

Post-Hearing Procedure

1.0 This Practice Direction:

- Explains what a post-hearing request is at the Workplace Safety and Insurance Appeals Tribunal (“Tribunal”).
- Provides examples of common post-hearing requests.
- Explains how communications with a Vice-Chair or Panel are handled.
- Sets out the steps that must be completed in order to obtain medical information.
- Identifies what should happen when a party discovers new evidence.
- Describes what happens when more hearing dates are needed.
- Describes the usual method of obtaining written submissions.
- Explains what happens after a post-hearing request is completed.

1.1 The *Workplace Safety and Insurance Act, 1997* provides the Tribunal with certain investigative powers. Accordingly, Vice-Chairs or Panels may obtain additional information that was not before them at the hearing date if they feel it is necessary to properly adjudicate an appeal. These requests can be made before or after the hearing. When a request for information is made after the hearing, it is referred to as a post-hearing request.

1.2 The Tribunal’s investigative powers do not replace the parties’ obligations to prepare and present their case and the Tribunal will only utilize its investigative powers when determined to be necessary.

1.3 Tribunal staff, including Tribunal Counsel Office Lawyers, are responsible for carrying out the post-hearing requests for additional information made by Vice-Chairs and Panels. These post-hearing requests are made in the form of a memorandum or a formal interim decision. An interim decision is a decision of a Vice-Chair or Panel which does not finally dispose of all issues under appeal. Interim decisions often contain instructions to be carried out on a post-hearing basis.

1.4 A Vice-Chair or Panel can request any type of information, including testimony from additional witnesses, if they think it will help them make a fair decision. Some common types of information requested are:

- additional medical information such as clinical notes, medical records and reports
- disability claim applications for benefits such as CPP, EI and ODSP
- Medical assessor reports (additional medical information from independent health professionals)
- additional documents from the parties or the Workplace Safety and Insurance Board
- written post-hearing submissions from the parties and Tribunal Counsel.

1.5 The Vice-Chair or Panel decides an appeal, not Tribunal staff. The post-hearing role of Tribunal staff members is to assist the Vice-Chair or Panel to make a decision by carrying out the instructions of the Vice-Chair or Panel. Although Tribunal staff members can provide information to the parties on an appeal's progress and Tribunal practices, Tribunal staff are not the representative of any party. If parties require advice on how to argue their case, they should obtain professional representation. More information about the role of Tribunal Counsel in appeals and applications specifically can be found in the Tribunal **Practice Direction: The Role of Tribunal Counsel Office Lawyers in Appeals and Applications before the Tribunal.**

2.0 Communication

- 2.1** Parties cannot communicate directly with a Vice-Chair or Panel concerning an appeal. All communication is done by the assigned Tribunal staff member, who will then communicate with the Vice-Chair or Panel in writing.
- 2.2** All communications between a Vice-Chair or Panel and Tribunal staff are shared with the parties, including post-hearing instructions. If a party to an appeal wants to raise an issue with the Vice-Chair or Panel, the party is encouraged to put their concern in writing and forward this document to the appropriate Tribunal staff member.
- 2.3** The Tribunal will correspond directly with a party's authorized representative. Parties should copy their correspondence addressed to the Tribunal to all other parties to an appeal. If a party is represented, it is appropriate to copy the representative.
- 2.4** Tribunal staff will strive to keep parties informed of what is happening with an appeal and provide them with copies of any information obtained. Parties may

contact the Tribunal staff member assigned to their appeal if they have any questions or concerns.

- 2.5** At any time, Tribunal staff may also seek further instructions from the Vice-Chair or Panel hearing an appeal.

3.0 Additional Evidence and Unsolicited Information

- 3.1** As the Tribunal has investigative powers, Vice-Chairs and Panels may request that Tribunal staff locate additional relevant information they feel they need to make a fair decision. The cooperation of the parties is often necessary to obtain additional information. Prompt response to correspondence and phone calls will help avoid delay.

- 3.2** Once the hearing day(s) for an appeal are complete, new evidence submitted to the Tribunal by parties will not be accepted without the permission of the Vice-Chair or Panel.

Parties should make every effort to produce all evidence prior to the three-week deadline before the first hearing date. If, however, new documents or other information is discovered after the first hearing date, parties should submit it under a covering letter explaining why it could not have been obtained prior to the first hearing date.

- 3.3** Parties must provide copies of any new evidence to all other parties to an appeal.

The Tribunal may request submissions from all parties as to whether the new evidence should be accepted.

- 3.4** The Vice-Chair or Panel may decide if new evidence will be accepted before they direct the Tribunal staff to forward the new evidence to them. Vice-Chairs and Panels may decide not to accept additional evidence sent to the Tribunal after a hearing.

- 3.5** In some appeals, it is useful for a Vice-Chair or Panel to understand what is happening with a worker’s claim(s) or an employer’s assessments at the Board.

The Tribunal will include in the case materials any relevant updates it receives to a Board file. Updates to a Board file can be admitted at any time prior to the completion of post hearing activity.

For more information about submitting evidence, see the Tribunal **Practice Direction: Disclosure, Witnesses and the Three-Week Rule.**

4.0 Additional Medical Evidence

- 4.1 A Vice-Chair or Panel may request additional medical information. In order for the Tribunal to obtain medical information about a worker, the Tribunal asks that the worker complete a Consent to Disclose Personal Health Information form. This form must be signed, dated and witnessed by another person who sees the worker sign the form. The Tribunal requires the original signed copy.
- 4.2 The Tribunal's consent form also asks that the worker state whether they agree to release the medical information to the employer once it is received. If an employer is participating in an appeal, that employer has a right to see and make submissions on information that informs a Vice-Chair's or Panel's decision. A worker's refusal to release any new medical information to an employer may delay an appeal. If a worker feels very strongly about not releasing medical information to the employer, they can identify specific information that is not relevant and that they do not want released. The Vice-Chair or Panel will decide if that medical information will become part of the case materials.
- 4.3 The Tribunal will pay fees, according to the Tribunal's fee schedule, to doctors who provide additional medical information that was requested by the Vice-Chair or Panel hearing an appeal.
- 4.4 For more information about the Tribunal's processes for obtaining additional medical information see the Tribunal **Practice Direction: Medical Information Requested by the Tribunal**.

5.0 WSIAT-Initiated Assistance for Medical Issues

- 5.1 In certain cases, a Tribunal Vice-Chair or Panel may determine it necessary to seek Tribunal-initiated assistance in relation to one or more medical issues arising in an appeal.
- 5.2 For more information about the different types of Tribunal-initiated assistance that may be requested by a Tribunal Vice-Chair or Panel, please consult the **WSIAT Guide: WSIAT-Initiated Assistance for Medical Issues**. The Guide also describes the Medical Liaison Office and explains the roles of the Tribunal's Medical Counsellors and Medical Assessors.

6.0 Reconvened Hearing Days

- 6.1 Sometimes a Vice-Chair or Panel will decide that additional hearing days are needed to complete a hearing. These added hearing days are called a reconvened hearing. Tribunal staff will ask the Tribunal's Scheduling Department

to arrange for the further hearing day(s) on a date that all parties and the Vice-Chair or Panel hearing the appeal are available.

- 6.2** Before the hearing date, Tribunal staff will update the case materials by compiling any further correspondence into an addendum.

For more information about submitting new evidence in a reconvened hearing, see the Tribunal **Practice Direction: Disclosure, Witnesses and the Three-Week Rule**.

- 6.3** Parties should bring all case materials to the reconvened hearing.

- 6.4** A Vice-Chair or Panel usually stays seized with an appeal after there has been a hearing. If a Vice-Chair or Panel does not stay seized, a new Vice-Chair or Panel will be assigned for the reconvened hearing.

7.0 Post-Hearing Submissions

- 7.1** Parties will be given an opportunity to make submissions on all post-hearing evidence. According to the Vice-Chair's or Panel's instructions, these submissions may be made at a reconvened hearing, but usually written submissions are requested.

- 7.2** Unless otherwise specified by the Vice-Chair or Panel, all parties to an appeal will be asked to provide their initial submissions simultaneously and by a specific deadline date. All parties will then be given additional time to provide submissions in reply to those of the other party (or parties) if they so choose. Written submissions should be provided to Tribunal staff and also copied to all other parties to an appeal.

- 7.3** Parties should make every effort to ensure their submissions are received by the deadline date. A Vice-Chair or Panel may choose not to accept written submissions that are received after the deadline date. If an extension is required, the party should contact the Tribunal staff before the deadline date and explain why an extension is needed. In some cases, Tribunal staff may seek instructions regarding the extension request from the Vice-Chair or Panel hearing the appeal.

8.0 What Happens When a Post-Hearing Request is Complete?

- 8.1** Once all of a Vice-Chair or Panel's post-hearing instructions are complete, Tribunal staff will advise the Vice-Chair or Panel hearing the appeal that the post-hearing stage of an appeal is complete.

- 8.2** When the post-hearing stage of the appeal is complete, all of the case materials are with the Vice-Chair or Panel and there is no communication between the parties or the assigned Tribunal staff until a final decision is released. Tribunal staff do not help the Vice-Chair or Panel to write the decision. If a Vice-Chair or Panel decides that still more information is required, they may issue another post-hearing request in the form of a memorandum or an interim decision. Any new post-hearing request will be referred to Tribunal staff.
- 8.3** Decisions take time to complete. Once all the post-hearing information and submissions have been received, section 127 of the *Workplace Safety and Insurance Act* provides a guideline of 120 days for a decision to be released. Complex appeals may take additional time. Once the final hearing date or post-hearing instructions have been completed, a party who wants to inquire about the status of a decision may contact the Chair's Office.

Effective date: January 1, 2020
Workplace Safety and Insurance Appeals Tribunal