

Rules of Procedure for Hearings before the Workers' Compensation Appeal Tribunal

The Workers' Compensation Appeal Tribunal (WCAT) is the final level of appeal for workers and employers dissatisfied with decisions made by Yukon Workers' Compensation Health and Safety Board (board). The Tribunal is an administrative body independent of the board. WCAT is required by law to follow the provisions set out in the [Workers' Compensation Act](#) (*Act*) and policies of the Yukon Workers' Compensation Health and Safety Board.

These rules of procedure are made under section 63 of the *Workers' Compensation Act*, S.Y. 2008, c. 12, and are provided to assist interested parties to prepare for and to participate in the appeal process. Workers, employers and their representatives should review the rules of procedure as well as the *Act* and policies. If necessary, the tribunal may change any provision or timeframe fixed by these rules in the interest of fairness. Copies of the *Act* are available at the information desk located in the Yukon Government Administration building, 2071 Second Avenue, Whitehorse, or on the Internet at www.wcb.yk.ca.

Questions regarding the rules should be directed to the appeals officer at (867) 667-8731.

Jurisdiction

The authority for the appeal tribunal to hear appeals of decisions relating to compensation claims and related matters is found in section 65 of the *Act*.

The appeal tribunal hears appeals from decisions rendered:

- by the Yukon Workers' Compensation Health and Safety Board under section 14 (2);
- from decisions of hearing officers under section 53 (1); and,
- from decisions of the president under section 56 (4) of the *Act*.

The tribunal may at any time examine, inquire into, reopen and re-hear any matter that it has dealt with previously and may rescind or vary any decision or order previously made by it as provided by section 65 (6) of the *Act*.

Appeal Committees

Appeals are heard by an appeal committee who has the power to confirm, reverse or vary the decision under appeal.

Appeal committees are established by the Chair of the tribunal and must consist of the chair or alternate chair: who shall be the presiding officer, one member representative of employers and one member representative of workers.

NOTE: All forms are located on WCAT's website under the "Links" tab

Starting an Appeal

If you wish to appeal, you or your representative must complete a Notice of Appeal Form and deliver it to the appeals officer at 456 Range Road, Whitehorse, Yukon, Y1A 3A2, where appeal forms are available. The notice must include the following information:

- (1) your name, mailing address, telephone number, fax number, and e-mail address (if any), as your point of contact;
- (2) your WCB claim number and the name of your employer (or employee) at the time of injury;
- (3) the date of the decision that you are appealing;
- (4) the issue(s) for the appeal (e.g., termination of benefits);
- (5) the changes or remedies you want;
- (6) whether you wish to be heard in person or would prefer a documentary review;
- (7) whether additional information, submissions or evidence will be provided;
- (8) whether you or your representative will be calling witnesses. Names, addresses, telephone numbers and a summary of evidence each witness will give must be provided;
- (9) An authorization of representation form must be completed and forwarded to the appeals officer.

The appeal tribunal may refuse to schedule a hearing until you or your representative provide this required information. You may provide this information in writing or orally to the appeals officer. This must be signed by the appellant (person appealing the decision).

Representation

1. Appellants may appoint a representative by completing WCAT's Authorization for Representative form.
2. Representatives may be changed by submitting a new Authorization for Representative form.
3. If you wish to be represented by the workers' advocate, appellants must still sign an Authorization for Representative form. This form is available at the worker's advocate office.
4. Faxed or e-mailed copies of the form will be accepted.

Notification and Scheduling

1. Upon receipt of your notice of appeal, the appeals officer will confirm receipt with you or your representative and will schedule, in a timely manner, your hearing to occur on a date compatible with the availability of all interested parties.

2. The appeals officer will notify all parties to the appeal (worker, employer, and/or representative) of the hearing. The notice of hearing shall include the date, time and location of the hearing.
3. A request to the tribunal for rescheduling of the hearing must be provided in writing, stating reasons. The tribunal will give all parties an opportunity to agree or object to the request. The final decision to reschedule rests with the tribunal.

Reply to Notification

1. A party to the proceedings must reply within 10 days of being notified:
 - (a) if they intend to take part in the appeal, and, if so
 - (b) provide their name, address and telephone number .
2. If a party fails to reply within 10 days, the appeal tribunal may proceed in their absence.
3. If a party fails to comply with subsection 1(a) or having replied that they intend to participate and fails to appear, the appeal committee may proceed without further notice.

Rejection of Request for an Appeal

1. The appeals officer will review the notice of appeal to ensure that proper signatures, claim numbers and dates are correct. If the notice is incomplete, the appeals officer will notify the appellant or their representative of necessary steps to correct the form (e.g. notice of appeal form must be signed by appellant in order for the board to provide file disclosure to the tribunal).
2. An incomplete notice of appeal may be rejected.
3. If the notice of appeal is rejected, the tribunal will explain its reasons in writing.

Interpreters

Parties requiring interpreters must notify the appeals officer no later than 20 days before the hearing.

Disclosure

Section 64(4) of the *Workers' Compensation Act* provides the tribunal with access to the entire claim file or record from the board.

1. Section 56 (5) of the *Act* governs issues of access to a worker's file.
2. Appellants or their representatives are responsible for obtaining copies of their file from the board.
3. Employers who are a party to the appeal may ask the board to examine and copy information from a worker's file which is relevant to the appeal.
 - (a) When making such a request, the board must notify the worker and allow him or her to submit written objections.

- (b) Any information objected to by the worker shall be forwarded to the president of the board for a decision as to whether the information is relevant.
- 4. All evidence to be presented at the hearing must be provided to the appeal committee and other parties at least 21 days prior to the hearing.
- 5. As provided by section 55 of the *Act*, board submissions with respect to clarifying the record and jurisdiction only will be accepted by the tribunal.

Submissions

For the purpose of this Rule, the following definitions apply:

“Submissions” are written or oral arguments presented to the appeal tribunal in support of a party’s position on the issues in an appeal or regarding a procedural step.

“Evidence” is any evidence, including hearsay, and including any oral testimony, documents or demonstrative evidence which the appeal tribunal considers relevant to the appeal.

Appeal Hearings by Documentary Review

- 1. The appeal tribunal may proceed by written submission alone when it determines that the issue(s) under appeal can be resolved by receiving written evidence and submissions.
- 2. Evidence may include documents, medical reports and written statements, sworn or not, given by a party or witness together with the entire record of a worker’s claim in the possession of the Yukon Workers’ Compensation Health and Safety Board.
- 3. Submissions are written arguments in support of the party’s position.
- 4. The appeal tribunal will advise the parties in writing that an appeal will proceed by written submission alone and the date that the appeal tribunal will consider the appeal.
- 5. In that event, the parties to the appeal must file submissions and any evidence they choose to file 14 days before the appeal tribunal considers the appeal to the Appellant’s submissions. The appeals officer will deliver the submissions to the other parties. The parties will be provided an opportunity to respond to the other party’s submission within 14 days.
- 6. Submissions are considered complete when all submission deadlines are passed or when submissions have been received by all parties.
- 7. If no submissions are provided to the appeal tribunal, the appeal tribunal will consider the appeal on the basis of the Notice of Appeal and the Record.

Oral Appeals

1. At an oral hearing, the parties have the right to present evidence and call witnesses and question witnesses who give evidence at the hearing.
2. Parties are entitled to file written submissions prior to the commencement of the hearing but other parties to the appeal must be given a copy of the submissions at the same time.
3. Subject to an order by the appeal tribunal considering the appeal, any and all written submissions are to be filed with the appeals officer for the appeal tribunal 14 days prior to the hearing of the appeal.
4. The appeals officer will then deliver the submissions to the other parties.
5. Subject to an order made by the appeal tribunal considering the appeal, any reply to any written submissions is to be made at the hearing itself and not in the form of a further written response or supplementary submissions by a party.

Pre-hearing Conferences

The appeal committee may convene pre-hearing conferences for any reason they consider necessary.

Confidentiality

Section 117 (1) of the *Act* states:

No member of the board of directors, the appeal tribunal, the board, or any employee or agent of the board of directors, the appeal tribunal, or the board authorized to make an examination or inquiry under this Act, shall divulge or allow to be divulged, except in the performance of their duties or under authority of the board of directors or the board, any information obtained in the administration of the Act.

This means all information received by the appeal tribunal will only be disclosed as part of the appeal process. Relevant information may become part of the written decision and filed with the public registry at the board.

Witnesses

Section 65 (8) of the *Act* authorizes the appeal tribunal to:

- (a) order witnesses to attend the hearing;
- (b) examine witnesses under oath;
- (c) order the production and inspection of books, papers and objects relevant to the hearing;
- (d) cause depositions of witnesses to be taken before any person appointed by it in the same fashion as the Supreme Court of the Yukon Territory in civil actions.

Conduct of the Hearing

1. Hearings are conducted either by oral hearing or by documentary review.
2. Appeals will be conducted in an informal, non-adversarial manner.
3. Parties have the right to:
 - (a) present evidence;
 - (b) call witnesses; and,
 - (c) question witnesses who give evidence at the hearing.
4. Expert witnesses must satisfy the appeal committee they are qualified to give expert evidence. The appeal committee will establish a time prior to the hearing, by which a party must submit the qualifications as well as a summary of the evidence of any medical or technical witnesses.
5. The presiding officer may exclude witnesses from the hearing until they are called to give testimony.
6. All hearings will be recorded.
7. Witnesses will give their evidence under oath.

Parties to an appeal

Unless the appeal committee decides otherwise, the parties to an appeal are:

- a. the worker, if the worker is the appellant or otherwise has a direct interest in the appeal,
- b. an employer having a direct interest in the appeal, and
- c. any other person recognized by the appeal committee as a party to the appeal,
- d. the board, within the parameters set out in section 55 of the *Workers' Compensation Act, S.Y. 2008*.

Who May Attend the Oral Hearing

1. Oral hearings are not open to the public, as WCAT must maintain confidentiality [s. 117].
2. The appellant, the appellant's representative, the respondent, and the respondent's representative have a right to attend an oral hearing. Some appeals may involve more than one respondent.
3. Parties have the right to be present for the whole of the oral hearing even if they will be giving evidence. The committee will determine the extent to which interested participants will be permitted to participate in an oral hearing.
4. The appeal committee has the discretion to permit members of the public, including the media, to attend an oral hearing with the consent of all participating parties. WCAT requires observers to sign a Declaration of Confidentiality.

5. Committees will generally allow the following persons to observe oral hearings if all parties consent: family members, friends, trainee representatives, and WCAT or board staff wishing to observe for training purposes. Any observers must be identified at the outset of the hearing. A party may withdraw their consent at any time during the oral hearing.
6. Observers are not permitted to participate in the oral hearing. Observers or participants who disrupt the hearing may be expelled from the hearing.
7. When considering a request for an observer, the appeal committee will consider the submissions of the parties. The issues in a hearing may be sensitive due to intimate personal or financial information. Therefore, the committee exercises its discretion in reviewing requests to observe a WCAT hearing. The committee may refuse a request to observe a hearing.
8. When a party requests attendance at a WCAT hearing, they must do so in writing 21 days prior to the hearing to allow notification for all parties.

Recording of Hearings

WCAT electronically records all oral hearings. In the interest of consistency and accuracy, parties and other attendees at a hearing may not record the hearing.

Evidence

1. The appeal committee will consider the entire record of the claim as provided by the board.
2. The appeal committee may receive evidence by:
 - (a) pre-filed sworn written documentation;
 - (b) affidavits;
 - (c) oral testimony in person or by telephone;
 - (d) any other manner the appeal committee considers appropriate.
3. The appeal committee may question any evidence, including the record.
4. The appeal committee may reject evidence where there is no opportunity to cross-examine the person who produced it.
5. The appeal committee may question any witness at the hearing.
6. The appeal committee has exclusive jurisdiction, as provided by 65 (1) of the Act to examine, inquire into, hear, and determine all matters arising in respect of an appeal. The committee is not restricted to reviewing only those issues listed on the Notice of Appeal.

Therefore, appellants and their representatives are advised to consider any possible downside risk that may exist as a consequence of proceeding with an appeal.

Adjournments and Postponements

1. The appeal committee may adjourn or postpone a hearing for cause and will reschedule a new date.

2. Parties may request a postponement no later than seven days before the hearing, unless unable to do so because of extenuating circumstances (e.g., health, crisis or emergency).
3. In deciding whether or not to postpone, the appeal committee will consider if:
 - (a) the request is reasonable;
 - (b) granting the request would unreasonably delay the proceeding; and,
 - (c) other parties have consented to the request.

Decisions

1. Members of the appeal committee hearing the appeal shall make the decision.
2. A decision of the appeal committee must be made within 45 working days after the hearing unless the chair of the appeal committee extends the timeline. A request to extend must be completed in writing outlining the reasons. An extension may occur when a worker, the workers' representative or employer requests a delay or when the committee considers it is necessary.
3. The appeal committee shall provide the written decision to all parties to the appeal. The decision is sent to the board to be contained in the public registry and to the Law Library. All appeal tribunal decisions are contained on the tribunal's website at www.yukonwcat.ca.
4. A decision of the appeal committee requires two agreeing votes. The chair of the appeal committee is not entitled to a vote.
5. Where there is no agreement, the Chair of the Appeal Tribunal shall direct a new hearing before a new committee.
6. Where the board considers that the committee did not correctly apply policies or regulations it may, with reasons in writing, direct the committee to rehear the appeal.
7. The committee may rehear, examine, inquire into, or reopen any matter it has already dealt with and may withdraw or vary any decision previously made.
8. A decision of the committee is deemed to be a decision of the tribunal.
[Section 64 (6) of the *Workers' Compensation Act*]

MOTION: To amend the Rules of Procedure for Proceedings before the Workers' Compensation Appeal Tribunal.

MOVED BY: John Walsh

SECONDED BY: Maureen Stephens

All in agreement. Motion carried.

Approval Date: December 12, 2013

Effective Date: December 12, 2013