

Appeals Services Division

Practices and Procedures

Effective July 9, 2020

Appeals Services Division

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Key changes to the Appeals Services Division Practices and Procedures

Effective July 9, 2020

In this document, we have made a number of minor updates and clarifications, as listed below. This version also features reorganized and simplified language to make it easier to read and to help stakeholders better understand the appeal process.

The specific updates are as follows:

Page #	Description of update	Reason for update
7	Added summary outlining the criteria we use when we consider extending the time limit to object to a decision.	This information was previously at the end of the document. Now it is included in the appropriate section for easier reference.
25	Added statement that at oral hearings, Appeals Resolution Officers will go on record as soon as all attendees enter the hearing room, prior to the start of the oral hearing.	This approach will ensure the transparency and integrity of the process for all participants and guarantee there are no misunderstandings about anything discussed before the start of the hearing.
28	Added information about increased capacity to continue to conduct oral hearings through alternate channels. Increased reasons why we would use an alternate channel to conduct an oral hearing.	This will provide more options for customers who may not be readily able to travel or don't want to travel, or for situations where access to physical room locations is impossible (e.g., natural disasters, etc.).
32/39/40	Added statement that when someone withdraws their appeal, we will still look for opportunities to address at least part of the appeal. For example: If someone is appealing three separate issues/decisions within a claim and wants to withdraw because they are not ready to move forward on two of the three issues, we will still move forward on the third issue if the objecting party agrees.	This addition increases clarity and awareness of our current practice.

35	Clarified that an employer resource person who is also a witness at an oral hearing must provide a “will say” statement outlining what they intend to testify about.	This update was made for clarity and awareness. It is part of regular practice.
49	Updated information on premium rate adjustments	Changes reflect current Employer Premium Adjustments policy (14-02-06) .
n/a	Removed Glossary of Acronyms, Term Definitions and Calculation of Time sections and incorporated this information into the rest of the document.	This information was incorporated into the relevant sections in the document for easier reference.

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About the WSIB's appeals process

At the Workplace Safety and Insurance Board (WSIB), there is an Appeals Services Division, which considers and makes final decisions on claims and employer account appeals. Our decisions adhere to the *Workplace Safety and Insurance Act* and WSIB policy. They are timely, transparent and fair.

We ensure service excellence by being responsive to both people with claims and employers and we are committed to independent, transparent, and barrier-free decision-making.

Our legal authority

Two sections of the *Workplace Safety and Insurance Act* give us the power to make the final decisions of the WSIB, and tell us how we can make these decisions. The sections are:

Section 119, which says:

- 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), which says:

- 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.

Our practices and procedures

Section 131(1) of the *Workplace Safety and Insurance Act* tells us that we are to decide what rules we use when making the final decisions of the WSIB. We have outlined these rules in this document. You can find the Appeals Services Division Practices and Procedures at wsib.ca.

We review and update this document regularly. The updated document remains in effect until the date of next review.

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

Time limits to object

The *Workplace Safety and Insurance Act* sets out the time limits you have to object to WSIB decisions.

You have 30 days to object to WSIB decisions about:

- return to work,
- re-employment, and
- return-to-work plans made on or after January 1, 1998.

You have six months to object to any other WSIB decision made on or after January 1, 1998, including any employer account decisions.

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

The WSIB must receive your completed [Intent to Object Form](#) within the time limit set out in your decision letter. If you can't find the form, you can send a letter explaining what decision you are objecting to and why. Please note, there is a separate [Objection Form](#) for employers who object to a decision about their account. See page 46 for more information.

If you want to object to a decision after the time limit, the person who made the decision may be able to give you an extension. You must write to the decision maker and let them know why you didn't meet the time limit. They will write back to you with their decision.

These are the criteria used to consider a time-limit extension request:

For decisions made on or after July 1, 2016:

1. Whether you received actual notice of the time limit.
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 or country due to an illness or death in your family.
5. You have a condition that prevents you from understanding or meeting the time limit.
6. Information in your claim file clearly shows you objected to a particular issue, even though you did not submit an Intent to Object Form or an objection letter. To show this, we look for mail or memos about a telephone discussion on the particular issue.
7. You have objected to other closely related issues within the time limit, and it would be impossible to address all of the issues separately.

For decisions made between February 1, 2013 and June 30, 2016, we apply the same criteria as above, except for number six.

For decisions made between January 1, 2008 and January 31, 2013 we will apply all of the criteria above except for number six. For this period, we may also consider the significance of the issue in dispute.

Frequently asked questions about time limits to object

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

When the WSIB writes a decision letter, it will always include your 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.

If you want to appeal a time-limit decision, tell the decision maker why you missed the time limit. If they don't change their decision on the time-limit extension, they will send your request to the Appeals Services Division.

Once we receive your time-limit appeal, we will write to you, giving 30 calendar days (plus five days for mailing), to send in any further information you might have about the time-limit issue. We let anyone else involved in your appeal know that we have been asked to consider a time-limit extension and invite them to provide any further information.

Once we receive everyone's information, or when the deadline has passed, we review the request. We write to you and the other person involved in your appeal to tell you our decision within 30 days.

If we decide to give you the time-limit extension, you can then start your appeal about the decision that needed that extension. To do this, contact the original decision maker and start the regular appeal process for that decision.

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.

People involved in your appeal

Appeals Resolution Officer – resolves all appeals about WSIB claims or employer accounts. An Appeals Resolution Officer's decision is the final decision of the WSIB.

Appeals Registrar – your main contact during the appeal process. Their responsibilities include:

- making sure you are ready to start the appeal process
- choosing whether you will have an oral hearing or a hearing in writing
- handling issues around the sharing of health care information
- handling requests to add issues to an appeal

- deciding whether to grant time-limit extensions
- answering questions and educating people about the appeal process
- giving you status updates on your appeal if needed

Appeals 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.
- ensuring we share submissions with the right people

Objecting person – the person who disagrees with a WSIB decision about a claim or an employer account.

Non-objecting person (respondent) – the other person involved in an appeal, apart from the objecting person. For example, if someone is objecting to a decision about their claim, their employer would be the respondent.

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.

Representatives

A representative is a person who helps either the objecting person 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.

We expect representatives to make good faith attempts to resolve issues in dispute with the original decision maker when possible, 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, which is available at wsib.ca/en/reconduct.

Because representatives often have more interaction with the Appeals Services Division, there are additional standards at this level. When interacting with the Appeals Services Division, representatives are expected to:

- be aware of and comply with the Appeals Services Division Practices and Procedures document
- be prepared to comply with the disclosure requirements set out in the Appeals Services Division Practices and Procedures document
- be courteous and respectful to the opposing party, witnesses, and ASD staff
- respect the confidentiality of the file information and related information submitted in the appeals process
- respect the privacy of the individuals involved in the appeals process
- provide submissions/responses by date required/requested
- be on time when attending oral hearings

You can also find the Law Society of Ontario Rules of Professional Conduct on the Law Society of Ontario website at lso.ca.

Frequently asked questions about representatives

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 at lso.ca.

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 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. There is a separate [authorization form](#) for employer account issues.

If you are using a representative, before we will start the appeal process we must have your Direction of Authorization or Employer's Direction of Authorization Form and your representative must be available to attend an oral hearing if needed.

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

Late notice of representation and/or participation 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.

If this does happen, we may pause the appeal in the following situations:

HEARING IN WRITING

- If we haven't assigned the hearing in writing to an Appeals Resolution Officer, we may pause the appeal process for up to 30 calendar days. The 30-day pause begins from the day that you notify us of a change in your representation. If we pause the appeal process, we ask everyone involved in the appeal to provide any written submissions within these additional 30 days. The person who is objecting may also choose to withdraw the appeal instead of pausing it. In this case, we follow the rules around [withdrawal](#).

ORAL HEARING

- If we haven't set a date for an oral hearing, we may delay the scheduling of the hearing for up to 30 calendar days. Once the 30-day delay is over, everyone involved in the appeal must then be available to attend an oral hearing within 90 calendar days. The person who is objecting may also choose to withdraw the appeal instead of delaying it. In this case, we follow the rules around [withdrawal](#).
- If an oral hearing is already scheduled and there is a change in representation, we do the following, depending on who is making the change:
 - For the person who is objecting, we may postpone the oral hearing for up to 30 calendar days. If everyone involved in the appeal can't agree on a hearing date within these extra 30 days, we will withdraw the appeal instead of postponing it further. In this case, we follow the rules around [withdrawal](#).
 - For the person responding to the appeal, we may postpone the oral hearing for up to 30 calendar days. If everyone involved in the appeal can't agree on a hearing date within these extra 30 days, the oral hearing will take place on the originally scheduled date.

We pause appeal proceedings to give new representatives a chance to get copies of the relevant claim files and other evidence they may need.

Raising a question about the *Ontario Human Rights Code* or the *Canadian Charter of Rights and Freedoms*

Sometimes people object to a WSIB decision because they feel that it discriminates against them under the *Ontario Human Rights Code* or the *Canadian Charter of Rights and Freedoms*.

We do have the authority to address these types of questions, but our first priority is to make a decision on the issues under appeal, based on the *Workplace Safety and Insurance Act* or WSIB policy. This decision is called the merit review.

If we decide to allow the appeal based on the merit review, we will not rule on the human rights or constitutional question.

If we deny the WSIB appeal, we will then address the human rights or constitutional question as an additional decision.

Ontario Human Rights Code

We have the authority to consider a question under the *Ontario Human Rights Code*, based on the Supreme Court of Canada decision in *Tranchemontagne v. Ontario*.

If you intend to raise a human rights question under the *Ontario Human Rights Code*, you must give us written notice that includes the following:

- a detailed explanation of the human rights question you are raising, along with the material facts,
- the section of the code you relied on, or the legal basis for your argument,
- the solution you are asking for, and
- the contact information for your representative, if you have one

Canadian Charter of Rights and Freedoms

We have the authority to consider a question under the *Canadian Charter of Rights and Freedoms* based on the Supreme Court of Canada decision in *Nova Scotia (Workers' Compensation Board) v. Martin*.

If you intend to raise a question about the *Workplace Safety and Insurance Act* or WSIB policy under the charter, you must comply with section 109 of the *Courts of Justice Act*.

You must notify the Attorney General of Canada and the Attorney General of Ontario that you are raising a constitutional question with us as soon as you decide to do so. You must also provide a copy of the notice to the Appeals Services Division and to everyone involved in the appeal.

The notice must include:

- a detailed explanation of the Charter question you are raising along with the material facts,
- the section(s) of the Charter you relied on, or the legal basis for your argument (which constitutional principles you are arguing),
- the solution you are asking for, and
- the contact information for your representative, if you have one

Everyone involved in these appeals must comply with the same requirements listed in the [Evidence and Witnesses](#) section on page 33.

You will not need to provide your written submissions and evidence regarding the Human Rights or Charter question until we are ready to deal with those issues. This usually occurs after we have addressed the merits of your claim. Once we are ready to address the Human Rights or Charter question, we will let you know and give you 30 days (plus five days for mailing) to provide your written submissions and evidence.

Failure to follow procedure

If you do not follow the above procedures, you will not be permitted to raise the Human Rights or Charter question in any proceeding before the Appeals Services Division.

Publishing appeal decisions

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

These published decisions do not include any personal identifying details, such as names of people involved in the appeal.

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

How to object to a WSIB claim decision

Any time someone at the WSIB makes a decision about your claim, that person will send you and your employer a letter explaining how they made the decision. They will also let you and your employer know what to do if you or your employer disagree with the decision. (NOTE: Information about employer account appeals is available on page 46 of this document.)

If you disagree with a WSIB decision, you have several opportunities to ask for the decision to be changed. First, you can ask the original decision maker to review their decision to see if they will change it. If they do not change the decision, you can then formally object to the decision.

What to do if you disagree with a WSIB claim decision

If you disagree with a WSIB decision, here are the steps you should take:

Step 1: Contact the decision maker

- The decision maker is the person who signed the decision letter you received. Call the person who made the decision to talk about why you don't agree, before the time limit given in the letter. You can also let them know if you have any additional information that might change their decision.
- The decision maker will listen to your concerns and review any new information that you provide.
- If you still don't agree with the decision after talking about it, move on to Step 2.

Step 2: Complete and send in an Intent to Object Form

- Use the [Intent to Object Form](#) to provide any new information that might change the decision. You can find the form on the WSIB website.
- Send in the form within the time limit given in your decision letter.
- You only need to return the first page of the form. You can return page 2 if you have new information or want to provide reasons for your objection.
- You can send a letter of objection instead of an [Intent to Object Form](#) if you prefer. The letter must include your name, the claim number, the date of the decision you disagree with, and what issues you disagree with. You may also include any new information or further explanation you have.

Step 3: Await review and a possible reconsideration by the original decision maker

- When you complete and send in an [Intent to Object Form](#), the original decision maker will look at it to make sure it is complete and will review any new information that you provide. If they are able to do so, they will reconsider their original decision.
- If you raised new issues in the [Intent to Object Form](#), the decision maker will address those issues as well.
- If the decision changes, you will get a letter to tell you what is changing, and the objection process will stop.

- If the decision doesn't change, you will get a letter that tells you why the original decision hasn't changed, and the objection process will move to Step 4.

The original decision maker will usually reconsider their decision within a month. It may take them longer if they need to get additional information.

Step 4: Await receipt of the claim file and an Appeal Readiness Form

- If the original decision maker does not change their decision, we will send you a copy of your claim file. If you are an employer, the person with the claim will have to give their permission before we can send you their medical information.
- We will also send you a form called the Appeal Readiness Form, and instructions to help you to fill it out.

Step 5: Complete and send back the Appeal Readiness Form

When you receive the claim file and the Appeal Readiness Form, you will need to complete the form and send it back to us. This lets us know you want to start a formal appeal process with the Appeals Services Division.

We want you to take your time and make sure you have included all the information you want us to have, so there is no time limit for completing the Appeal Readiness Form.

There may be another person involved in your appeal. If you are the person with a workplace injury or illness, your employer may be involved in your appeal. In this case, we need your permission to send medical information from your claim file to your employer before you complete the Appeal Readiness Form.

Send in your Appeal Readiness Form when you are willing to release the medical information as noted above, and when:

- You have talked about all of your issues with the original decision maker and you still don't agree with their decision.
- You have gathered all of the information you want us to have (you may attach a written statement to the Appeal Readiness Form to further explain your appeal).
- You are certain that you can attend an oral hearing within 90 calendar days, if you have requested one.

We receive your appeal

When the WSIB receives your Appeal Readiness Form, we review it to make sure we have all the information we need.

If you raise any new issues, or provide any significant new information with your Appeal Readiness Form, we may go back to the original decision maker to see if they will change their decision.

We send you a letter when we are ready to move your appeal forward to the Appeals Services Division. We also let the other person involved in your claim know (either your employer or your employee with the claim), if they have chosen to participate in the appeal.

Frequently asked questions about objecting to a WSIB 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 a WSIB 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?

If the other person involved in the claim (the respondent) wants to participate in your appeal and has sent us a Participant Form, we send them a copy of the claim file. This helps to make sure they have the information they need to participate in the appeal.

We also send them a Respondent Form, which they can use to provide us any information they want us to consider. We send the Respondent Form and the copy of your claim file only after we receive your completed Appeal Readiness Form.

The respondent then has 45 calendar days (plus 5 days for mailing) to review the file and send in their Respondent Form. If they do not send it in, then we do not include them in your appeal any further, except to give them a copy of the final appeal decision.

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.

If you refuse to let us share the 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.

What if I want to add an additional issue to my appeal after I have submitted my Appeal Readiness Form?

Once we have registered your appeal, we would only allow you to add a new issue to the agenda in exceptional circumstances. If the file is assigned to an Appeals Resolution Officer, they will make the decision whether or not to allow you to add an issue. If you believe that you cannot move forward with the appeal until that additional issue is resolved, we will [withdraw the appeal](#). This allows you to pursue the new issue with an Operations decision maker and when you are ready, to start a new appeal on all issues at once.

How to participate in an appeal

When someone objects to a WSIB decision, it may impact other people. For example, if someone with a claim objects to their benefits ending, their employer may want to participate in the appeal process because it could impact their business. If an employer objects to an employee's benefits, the employee may want to be involved in the appeal process because it could affect the benefits they receive.

If you are directly impacted by someone's objection to a decision, we will invite you to participate in the appeal process. You may also have an authorized representative participate on your behalf.

The following steps outline how you can participate in an appeal when you are not the objecting person, but a respondent:

Step 1: Complete the Participant Form

When someone objects to a WSIB decision by sending us an Intent to Object Form, we will send you a letter and a Participant Form, inviting you to participate in the appeal.

If you want to participate in the appeal, you must complete the Participant Form and return it to us within 30 calendar days (plus five days for mailing) from the date on the letter.

You should also provide information about your representative, if you have one.

If you do not want to participate in the appeal process, you do not need to complete and return the form. We will not include you in any further activity around the appeal process including any information sharing. If you complete the Participant Form and then later decide that you don't want to participate, you don't need to do anything else.

Whether or not you choose to participate, we will send you a copy of the written decision on the appeal.

If you have chosen to participate in the appeal, proceed to step two.

Step 2: Complete the Respondent Form

We encourage people who disagree with a WSIB decision to resolve the issue with the original decision maker. If this is not possible, the objecting person completes and sends us an Appeal Readiness Form. This provides us with the information we need to start the appeal process.

As there is no time limit for providing the Appeal Readiness Form, there may not be much immediate activity for you after completing your Participant Form. The time it takes to start the appeal with the Appeals Services Division is up to the person who is objecting.

Once we receive the Appeal Readiness Form, we will send you a Respondent Form, along with relevant claim file information.

You must provide the following with your Respondent Form:

- information about your representative, if you have one
- any information or [evidence](#) about the claim that you want us to consider
- the names of any witnesses you want to involve in the appeal
- the type of hearing you feel should be used for the appeal, and
- whether you need an interpreter

You will have 45 calendar days (plus five days for mailing) to complete and return the Respondent Form to us. If we do not receive your Respondent Form, we will not involve you in the rest of the appeal process, but we will still send you a copy of the final written decision.

If you send your form in late, you may still be able to take part in the appeal, but there will be limits on how you can participate (see the frequently asked questions below).

Step 3: Await a response

We review your Respondent Form and any information you attached, along with the objecting person's Appeal Readiness Form. We use this information to choose the [type of hearing](#) that we will use to resolve the appeal.

If we choose a hearing in writing to resolve the appeal, we also use the information in the [Respondent Form](#) and [Appeal Readiness Form](#) to make our final decision.

If we choose to use an [oral hearing](#) to resolve the appeal, we will contact you to schedule the hearing. Once we have set a date, we will send you a letter with the details about the time, place and any other information you may need.

Frequently asked questions about how to participate in an appeal

Who else may be invited to participate in an appeal?

Other people may be included in an appeal in certain circumstances (for example, past or successor employers for multiple workplace exposures involving more than one employer).

An out-of-business employer whose WSIB account has been closed will generally not be included as a participant in the appeal process. We may still request information from the former officers or employees of that company if that information is needed to help to resolve the appeal.

Can I ask for a summons for a witness or a document?

Yes. If you want us to summon a witness or a document, you must give us the following information on your Respondent Form:

To summon a witness, we need:

- name of the witness
- the reason for the summons

- the address where the summons would need to be served

To summon a document, we need:

- the name of the person who has the document, and their contact information
- how the document is important to the appeal

What happens if I miss the deadline to send in my Participant Form or my Respondent Form?

The Participant Form provides a timeline for you to let us know whether you want to participate in an appeal. Depending on where we are in the appeal process, and the type of hearing we are using to resolve the appeal, the following applies:

HEARING IN WRITING

- If we have assigned the hearing to an Appeals Resolution Officer, we will not delay the appeal.
- If we haven't assigned the hearing yet, we may pause the appeal process for up to 30 calendar days from the date you notify us you want to participate. In this case, you must provide your written submission within those 30 calendar days.

ORAL HEARING

- If we haven't set a date, we may delay the scheduling of the oral hearing for up to 30 calendar days. You must be available to attend the oral hearing within 90 calendar days after this delay.
- If we have already scheduled an oral hearing, you will be allowed to participate. In this case we will not change the oral hearing date and you won't have a chance to add any issues to the agenda.

Types of hearings

We have two different ways of making appeal decisions: a hearing in writing or an oral hearing, which may be in person, or via teleconference or videoconference. This section tells you about how we choose the type of hearing used to resolve your appeal.

We choose the type of hearing that is best suited to the appeal on a case-by-case basis. We consider peoples' preferences and a set of guidelines and questions that help guide our decision.

Peoples' preferences:

When you complete the Appeal Readiness Form or Respondent Form, you explain in detail what the issues are, why you are appealing them, as well as what type of hearing you want.

We look at what type of hearing you and the other participant want before moving on to the next step.

Issue-based guidelines:

The Appeals Registrar will review a set of [guidelines](#) designed to help them choose the best type of hearing for each appeal.

Usually, we choose a hearing in writing when the appeal is mostly based on medical information, law or policy, and when the credibility of the people involved in the appeal is not an issue. Credibility is whether someone should be trusted or believed.

If the answer is “yes” to one or more of these questions, we will usually choose an oral hearing:

- Do we need the participants in the appeal or witnesses to make statements under oath? For example, we may need oral statements if we have conflicting information about an accident date, time, location or other important details.
- Is there a major conflict about important evidence? For example, a surveillance video is presented as evidence and people explain what is happening in the video differently.
- Does someone without a representative have a major barrier to writing a submission? For example, a participant or witness has a significant language barrier and needs a translator.
- Do we need more information about someone’s non-organic function, or is the information we have inconsistent? Examples of non-organic function are: activities of daily living, fears or issues related to their accident, ability to do common work tasks, and issues with interacting with other people.
- Are we unsure about the credibility of any of the participants or witnesses?
- Do we need to discuss important pieces of information that seem to contradict each other?
- Do we need to discuss inconsistent information from a witness in the case – either around their own statements or regarding other evidence found in the case?

Note: If some of these questions can be explained in a written submission, it may not be necessary to hold an oral hearing.

Frequently asked questions about types of hearings

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 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. In these cases, we assume it is your preference and that you have given us all of the information you think we need.

If we find significant new information in the Respondent Form or its attachments, we give you a chance to respond to the new information. If this happens, we send you a letter giving you 21 calendar days (plus five days for mailing) to reply to the new information.

Once we receive your response (or the 26 days have passed – whichever happens first), we will assign your appeal to an Appeals Resolution Officer.

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 didn't get one. What happens next?

You and the other person involved in your appeal 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 (plus five days for mailing) to provide us with any additional information.

I asked for an oral hearing but didn't get one. Will I get a chance to respond to any new information that the other person involved in my appeal provides?

If the other person involved in your appeal sends us significant new information, we will share it with you and give you a chance to respond. You will have 21 calendar days (plus five days for mailing) 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 you ask for a hearing in writing, we will usually agree, even if we would usually resolve your issue with an oral hearing. Occasionally, we may decide that we need an oral hearing, if there are other factors that would make it difficult to make a decision in writing. If this happens, we will explain our reasons in a letter.

What happens if the other person involved in my appeal and I don't 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 for requesting either a written or oral hearing, and make our decision based on what we think is the best way 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 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 we decide to use one.

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 us and ask us to reconsider. In your letter, you must tell us why you think we should change the type of hearing we have chosen.

Guidelines for choosing hearings in writing vs. oral hearings

Hearing in writing criteria

We typically use hearings in writing to decide on the following types of issues. (See “Types of hearings” on page 19 for more information.)

- A1. Initial entitlement – chance event where there is no factual dispute
- A2. Initial entitlement one party – only issue is delay in reporting to employer and/or in seeking medical attention and a statement from the person with the claim can explain delays
- A3. Initial entitlement – disablement where there is no factual dispute and there is sufficient information on file about the reported job duties of the person with the claim
- A4. Occupational disease – medical causation
- A5. Noise-induced hearing loss claims
- A6. Medical compatibility (i.e. is the claimed injury/illness or condition related to the accident?)
- A7. Earnings basis
- A8. Less than four weeks of loss-of-earnings benefits, where the dispute is about the level of impairment
- A9. Job suitability with or outside of injury employer – no factual dispute
- A10. Job suitability – information about the offered job(s) and injured person’s functional information is already on file but parties disagree about job suitability
- A11. Suitability of the suitable occupation
- A12. Recurrence – one year or less from the date of injury/illness or 12 weeks or less of loss of earnings
- A13. New organic condition where entitlement rests on medical compatibility
- A14. Secondary condition where entitlement rests on medical compatibility
- A15. Non-organic conditions – no factual dispute
- A16. Request for an independent medical examination
- A17. Medication
- A18. Co-operation in health-care measures
- A19. Health care benefits
- A20. Pension or non-economic loss award quantum or redetermination
- A21. Pension arrears
- A22. Pension or future economic loss commutations
- A23. Canada Pension Plan (CPP) offset
- A24. Benefit-related debt

- A25. Survivor benefits – general
- A26. Second Injury and Enhancement Fund
- A27. Loss of earnings lock-in – dispute over actual or deemed earnings to determine loss of earnings benefits
- A28. Loss of earnings lock-in where there is no factual dispute
- A29. Time limit to object – s. 120
- A30. Time limit to claim – s. 22
- A31. Any issue that is decided on a policy interpretation or a review and weighing of medical information
- A32. All employer account issues not outlined under the following oral hearing list

Oral hearings criteria

We typically use oral hearings to decide on the following types of issues.

- B1. Initial entitlement – disablement where there is evidence of factual dispute related to the injured person’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. Complex occupational disease
- B4. Complex non-organic conditions
- B5. Job suitability with or outside of injury employer where there is a factual dispute
- B6. Job suitability – information about the offered job(s) and injured person’s functional information is either not on file or is incomplete, and the parties disagree about job suitability
- B7. Co-operation in return to work
- B8. Co-operation in work transition (labour market re-entry)
- B9. Disagreement over work transition plans
- B10. Re-employment (where the threshold for re-employment has been met)
- B11. Complex loss of earnings lock-in where there is a factual dispute
- B12. Recurrence – one year or more from the date of injury/illness or 12 weeks or more of loss of earnings
- B13. Survivor benefits – complex determinations of who is a spouse/dependent
- B14. New organic condition where entitlement does not rest on medical compatibility
- B15. Secondary conditions where entitlement does not rest on medical compatibility
- B16. Transfer of cost issues between two or more employers
- B17. Independent operator and worker status

Special alternative dispute resolution (ADR) projects

In some cases that involve larger employers, we offer the opportunity to resolve disputes in a more efficient and collaborative way.

We work with employers and unions to develop these special projects to ensure they address the specific needs of the parties involved.

For larger employers and unions where an ADR project has been implemented, an Appeals Resolution Officer will typically provide a written “view” or opinion on the case to the employer and union representatives. If multiple cases are being considered, a meeting may be held to provide an opportunity to discuss the “view” and come to a resolution.

If the parties involved need more information to come to a resolution, the case may proceed to an oral hearing. This only happens in a small number of cases where there is a need for more information to reach a resolution.

Please speak to the Executive Director of the Appeals Services Division for more information about the opportunity to develop employer-specific ADR projects if required.

Oral hearings

Participants in the hearing

- The Appeals Resolution Officer
- The person who is objecting
- The other person involved in the appeal (respondent)
- Representatives (if any)
- Witnesses (if any)
- Interpreters (if any)

What to expect at an oral hearing

NOTE: the circumstances of each case will determine how closely these procedures will be followed.

Receiving evidence

See the section on [evidence and witnesses](#) for details on providing evidence at the time of the oral hearing.

The purpose of an oral hearing

The purpose of an oral hearing is to gather information in a thorough, fair and courteous manner. All participants in an oral hearing should make every effort to create and maintain a non-adversarial atmosphere.

Before entering the hearing room

Before entering the hearing room, the Appeals Resolution officer will:

- Confirm that all participants are present and identifies each of them, and their role.
- Explain that witnesses, other than the injured or ill person and the employer's designated resource person, will be excluded from the hearing room until it's time for them to give their testimony. An employer is allowed to have one designated resource person, who is allowed to stay in the hearing room for the duration of the hearing.
- Decide whether or not observers will be allowed in the hearing room. Oral hearings are generally not open to the public. However, we generally allow observers to attend hearings provided that all participants consent, and there are no compelling reasons for excluding observers (i.e., sensitive factual issues, matters of space, potential security problems). The Appeals Resolution Officer will instruct observers that they are not entitled to participate in the hearing or record the hearing.

In the hearing room

Once in the hearing room the Appeals Resolution Officer will:

- Start a recording, and let the participants know that the hearing will be recorded.
- Outline the purpose of the hearing and how it will proceed (i.e., the order of presentations).
- Discuss/confirm with the participants the issues to be dealt with, and let them know about any information or facts that are already established from the evidence, and of what information they need to deal with the issues under objection.
- Clarify with both the participants (or their representatives) which witnesses will be called and what they will be testifying about. The Appeals Resolution Officer should not hear from witnesses whose evidence is irrelevant to the issue under objection, or relates to non-contentious matters of fact they have already accepted.
- If multiple witnesses are being called to provide the same information, it may not be necessary for all of the witnesses to give the same detailed testimony. The Appeals Resolution Officer will seek agreement from the participants on the amount of detail required from each witness.
- Explain that the witnesses will give their information under oath, or affirmed, as the witnesses prefer.
- If an interpreter is present, explain that the interpreter is not an employee of the WSIB, and explain the role of the interpreter
- If both participants ask the Appeals Resolution Officer to engage in mediation (or agreement) discussions, the Appeals Resolution Officer must first advise that they will still make a decision if the participants don't reach an agreement.
- If there is a question about whether the case should be returned to the original decision maker, withdrawn, or postponed, the guidelines on [returns](#), [withdrawals](#) and postponements will apply.

Opening the hearing

To open the oral hearing, the Appeals Resolution Officer will:

- State for the record the date and location of the oral hearing, their name, the name of the injured or ill person, the claim or firm number, the date of decision being objected to and who is objecting.
- Identify for the record those in attendance at the hearing and their role.
- Confirm the issue(s) under objection.
- Determine if they will accept any additional written documents provided by the participants (see [Evidence and witnesses](#) for more information).
- Mark any documents accepted as exhibits and give them a number. In the case of a claims objection, the exhibit will also be marked with the injured or ill person's name, claim number, date received and the initials of the Appeals Resolution Officer. For employer account appeals, the exhibit will be marked with the employer's name, firm number, date received and the initials of the Appeals Resolution Officer. The Appeals Resolution Officer will have to determine 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. They 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.
- Ask the participants if they want to raise any preliminary issues, and 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. For example, the Appeals Resolution Officer may defer a request that a summons be issued until after all evidence has been heard, so they can decide whether the information to be summoned is necessary to make a decision. 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.

Presentations

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

- Each participant (or their representative) will be given an opportunity to make a brief opening statement, which will be a summary of their respective positions, with the person who is objecting first, followed by the respondent.
- The person who is objecting will be sworn in/affirmed and give evidence through questioning by the 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 that arise from the questions asked by the Appeals Resolution Officer, and the objecting person's representative will have an opportunity to ask questions arising from the questions of the Appeals Resolution Officer and the responding representative.

- If the person who is objecting is the injured or ill person, and their representative concludes that they not wish to call the injured or ill person as a witness, the injured or ill person will be required to answer any questions posed by the respondent and the Appeals Resolution Officer. If the injured or ill person refuses to testify, the Appeals Resolution Officer may take a negative inference from that refusal
- After the person who is objecting has testified, the other witnesses for the objecting person will be called, sworn in/affirmed and questioned in the same order as above
- The respondent will then be given an opportunity to present information through their witnesses. The respondent (or their representative) will ask questions first, followed by the objecting person (or their representative), followed by the Appeals Resolution Officer, with follow up questions after that. For an employer's appeals, the employer's representative will decide whether to call the resource person first. If the employer's resource person is not called first, and stays in the hearing room while the other witnesses testify, the Appeals Resolution Officer should let them know that their presence in the room will be considered when weighing their testimony.
- In the case of an injured or 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 or ill person testifies. If the employer representative submits that the injured or ill person should testify first, the employer resource/witness will be allowed to stay in the room while the injured or 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
- Each witness should be sworn in/affirmed when they enter the hearing room and before questions are asked
- The Appeals Resolution Officer must ensure that the questions asked of 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.
- In appropriate cases, to be determined by the nature of the issue and the relative abilities of the representatives, the Appeals Resolution Officer may suggest to the participants that, having reviewed the contents of the file, the Appeals Resolution Officer wants to clarify certain information to focus the enquiry. If everyone agrees to this approach, the Appeals Resolution Officer will question the injured or ill person and their witnesses first. The participants (or their representatives) will then follow with additional questions, as needed. If the participants (or their representatives) don't agree with this approach, the Appeals Resolution Officer will follow the normal oral hearing protocol set out above.
- Witnesses are dismissed from the hearing room (except the injured or ill person and employer) after giving testimony

- After all testimony has been received, the Appeals Resolution Officer will invite closing submissions from each participant (or their representative) with the person who is objecting first, followed by the respondent
- Each representative may want to respond to the other representative's closing submissions. This is allowed, as long as the representatives do not rehash old ground and limit themselves to responding to the specific areas covered by the other side that were not addressed in their own final submissions. The person who is objecting has the last opportunity to respond to the submission of the respondent.
- In circumstances of an unrepresented participant(s), opening statements and closing submissions will be invited and the Appeals Resolution Officer will likely be the only one asking questions.

Recesses - Going off the record

If an oral hearing continues for more than one to two hours, it will likely be necessary to 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 tell the witness not to discuss their testimony with anyone during the break.

If, for any reason during the hearing, it becomes 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 end the hearing as follows:

- Explain that they will consider all evidence presented at the hearing, as well as the information on file, in reaching a decision.
- Explain that they will send a written decision to all participants and representatives.
- Thank the participants for their attendance and tell them them "the hearing is closed."

Conducting oral hearings by video or teleconference

Sometimes an Appeals Resolution Officer will review a file before an oral hearing and decide that using an alternate method, such as teleconference or videoconference, is the best way to make their decision. In these cases, they will let all the people involved in the appeal know.

Before we hold a hearing by teleconference or videoconference, we will make sure that:

- everyone has access to the technology needed
- everyone has a copy of the updated file and all relevant information prior to the hearing
- no one involved in the appeal will face any significant prejudice, and
- any credibility issues that may be part of the appeal can be addressed

When we do use an alternate method to conduct an oral hearing, everyone involved in the appeal must still follow the same disclosure and scheduling requirements we use for an in-person oral hearing.

Appeal participants may also request a hearing by teleconference or videoconference on the Appeal Readiness Form or Respondent Form. Examples of when someone may request a teleconference or videoconference include the following:

- someone is physically unable, or prefers not to travel
- someone lives in an area where we don't usually hold oral hearings
- transportation is difficult for one or more of the people involved in the appeal, or
- we need to make a decision more quickly than usual (an example may be where a return-to-work plan is at risk)

There may be exceptional circumstances, such as natural disasters or pandemics, where in-person oral hearings would be impossible. In these situations, we will contact the people involved in any scheduled in-person oral hearings to make alternate arrangements.

We are working collaboratively with various stakeholders to formulate criteria and processes, and to test technologies for conducting oral hearings remotely via alternate methods (i.e., teleconference and videoconference). We will include more formalized practices and criteria related to alternate hearing methods in future versions of this document.

Travel and related expenses

We will pay travel, meal and accommodation expenses for people with claims and their witnesses, according to [WSIB Policy 17-01-09, Travel and Related Expenses](#). If you claim any expenses, we will ask you to sign an expense form that shows what you have claimed. Employers and their witnesses are not entitled to reimbursement for travel expenses related to an appeal.

If you can take public transportation to your hearing, we will pay the amount for public transit. If public transit is not an option, we will pay the approved mileage rate found in [WSIB Policy 18-01-05, Table of Rates](#). We will also pay for parking. If you don't have a parking receipt, we will pay up to \$15.00.

We will usually only pay for travel expenses within Ontario. If necessary, we will pay for the following:

- travel from as far as Winnipeg in the west, or Montreal in the east, to the location of the oral hearing
- if you need to travel from somewhere that is farther away than Winnipeg or Montreal, we will either cover your actual travel costs, or the cost of a return flight from either Winnipeg or Montreal (whichever is less)

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 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'm not available at the time that my oral hearing is scheduled?

If you're not available within the 90-calendar day timeframe, the Appeals 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 person who is objecting is not available within 120 calendar days, we will withdraw the appeal (please note the information about withdrawal waiting periods on page 40).

What happens if I'm 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 Appeals 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 determine 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'm 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.

What if someone becomes disruptive during an oral hearing?

If someone acts inappropriately during an oral hearing, the Appeals Resolution Officer will ask them to change their behaviour, or leave the oral hearing if their behaviour does not improve.

If a representative is being disruptive, the Appeals Resolution Officer may stop the oral hearing. They will either reschedule it for another date, or offer the people involved a chance to provide additional information in writing. This also gives the disruptive representative's client a chance to replace their representative if they choose.

Am I allowed to bring new information to the oral hearing?

If you bring new information to the oral hearing, the Appeals Resolution Officer will accept it if you can make a reasonable argument about why the information was not available when you submitted the Appeal Readiness Form or Respondent Form.

If the information was available when you submitted the Appeal Readiness Form or Respondent Form, the Appeals Resolution Officer will accept it if:

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

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 will probably arrange 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 suddenly can't 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 won't 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 an Appeals Coordinator.

Once you make the call, we will review the situation and decide whether to delay the oral hearing or reschedule it. The Appeals Resolution Officer will let the people who did arrive for the oral hearing know what is happening. If you have a representative, you may give them permission to complete the oral hearing without you.

If neither you nor your representative contact us up to 30 minutes after your hearing's scheduled start time, we will cancel the hearing and withdraw your appeal.

If you still want to continue with your appeal, you can write to the Appeals Coordinator and tell them why you did not attend and why you didn't contact us up to 30 minutes after the scheduled start time. If you have any of the following reasons, they may reactivate the appeal and reschedule the hearing within 90 calendar days:

- your sudden illness
- sudden illness of your representative, if no replacement is reasonably available
- death of a member of your immediate family
- death of your representative or a member of his/her immediate family, if no replacement is reasonably available and/or
- severe weather on the day of the hearing, or an accident while coming to 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 aren't 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 reopened 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.

Can I use a friend or family member as an interpreter?

We do not allow friends or relatives of people involved in an appeal to interpret evidence at an oral hearing, except in very unusual circumstances.

What happens if I didn't ask for an interpreter because I didn't understand that I could ask for one?

If you don't 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 is the interpreter's role during an oral hearing?

Interpreters provide word-for-word interpretation of testimony unless they are directed to do otherwise by the Appeals Resolution Officer. The Appeals Resolution Officer would only give different direction if everyone involved in the appeal agrees that the person providing testimony only needs occasional help 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, they must inform everyone at the oral hearing. The Appeals Resolution Officer will give instructions about how to continue with the oral hearing after a discussion with the people involved.

What if the interpreter doesn't 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 transcript or copy of the recording?

We can provide you with a CD copy of the oral hearing if you would like one. Please call 416-344-3533 to make the request.

Evidence and witnesses

Everyone involved in an appeal, including the Appeals Resolution Officer, needs to have the same information. This is so they can understand what is included in the appeal, identify any additional information that may be needed, and prepare for an oral hearing, if we choose one.

Providing evidence

Documents

You must provide all of the information you want included in your appeal, including medical reports or records, when you submit your Appeal Readiness Form.

HEARINGS IN WRITING

When everyone requests a hearing in writing, we use the information in the Appeal Readiness Form and Respondent Form to make our decision.

The respondent's submission may contain new evidence or an argument so significant that we feel you should be given a chance to review and respond to it. If this happens, we will share it with you, and give you 21 calendar days (plus five days for mailing) to respond if you want to. This is called a rebuttal.

If anyone involved in the appeal has requested an oral hearing, but we decide the appeal should be decided by a hearing in writing, we will give you and the other person involved in your appeal 30 calendar days (plus five days for mailing) to send us additional written submissions (arguments) regarding the appeal. The written submissions are optional.

ORAL HEARINGS

If we decide an oral hearing is needed to decide on your appeal, you still must provide any documents you want us to consider in your Appeal Readiness Form or Respondent Form.

Surveillance Videos

We may accept video evidence from people involved in an appeal or from the WSIB Regulatory Services Division. That 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.

If you have video evidence, you need to submit it 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 them. If you need more information about video formats, please contact the Appeals Coordinator.

We may allow the respondent to provide new video evidence at least 30 calendar days before a scheduled oral hearing date; it must be given to the other person at the same time it is given to the Appeals Services Division.

Video evidence must be authenticated. This means the person that made the video must sign a statement confirming:

- the date, time and location of the video,
- that it has not been changed in any way, and
- that the video truly and completely shows what is happening

We return any video evidence that does not have this signed statement attached. If you still want us to use it as evidence, you must have it authenticated and send it back to us.

HEALTH CARE REPORTS/RECORDS

You must attach all health care reports or records you want us to consider to your Appeal Readiness Form or Respondent Form. If you personally asked for a doctor's opinion, you must also attach the letter or memo you sent that asked for that opinion.

PUBLIC INFORMATION

You can present public reference material at the oral hearing as long as you provide a copy for the Appeals Resolution Officer and everyone else participating in the oral hearing.

Some examples are:

- WSIB policies
- Workplace Safety and Insurance Appeals Tribunal decisions or medical discussion papers
- published decisions of other Appeals Resolution Officers

Witnesses

You must list any witnesses you would like to use on your Appeal Readiness Form or Respondent Form. We do not consider the person with the workplace injury or illness a witness.

You should include a “will say” document for each witness. A “will say” document is a brief summary of the evidence that each witness will provide at the hearing. We use this document to decide if that witness is needed.

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

We usually only allow one witness for each piece of evidence. If you believe that you need more than one witness for the same evidence, you must tell us why the other witness(es) can't just provide a written statement. We try to balance the number of witnesses for everyone involved in the appeal.

Once we decide whether or not to allow your witnesses, we will not allow any other witnesses except in exceptional circumstances, such as late participation, late representation, or a late change in representation.

Once an appeal is at the oral hearing stage, the people involved in the appeal are responsible for making sure all approved witnesses are available at the hearing. They must also deal with any process issues that may happen before the hearing. An example of a process issue is a late request to provide additional information prior to an oral hearing. You can call an Appeals Registrar if you have any questions about process issues before an oral hearing.

If you want to remove a witness from the approved list, you must let everyone involved in the appeal know at least seven days before the oral hearing date.

Non-professional witness fees

If someone with a claim, or any of their witnesses lose 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 \$55.48 for a half-day or \$110.96 for a full day. We will not pay a witness fee if:

- you are receiving full WSIB benefits for that day,
- your employer is paying you for the lost time, or
- you will not lose any wages by attending the oral hearing

Professional witness fees

We will pay professional witnesses, such as doctors, psychologists or physiotherapists, for their time to participate in an appeal hearing. This needs to be pre-approved.

Usually, these professionals can provide written medical reports and only need to go to an oral hearing if they can only effectively give their evidence in person. We will pay for medical reports using the approved WSIB fee schedule found in [WSIB Policy 17-02-03, Payment of Clinical Assessments/Reports Requested for Adjudication](#), if the Appeals Resolution Officer considers the report to be significant in their decision-making process.

On the rare occasion that a medical professional has to attend an oral hearing, we will pay up to \$600 for a full day or \$300 for a half day.

Summonses and production of documents

A summons tells someone that they need to appear at an oral hearing to give testimony or provide a document that is important to the appeal.

Anyone involved in an appeal can request a summons for a witness on their Appeal Readiness Form or Respondent Form. If you want to request a summons, you should provide the following information:

- name of the witness,
- the reason a summons is needed, and
- an address where the witness(es) can be served

If your summons request is for a document, you must identify the document(s) and tell us:

- who has the document(s), and
- why it's important

THE SUMMONS PROCESS

When deciding whether or not to use a summons to get information for an appeal, we consider the following:

- Is the evidence relevant to the issue(s) included in the appeal?
- Is the evidence likely to be significant in resolving the appeal?
- Is the request to summon a witness really needed, or is it likely to be used to harass or inconvenience the witness?
- Is there another, more reasonable, way to get the evidence? For example, in situations involving doctors or work transition service providers, could we get the information or clarification we need in writing?
- Is the summons request being used for the purpose of “fishing” in the hopes of getting relevant information?
- Is the person receiving the summons able to provide the information or documents, relevant to the case? The summons should be issued to the person who has the documents we need.
- Is the witness obligated to participate in the proceedings? (WSIB policy states that WSIB employees are not obligated to be witnesses and other laws limit the obligations of certain witnesses to participate in hearings).

If we decide we don't need the document or the proposed witness, we send you a letter to tell you.

If we decide we need the document or proposed witness, we arrange for the summons to be served.

Frequently asked questions about evidence and witnesses

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:

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

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 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:

- they think the witness' testimony is relevant,
- everyone involved in the appeal agrees, and
- 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 us for outstanding information when we are scheduling an oral hearing?

If this happens, the following rules apply:

- If the objecting person makes this request, we withdraw the appeal. We do this because the person 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 can't tell who is in the video?

If an Appeals Resolution Officer thinks the evidence is crucial to their decision and people involved in the appeal do not agree about who is in the video, the Appeals Resolution Officer may ask the WSIB's Regulatory Services Division 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. Often, everyone will agree that they don't need to watch the video in the oral hearing, because they have seen it before 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, we may see that there is significant new evidence or arguments provided by the respondent. In these cases, we will share this new information with the person who is objecting. They will be given 21 calendar days (plus five days for mailing) to respond to it.

Who decides whether or not a summons is needed?

An Appeals 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 don't 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 doesn't come to the oral hearing, or the Appeals Resolution Officer doesn't get the summoned documents?

The Appeals Resolution Officer may:

- decide that they don't need the summoned evidence and carry on with the oral hearing;
- tell you at the start of the hearing that they will make a decision about the need for the summoned evidence or witness at the end of the hearing. They will then complete the oral hearing. If they decide at the end of the hearing that the summoned evidence is needed, they will arrange to get the information in another way, so that they have it before they make their decision on the issues under appeal;
- decide to re-convene the hearing and make sure appropriate summonses are issued; or
- postpone the oral hearing until they can get the summoned evidence. This will only happen when the summoned evidence is so critical that they can't reasonably continue the oral hearing without it

If the summoned witness does not attend, and the Appeals Resolution Officer decides the witness' evidence is essential, they may decide to re-issue the summons. They will ask the Process Server Provider to tell the witness that they need to attend a future hearing, or the Appeals Resolution Officer may recommend that the WSIB proceed with contempt proceedings against the witness.

Returns and withdrawals

Returning an appeal to the original decision maker

If you raise new issues or provide significant new information with your Appeal Readiness Form, the original decision maker will look at the new information before your appeal goes to the Appeals Services Division.

Once we register your appeal in the Appeals Services Division, we only return your claim to the original decision maker in exceptional situations. Sometimes there is activity in your claim file that takes place when your appeal is with us waiting to be assigned or for an oral hearing to take place. This activity might make it impossible for an Appeals Resolution Officer to make a decision about the issue(s) you appealed.

This could be because:

- we are missing a very important piece of information that we can't reasonably get through testimony, or
- the original decision maker now needs to make a decision on another issue that might affect the issue you appealed

We will not return a claim to the original decision maker without first discussing it with everyone involved in the appeal.

We will still look for opportunities to proceed on any issues that aren't related to the reason for returning the appeal to the original decision maker. For example, if you have objected to three separate issues, and we can still proceed with making a decision on one or two of them, we will do so.

The return process

When we return a claim to the original decision maker, we send a memo outlining the reasons for the return and any activities that are needed to help us resolve the appeal. We send a copy of this memo to everyone involved in the appeal.

The original decision maker will complete the required activity. If you still object to the decision after this, you must complete and return a new Appeal Readiness Form.

We need a new Appeal Readiness Form because the appeal issues may have changed. We also start the appeal again to ensure everyone gets updated claim file information.

Withdrawing your appeal

You can withdraw your appeal at any time. If you withdraw your appeal and decide later that you want to reopen it, there is a waiting period.

For your first withdrawal, the waiting period is 30 days. For your second withdrawal, the waiting period is 90 days. For any subsequent withdrawals, you must write to the Manager of the Appeals Services Division and ask for the appeal to be reopened.

Once the waiting period is complete, you need to send us a new Appeal Readiness Form. When withdrawn appeals come back to us, we will not give them priority status.

Since you can take as much time as you need to gather the information you need before submitting an Appeal Readiness Form, withdrawals should be rare. If you decide that you are not ready to move forward with your appeal after you have already submitted your Appeal Readiness Form, please let us know as soon as possible.

We will still look for opportunities to proceed on any issues that aren't related to your reason for withdrawing the appeal. For example, if you have objected to three separate issues, and we can still proceed with making a decision on one of them, we will do so with the objecting person's approval, provided the issue is a separate and distinct one (not intertwined with or possibly prejudicing the other two)

We will not withdraw an appeal right away if there are exceptional situations. For example, if someone involved in the appeal is temporarily not available for reasons beyond their control, involving a sudden and serious emergency, we will put the appeal on hold for up to 30 calendar

days, or until the situation has resolved, whichever happens first. If the person is unavailable for more than 30 days, we will decide whether to withdraw the case or continue the appeal. If someone has a pattern of withdrawing appeals because they send in the Appeal Readiness Form too early, we will write to them, reminding them to make sure they have gathered all the information they need before submitting an Appeal Readiness Form.

Downside Risk

Sometimes when an Appeals Resolution Officer reviews a claim file, they find a significant error in a decision about a related issue. For instance, someone may start an appeal for a higher non-economic loss benefit, and the Appeals Resolution Officer sees that they should get a lower benefit than they currently receive, or no benefit at all. We call this a “downside risk”.

Another example is an employer who starts an appeal to increase their level of Second Injury and Enhancement Fund relief and the Appeals Resolution Officer sees that they should get less relief than they currently receive, or none at all.

If the Appeals Resolution Officer sees an error like this, they must address it.

They tell the person who is objecting that they have found an error. The person who is objecting can choose to either withdraw the appeal or continue with it.

- If they choose to withdraw, the Appeals Resolution Officer does not add any detailed information about the downside risk to the claim file. They only report that they discussed the risk and the objecting person chose to withdraw.
- If they continue, they must accept the risk that the Appeals Resolution Officer may change a decision that has currently been made in their favour.

If the objecting person chooses to go ahead with the appeal, we tell everyone involved in the appeal about the downside risk. We give them 30 calendar days (plus five days for mailing) to give the Appeals Resolution Officer any information they would like to share about the downside risk issue.

Appeal decisions

The written decision

Once the Appeals Resolution Officer has made a decision on your appeal, they mail you a written decision.

If you had an oral hearing, the Appeals Resolution Officer mails a written decision to both people involved in the appeal within 30 calendar days of the hearing. If you had a hearing in writing, they mail the written decision within 30 calendar days of receiving your appeal. The other person involved in your claim receives a copy of the written decision, even if they did not participate in the appeal.

For more complex appeals, it may take longer than 30 days to issue a written decision. In the written decision, the Appeals Resolution Officer will use clear, plain language to explain the reasons for their decision. They focus on the information they found most relevant to the issue being appealed.

If the Appeals Resolution Officer made their decision based on credibility, they will explain why they accepted or rejected the credibility of someone's statement. If they based their decision on the weighing of medical evidence, they will explain why they gave one medical report more weight than another.

Your written decision will always include the following information:

- the issues objected to
- a brief description of why those issues were under objection
- the policy that applies to the decision
- the type of hearing used
- the evidence considered and how they weighed it
- the decision
- details about what benefits the person with the claim should receive, how much they should receive and how long they should receive them, and
- information about the Workplace Safety and Insurance Appeals Tribunal and the time limit to appeal the decision

Agreements

Occasionally, the people involved in an appeal will reach an agreement and the Appeals Resolution Officer will not have to make a formal written decision.

Once everyone has agreed on the outcome, the Appeals Resolution Officer writes an agreement document that covers the same information as the written decision (outlined above) showing how the agreement meets WSIB legislation and policy. We consider this the final decision of the WSIB.

The Appeals Resolution Officer sends everyone involved in the appeal the agreement document with a cover letter that includes the time limit for appeals to the Workplace Safety and Insurance Appeals Tribunal.

Frequently asked questions about appeal decisions

What if I don't want the Appeals Resolution Officer to provide details about the benefits I should receive in their decision?

Sometimes, a person involved in an appeal asks the Appeals Resolution Officer not to address details about any benefits they will receive as a result of the appeal decision. When this happens, the Appeals Resolution Officer determines whether or not they agree with this request. If they agree, they will not provide the benefit details in their decision, but will explain why. The Appeals Resolution Officer does not need everyone to agree about this.

Clarifications and reconsiderations

An Appeals Resolution Officer's decision is the final decision of the WSIB. We work hard to make sure that our decision-making processes are fair and we give people the opportunity to provide any information they think we need.

According to [WSIB Policy 11-01-14, Reconsiderations of Decisions](#), an Appeals Resolution Officer or their manager may clarify, or reconsider any decision we make.

Clarifications

If an Appeals Resolution Officer's decision is unclear, incomplete, or has an obvious error (for example, a typographical error that does not impact the decision) you can send a letter asking them to clarify the decision.

If they agree, they will mail you a clarification in writing.

A clarification is different from a reconsideration. If you are asking for a clarification, you should not use the opportunity to ask the Appeals Resolution Officer to decide on an issue that was not part of your original appeal.

Reconsiderations

If you think an Appeals Resolution Officer should reconsider their decision, you must ask them in writing. Generally, this should be done as soon as possible once you receive the decision and within two years of the date of the decision.

In your letter, you must tell the Appeals Resolution Officer why you are asking them to reconsider, based on one or more of the reasons outlined below. If the Appeals Resolution Officer has left the Appeals Services Division, an Appeals Manager will address your request.

An Appeals Resolution Officer may reconsider a decision if:

- there was a significant flaw in their decision or the decision-making process that could affect the outcome
- they failed to apply the *Workplace Safety and Insurance Act* or WSIB policy correctly
- they made a typographical error that impacts the decision, or
- there is significant and relevant new evidence that did not exist at the time the Appeals Resolution Officer made the decision. If evidence was available at the time the Appeals Resolution Officer made their decision, but no one provided it to them, the reconsideration process will not apply

The reconsideration process

Once we receive your request for reconsideration, we follow two steps:

Step one: Threshold test

The Appeals Resolution Officer reviews your request and decides whether it meets one or more of the reasons for a reconsideration listed above. This is called the threshold test.

If your request doesn't pass the threshold test, the Appeals Resolution Officer will mail you a letter that explains why they won't continue with the reconsideration.

If your request passes the threshold test, they move to step two, which is called a substantive review.

Step two: Substantive review

If your request passes the threshold test, the Appeals Resolution Officer will review the issues that were involved in the appeal again. During this review, they consider whether their original decision should change. They will send you a letter to let you know whether or not they will reconsider their decision.

If they do move forward with a reconsideration, they will usually ask you and the other person involved in your appeal to send a written submission about the issues they are reconsidering. They use this information to help them decide whether or not to change their decision.

In most cases, you will have 30 calendar days (plus five days for mailing) to send in your written submission.

Once they have finished the reconsideration, they will send you a reconsidered decision.

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

Frequently asked questions about reconsiderations

Who can ask for a reconsideration of a decision?

Anyone who was involved in the original appeal can ask us to reconsider an appeal decision.

Someone from within the WSIB can also submit a request. If this happens, they must tell everyone involved in the appeal that they are requesting a reconsideration and why. These internal requests must be approved by an Operations Director and must be forwarded directly to the Executive Director of the Appeals Services Division.

How long do I have to ask for a reconsideration?

You have two years from the date of the original appeal decision to ask for a reconsideration. Reconsideration requests made after two years will be accepted only in exceptional circumstances.

Examples of exceptional circumstances include:

- you provide compelling reasons why you did not meet the two-year time limit, and/or
- in the opinion of the Executive Director of the Appeals Services Division:
 - there is significant new evidence,

- the original decision maker did not notice a piece of significant evidence, or
- we made a significant error that would likely have changed the outcome of the decision

The Appeals Resolution Officer reconsidered their decision and it did not change. Can I ask someone else to reconsider?

If the original Appeals Resolution Officer has reconsidered their decision, and you still believe they made significant errors, you can ask the Appeals Manager or Executive Director to reconsider.

If you want the Appeals Manager or Executive Director to reconsider a decision, you must write them a letter that clearly outlines the reasons for your request. They will follow the same process as the Appeals Resolution Officer for dealing with your further reconsideration request.

The Appeals Manager or Executive Director will only reconsider an appeal decision if you are able to show them there was a significant flaw or error in the Appeals Resolution Officer's reconsideration that could affect the outcome. Their reconsideration is not meant to be another level of appeal or to substitute their judgement for the judgement of the Appeals Resolution Officer.

The Appeals Resolution Officer, Appeals Manager and Executive Director will each only reconsider a decision *once*, unless there would be a serious procedural error, substantial unfairness, or there are exceptional circumstances.

Unless there are exceptional circumstances, a second reconsideration will not be considered.

What happens to my claim during a reconsideration?

During a reconsideration, the original appeal decision will:

- remain in force,
- remain on the claim file, and
- be carried out by the WSIB

If the appeal decision changes after the reconsideration, the WSIB will reverse anything we have already carried out.

Making a new appeal decision (de novo)

On a rare occasion, we see a significant error in our decision making that made the appeal process fundamentally unfair. In these cases, we will withdraw the original appeal decision, start the appeal process again, and assign the decision to a different Appeals Resolution Officer. We do this to make sure there is no possible personal bias around the decision. We call this a "de novo" decision.

This might happen, for example, if we leave a person who completed and returned a Participant Form out of the appeal process by mistake.

If we decide to go forward with a de novo decision, we will:

- temporarily remove the original appeal decision from the claim file
- conduct a new oral hearing or hearing in writing by a second Appeals Resolution Officer
- mail the new written decision made by that Appeals Resolution Officer, and
- return the original decision back in the claim file along with the new one

The timelines for a de novo appeal are the same as those for the regular appeal process.

While we are going through the new appeal process, the WSIB will usually continue to implement the original appeal decision until we know the outcome of the new appeal.

If you think that continuing to carry out the original appeal decision would cause you significant harm, write to us to tell us why we should not do so.

Your letter should tell us:

- How you would be harmed if the original appeal decision moves forward. For example:
 - you are scheduled to start a one- to two-year college program and we can't complete a new appeal before the program starts
 - you have urgent financial issues, such as mortgage foreclosure or eviction actions
 - you are scheduled for surgery in the near future and need loss-of-earnings benefits, but the original appeal decision denied entitlement for surgery
- When the significant harm will happen. If the harm is likely to happen after we have completed the new appeal process, we will probably still move forward with the original appeal decision.
- Whether you are ready to participate in a new appeal process.

Objecting to an employer account decision

When we make a decision about an employer account, we send a written decision letter. If you disagree with a decision about your account, you will have the opportunity to give us more information that might make us change our decision.

Time limits

The *Workplace Safety and Insurance Act* outlines the [time limit](#) you need to follow when you disagree with an employer account decision. It is six months from the date of the decision.

What to do if you disagree with a WSIB account decision

If you disagree with a decision we make about your account, here are the steps you should take:

Step 1: Contact the decision maker

The decision maker is the person who signed the decision letter you received. Contact the person who made the decision via email at employeraccounts@wsib.on.ca or phone at 1-800-387-0750 before the time limit given in the letter. Tell them why you object to the decision and let them know if you have any additional information that might change their decision.

The decision maker will listen to your concerns and review any new information that you provide.

Based on your discussions, if you still disagree, you will be asked to complete and submit an [Objection Form](#).

Once you receive the form, move on to Step 2.

Step 2: Complete and send in your Objection Form

When you complete the form, provide the following information:

- reasons why you think the decision is incorrect,
- any new information the decision maker has not yet considered, and
- what you would like the outcome to be regarding your employer account

If the decision maker receives your completed [Objection Form](#), and is still not able to change their decision, they refer your objection to the Appeals Services Division.

Step 3: Get access to your account file

Your account file mostly contains correspondence between you and the WSIB.

We do not automatically send you your account file. If you would like a copy, you or your representative must complete and send us a [Firm File/Account Access Consent Form](#).

Step 4: Await receipt of the Hearing Request Form

Once the Appeals Services Division receives your appeal, we will:

- register your appeal,
- review your Objection Form to ensure it includes all the information we need, and
- send out a Hearing Request Form

Step 5: Complete and send in 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, so we know what issue you are appealing, and what type of hearing you want and why.

We have two types of hearings:

- A hearing in writing involves a review of the information in your account file and the Objection Form. This is the type of hearing we usually use. The hearing in writing involves a review of the information in your account file and your Objection Form. 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.

- An oral hearing may be used. This involves meeting with you to discuss your appeal, either in person or by an alternate method, such as teleconference or video conference. At the oral hearing, you will be able to present information about your appeal. We may use oral hearings 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 of deciding on that type of hearing, and will write to you about the details of the oral hearing.

Once we receive the completed Hearing Request Form and/or 30 calendar days have passed (whichever happens first), an Appeals Resolution Officer will be assigned to your appeal.

There may be another person or company involved in your appeal. The Appeals Resolution Officer will review the issue in dispute to decide if another person or company should be invited to participate. If someone else needs to be involved, the Appeals Resolution Officer will send them a Hearing Request Form as well. They will have 30 calendar days to send in their completed form.

Step 6: Await notification on the type of hearing

The Appeals Resolution Officer reviews the Hearing Request Form to see what type of hearing you have asked for. If you have asked for a hearing in writing, the Appeals Resolution Officer will make the decision and send it to you in writing.

If you have 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 don't agree with the type of hearing they have chosen, 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 don't 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 (plus five days for mailing) to send in any additional information you want them to consider.

Step 7: Receive the Appeals Resolution Officer's decision

The Appeals Resolution Officer will make the decision and send it to you in writing.

If you had a hearing in writing, they will send you a written decision within 30 calendar days from the time the appeal is assigned to them.

If you had an oral hearing, either in person or by teleconference, they will send you a written decision within 30 calendar days of the hearing.

For more complex appeals, it may take longer than 30 days to issue a written decision.

Frequently asked questions about employer account appeals

What happens if I don't send in the Hearing Request Form within 30 calendar days?

If you do not send in 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 person that made the original decision you object to, and ask for a new Objection Form; you will have to wait at least 30 calendar days before you can start your appeal again.

Premium rate adjustments

Experience rating adjustments – exceptional circumstances (based on appealable decisions made before January 1, 2020)

According to WSIB policy, we can make a retroactive adjustment to an employer's experience rating outside of the experience rating window if the WSIB has made one of the following types of errors:

- clerical (typographical)
- data processing (computer-generated)
- omission (decision made but not put into action)

Sometimes an Appeals Resolution Officer grants cost relief under the Second Injury Enhancement Fund (SIEF) outside of your experience rating window. If they do, they need to take the following factors into account if you are asking for an adjustment to your experience rating.

It is important to separate out the above circumstances from delays that result from the appeal process.

The fact that an Appeals Resolution Officer grants SIEF cost relief outside of your experience rating window does not always mean a WSIB "error" has been made that would result in an experience rating adjustment being allowed.

The Appeals Resolution Officer uses the following guidelines to determine whether exceptional circumstances exist that might cause them to direct an adjustment of your experience rating:

- Did you request SIEF cost relief within a reasonable time after you knew or ought to have known your employee's recovery period was prolonged or enhanced by a pre-existing condition?

- Was there a delay in identifying a pre-existing condition?
- Did an undue delay in the WSIB decision to grant SIEF cost relief cause that relief to fall outside the experience rating window?
- How long was it between the closure of the experience rating window and the SIEF decision? If the time period is less than six months, we are more likely to reconsider the initial decision.

When an Appeals Resolution Officer is considering an adjustment to experience rating as part of an SIEF appeal, they must keep in mind the appeal time limit for the experience rating adjustment, if Operations has made a decision relating to that issue.

In cases where they apply these guidelines, the Appeals Resolution Officer will send their decision to the Manager of Experience Rating.

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 timelines outlined in the [Employer Premium Adjustments policy \(14-02-06\)](#). The policy applies to all adjustments with a notification date on or after January 1, 2020.

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, the limitations below apply:

- 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. 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. If the adjustment is first 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.