



## Practice Direction #25

### Post-Hearing Procedure

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#### 1.0 This Practice Direction

- explains what a post-hearing request is at the WSIAT
- provides examples of common post-hearing requests
- explains how communications with a Vice-Chair or Panel are handled
- lists the steps that must be completed to get medical information
- explains what should happen when a party discovers new evidence
- describes what happens when more hearing dates are needed
- describes the usual method of getting written submissions
- explains what happens after a post-hearing request is completed

1.1 The WSIAT has certain investigative powers. Vice-Chairs or Panels can get additional information that was not available for the hearing. They will do this if they feel it is necessary to 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 a post-hearing request.

1.2 The WSIAT's investigative powers do not replace the parties' obligations to prepare and present their case. The WSIAT will only use investigative powers when necessary.

1.3 WSIAT staff deal with post-hearing requests for additional information made by Vice-Chairs and Panels. These post-hearing requests could be in a memo or a interim decision. An "interim decision" is a decision of a Vice-Chair or Panel. It does not dispose of all issues under appeal. Interim decisions often have 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. They will request this if they think it will help them make a fair decision. Some common types of information requested are
- additional medical information like clinical notes, medical records and reports
  - disability claim applications for benefits like Canada Pension Plan (CPP), Employment Insurance (EI) and Ontario Disability Support Program (ODSP)
  - medical assessor reports (additional medical information from independent health professionals)
  - additional documents from the parties or the Workplace Safety and Insurance Board (WSIB)
  - written post-hearing submissions from the parties and Tribunal Counsel Office (TCO) Lawyers
- 1.5 The Vice-Chair or Panel decides an appeal, not WSIAT staff. The post-hearing role of staff is to carry out the instructions of the Vice-Chair or Panel. Staff members can provide information to the parties on an appeal's progress and WSIAT practices. But staff members are not a representative of any party. If parties need advice on how to present their case, they should get professional representation.

## **2.0 Communication**

- 2.1 Parties cannot communicate directly with a Vice-Chair or Panel about an appeal outside of the hearing. All communication is done by the assigned staff member. They communicate with the Vice-Chair or Panel in writing.
- 2.2 All communications between a Vice-Chair or Panel and staff are shared with the parties. This includes post-hearing instructions. If a party wants to raise an issue with the Vice-Chair or Panel, the party should
1. put their concern in writing
  2. forward this document to the appropriate staff member
- 2.3 WSIAT staff will correspond directly with a party's authorized representative. Parties should share their correspondence with the WSIAT and all other parties in the appeal. If a party is represented, copy the representative.

- 2.4 The WSIAT strives to keep parties informed of what is happening with an appeal. The WSIAT will provide them with copies of any information it gets. Parties can contact the staff member assigned to their appeal if they have any questions or concerns.
- 2.5 At any time, staff may also ask for further instructions from the Vice-Chair or Panel hearing an appeal.

### **3.0 Additional Evidence and Unsolicited Information**

- 3.1 Vice-Chairs and Panels may request that staff get more information if they need it to make a fair decision. Parties need to cooperate to get additional information. Parties should respond to correspondence and phone calls as soon as possible to help avoid delay.
- 3.2 New evidence submitted to the WSIAT by parties after the hearing will not be accepted without the permission of the Vice-Chair or Panel.
- 3.3 Parties need to make every effort to produce all evidence during the disclosure period. This is before the first hearing date. If new documents or information is discovered after the first hearing date, parties should submit it in writing. Include a cover letter explaining why you could not get it before the first hearing date.
- 3.4 Parties must provide copies of any new evidence to all other participating parties to an appeal. The WSIAT may request submissions from all parties asking if the new evidence should be accepted.
- 3.5 The Vice-Chair or Panel may decide that new evidence will be accepted before they ask staff to forward the new evidence to them. Vice-Chairs and Panels may decide not to accept additional evidence sent to staff after a hearing.
- 3.6 In some appeals, a Vice-Chair or Panel finds it useful to understand what is happening in a worker's claim(s). Or, it might be helpful to get an employer's assessments from the Workplace Safety and Insurance Board (WSIB). The WSIAT will include any updates it receives from the WSIB claim file. Updates to a WSIB claim file can be admitted at any time before post-hearing activity is completed.

## **4.0 Additional Medical Evidence**

- 4.1 A Vice-Chair or Panel can request more medical information. To get medical information about a worker, the WSIAT asks the worker to complete a Consent to Disclose Personal Health Information form.
- 4.2 This consent form asks if the worker or their estate trustee agree to release the medical information to the employer once it is received. If an employer is participating in an appeal, they have a right to review the information. They can make submissions on the information. This information informs a Vice-Chair's or Panel's decision. An appeal might be delayed if a worker or an estate trustee refuses to release any new medical information to an employer. If a worker or estate trustee does not want to release medical information to the employer, they can identify the information 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 WSIAT will pay fees to those that provide additional medical information that was requested by the Vice-Chair or Panel hearing an appeal. This includes
- doctors
  - clinics
  - hospitals

The WSIAT will do this according to its fee schedule.

## **5.0 WSIAT-Initiated Assistance for Medical Issues**

- 5.1 In some cases, a Vice-Chair or Panel might need assistance with medical issues arising in an appeal.
- 5.2 For more information about types of assistance requested by a Vice-Chair or Panel, review the WSIAT Guide to Medical Information and Medical Assessors. The Guide also describes the Medical Liaison Office. It explains the roles of the Medical Counsellors and Medical Assessors.

## **6.0 Reconvened Hearing Days**

- 6.1 Sometimes a Vice-Chair or Panel will need more oral hearing days to complete a hearing. This is called a reconvened hearing. Staff will ask the Scheduling Department to arrange for the additional hearing day(s). They will choose a date that all parties and the Vice-Chair or Panel are available.
- 6.2 WSIAT staff will update the case materials before the reconvened hearing. They will do this by compiling any further correspondence into an addendum.
- 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 can make submissions on all post-hearing evidence. Submissions can be made at a reconvened hearing. But usually written submissions are requested. This happens according to the Vice-Chair's or Panel's instructions.
- 7.2 All parties will be asked to provide their initial submissions at the same time and by a specific date. This is unless otherwise specified by the Vice-Chair or Panel. All parties will be given time to provide submissions in reply to the other party (or parties) if they so choose. Written submissions need to be sent to staff. They must also be copied to all other parties to an appeal.
- 7.3 Parties should make every effort to send their submissions by the deadline date. A Vice-Chair or Panel can choose not to accept written submissions that are late. If a party needs an extension, they should contact staff before the deadline date. They will need to explain why an extension is needed. In some cases, staff may ask the Vice-Chair or Panel for instructions about the extension.

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

- 8.1 WSIAT staff will advise a Vice-Chair or Panel when their post-hearing instructions are complete. This means that the post-hearing stage of the appeal appears to be complete.

- 8.2 At this point, the case materials are with the Vice-Chair or Panel. There is no communication between the parties or staff until the final decision is released. Staff members do not help the Vice-Chair or Panel write the decision. If a Vice-Chair or Panel decides that more information is required, they can issue another post-hearing request. This will be through a memo or an interim decision. Any new post-hearing request will be referred to staff.
- 8.3 Decisions take time to complete. There is a guideline of 120 days for a decision to be released. Complex appeals may take more time. Parties can contact the Chair's Office to ask about the status of a decision.

## **9.0 References and Resources**

### **9.1 Legislative Authority**

*Workplace Safety and Insurance Act, 1997* sections 127 (time limit for decisions to be released) 131 (the WSIAT can determine its own practice and procedure) 132 (the WSIAT's powers regarding proceedings) and 134 (assistance by health professionals to the WSIAT)

### **9.2 Related Practice Directions**

#8 – Disclosure

#13 – Medical Information Requested by the WSIAT

#19 – Hearing Assignments

#34 – Role of Tribunal Counsel Office at the WSIAT

#35 – Calculation of Time

#36 – Delivery and Filing Documents

### **9.3 Guides**

WSIAT Guide to Medical Information and Medical Assessors