. Whether there are other issues in the appeal which were appealed with the time limits and which are closely related to the issues not appealed within the time limits;
6. The significance of the issue in dispute;
7. Whether the party was able to understand the time limit requirements.

All decisions to extend time limits will be based on the merits and justice of the case.

Criteria between February 1, 2013 and June 30, 2016

Criteria to be considered for objections beyond the statutory time limit include:

1. Whether there was actual notice of the time limit in the decision you received.
2. You have experienced serious health problems;
3. Someone in your immediate family has experienced serious health problems;
4. You had to leave the province/country due to the illness or death of a family member;
5. You have a condition that prevents you from understanding the time limit and/or meeting the time limit;
6. You have objected to other closely related issues within the time limit, and there are other issues in the appeal that were appealed within the time limit which are so intertwined that the issue being objected to within the time limit cannot reasonably be addressed without waiving the time limit to appeal on the closely related issue.

All decisions to extend the time limits will be based on the merits and justice of the case.

Criteria as of July 1, 2016 (including Employer Account Appeals)

Criteria to be considered for objections beyond the statutory time limit include:

1. Whether there was actual notice of the time limit in the decision you received;
2. You experienced serious health problems;
3. Someone in your immediate family has experienced serious health problems;
4. You had to leave the province/country due to the ill health or death of a family member;
5. You have a condition that prevents you from understanding the time limit and/or meeting the time limit;
6. There is information in the claim file that you objected to a particular issue, even though you did not submit an Intent to Object Form or an objection letter;
7. You have objected to other closely related issues within the time limit and those other related issues are so intertwined with the issue that was not objected to within the time limit that the appeal cannot be reasonably resolved without waiving the time limit.
8. Whether the decision was issued between March 16, 2020 and September 13, 2020 when the Ontario Government temporarily suspended time limits due to the pandemic state of emergency.
9. From February 22 to March 16, 2023 there was a delay in people receiving letters from us because of a printing issue. Because of this delay, we extended the appeals timeframe to September 30, 2023 for any decisions dated between February 22 and March 16, 2023.

Appendix B: Special alternative dispute resolution projects

We offer Special Alternative Dispute Resolution projects. Appeal cases arising from larger employers are some times dealt with through special projects that are aimed at reaching outcomes more efficiently and more consensually. These projects depend upon the willingness of the employer and the union to seek constructive ways to resolve appeals.

Each project is developed in consultation with the employer and union and procedures vary based on the needs of the parties.

For larger employers and unions where an alternative dispute resolution project has been implemented, the project involves a dedicated Appeals Resolution Officer who typically provides a written “view” or opinion of the case to the employer and union representatives. A meeting may be held with the employer and union representative where multiple cases are considered. The discussions focus around the “view” and most cases are resolved through this process. A small number of cases proceed to an oral hearing. In some cases, additional enquiries may be identified as necessary before a resolution can be reached.

More information about the opportunity to develop employer-specific Alternative Dispute Resolution projects should be raised with the Senior Director of the Appeals Services Division.