



Practice Direction #27

Reconsiderations

1.0 This Practice Direction

- explains your options when trying to have a decision changed
- explains the reconsideration process
- explains who can request a reconsideration
- provides examples of information you should include in a reconsideration application
- outlines the threshold test that you must meet to have a decision reconsidered
- explains how reconsiderations of interim decisions or rulings are handled

2.0 Options When Trying to Have a Decision Changed

2.1 WSIAT decisions are final and cannot be appealed. The WSIAT can reconsider a decision if it decides to. The power to reconsider a decision is discretionary. It is important that decisions are final. Reconsiderations are considered to be exceptional.

2.2 You can request a clarification if a decision is

- unclear
- incomplete
- has an obvious error (for example, a typographical error that does not impact the decision)

A clarification is a type of reconsideration request. Review section 14 for more information.

2.3 There is only one other option for having a decision changed. This is to file an application for Judicial Review in the Superior Court of Justice – Divisional Court. Parties should also review section 16 below. It explains the role of the Office of the Ombudsman of Ontario.

3.0 The Reconsideration Process

3.1 A reconsideration is different from an appeal. You must provide a good reason for a decision to be reconsidered. Review section 4.4 for examples of good reasons. The WSIAT will not grant a reconsideration because you disagree with the decision and want to re-argue your case.

3.2 A reconsideration involves 2 steps

1. The WSIAT decides if it should reconsider the decision. This is called “the threshold test”.
2. If the threshold test is met, the WSIAT decides if the previous decision should be changed. If it should be changed, the WSIAT decides how it should be changed. This is called “the decision on the merits”.

4.0 The Threshold Test

4.1 Reconsiderations are discretionary. The WSIAT’s power to reconsider is only used in unusual circumstances. Reconsiderations are not meant to be used when you are unhappy with a decision.

4.2 The WSIAT has developed a specific threshold test in its decisions. To decide if a reconsideration should go forward, the WSIAT weighs the need for finality of its decisions against the circumstances for reconsideration.

4.3 To meet the threshold test, you must either

- show that there was a fundamental error of law that, if corrected, would likely produce a different result
- show that there was a fundamental error of process
- send the WSIAT substantial new evidence that was not available at the time of the original hearing and would likely have resulted in a different decision

4.4 Examples of when the WSIAT may decide that there is a good reason to reconsider a decision are when

- significant new evidence is discovered that was not available at the original hearing and would likely have changed the outcome
- the decision overlooks an important piece of evidence (instead of rejecting the evidence or distinguishing it)
- the decision contains a clear error of law (for example, the decision does not use the relevant sections of the *Workplace Safety and Insurance Act, 1997*)
- the decision is not internally coherent in its reasons and it is not justified, transparent and intelligible in light of the legal and factual constraints that bear on the decision
- the decision has a jurisdictional error (for example, the WSIAT decided an issue that it did not have the legal authority to decide)

5.0 The Reconsideration Request Process

5.1 Most reconsideration requests are decided by a hearing in writing. In certain circumstances, the WSIAT may need an oral hearing. The reconsideration request process is flexible. It can be changed to fit the needs of a particular case. The usual process is described in sections 6 and 7.

6.0 When to Request a Reconsideration

6.1 You should request a reconsideration within 6 months of the date of the decision. If you delay and request a reconsideration after 6 months it will be a factor that may be weighed in deciding whether the threshold test is met.

7.0 Who Can Request a Reconsideration?

7.1 A reconsideration can be requested by

- a party in a decision (note – if a party chose not to participate in the original hearing, it is unlikely that their reconsideration request will be granted)
- the Workplace Safety and Insurance Board (WSIB)
- the WSIAT

7.2 If the WSIAT starts a reconsideration process, the parties will have an opportunity to make submissions on the threshold test. This is unless the proposed change is only a clarification. Review section 14 about clarifications.

8.0 The Threshold Test Process

8.1 A reconsideration request must include

- the completed Request for Reconsideration / Clarification form
- a copy of any significant new evidence supporting your request (for example, an affidavit or signed witness statements or medical evidence)
- a letter explaining
 - why the reconsideration request should be granted
 - what evidence was overlooked and where that evidence can be located (include page numbers and if the evidence is found in the Case Record or an Addendum)
 - any jurisdictional error or error of law

8.2 Requests will not be processed until the WSIAT confirms that your reconsideration is complete. The WSIAT will close your file if it does not receive a complete reconsideration request within the set timeframe.

8.3 The Chair may assign the reconsideration request to the original Vice-Chair or Panel. Or, the Chair may assign it to a new Vice-Chair or Panel. In deciding the request, the Vice-Chair or Panel will consider

- the reconsideration request materials
- the original case materials
- any previous decisions

9.0 Process Where No Prospect of Success on Threshold Test

9.1 If the Vice-Chair or Panel decides that the reconsideration request does not have any prospect of success, the WSIAT will

- not seek submissions from other parties
- issue a decision explaining why the threshold test has not been met
- send the reconsideration decision to
 - the person requesting the reconsideration
 - any other party of record even if they did not participate
 - the Workplace Safety and Insurance Board (WSIB)

10.0 Process Where There Is an Arguable Case

10.1 The case will be referred for processing if the Vice-Chair or Panel decides that the reconsideration request makes an arguable case. The WSIAT will

- provide the reconsideration materials to all parties who participated at the original hearing (the “Respondent” to the reconsideration request)
- ask the Respondent to
 - complete a Reconsideration / Clarification Response form
 - make submissions on the threshold test

If a party did not participate in the original hearing, the WSIAT will not normally ask for submissions from that party.

10.2 The Respondent has 3 weeks to respond in writing to the reconsideration request. The Respondent must send their submissions and response form to the WSIAT and the party requesting the reconsideration (the “Applicant”).

10.3 The Applicant will have 2 weeks to make a written reply to the Respondent’s submissions. The Applicant’s reply must be sent to the WSIAT and the Respondent.

10.4 The Applicant’s reply is sent to the Respondent for information only. Submissions are complete at this point unless the WSIAT requests additional information.

11.0 Multiple Reconsideration Requests

- 11.1 A Vice-Chair or Panel will review a first reconsideration request. You should raise all possible arguments and issues. You should provide strong evidence when making your first reconsideration request.
- 11.2 A further reconsideration request (2nd or 3rd) may not be assigned for review. The Chair or their designate may decide that a further reconsideration request does not raise a new issue. Or they may decide that it does not provide new evidence that would need another review.

12.0 Decision on the Merits Process

- 12.1 If the threshold test is not met, the merits of the original decision will not be reviewed. If the threshold test is met, the case will be reconsidered. A new decision will be made on the merits. If the threshold test is met for only part of a decision, only that part of the decision will be reconsidered.
- 12.2 Only parties who participated in the original hearing will get a notice of hearing. This is unless the Vice-Chair or Panel directs that all parties get a notice of the hearing.
- 12.3 The WSIAT may give instructions about the procedure to be followed on the decision on the merits. For example, if credibility is not an issue, the WSIAT may not need to have an oral hearing on the merits. The Vice-Chair or Panel who decided the threshold question will make the decision on the merits unless they provide other directions.
- 12.4 In some cases, the hearings on the threshold and the merits will be combined.

13.0 Interim Decisions and Rulings

- 13.1 An “interim decision” or “ruling” is a declaration from a Vice-Chair or Panel. It might be a memo or a formal decision. The decision number for a formal interim decision will end in an “I”.

- 13.2 An interim decision or ruling does not fully decide an appeal. It is not the final decision. These types of rulings may be procedural or substantive. They are made before a final decision in an appeal is released. Most often, interim decisions will give directions on how to proceed with an appeal.
- 13.3 You should request a reconsideration for an interim decision as soon as possible as the appeal will continue to be heard. A decision will be deemed received by the parties 5 days after the date it was sent to the parties. This is unless there is evidence to the contrary.
- 13.4 Reconsideration requests of interim decisions will usually be decided by the Vice-Chair or Panel who is seized with the appeal. If the Vice-Chair or Panel is not seized, one will be assigned to review the reconsideration request.
- 13.5 Reconsideration requests of interim decisions must be handled quickly. This is because processing an appeal cannot continue until the reconsideration request is resolved. The Request for Reconsideration / Clarification form is not usually required. The Vice-Chair or Panel assigned will determine the specific procedure to be followed.

14.0 Clarifications – Technical Errors and Omissions

- 14.1 Some reconsideration requests do not question the result in a decision. They identify an omission, ambiguity or misstatement. The WSIAT may correct the omission, misstatement or ambiguity without asking for submissions. This happens when the problem identified in the Reconsideration / Clarification Request form does not affect the substance of the original decision. This is known as a “clarification”.
- 14.2 The Vice-Chair or Panel reviewing the request will decide if the request involves a clarification from an omission, misstatement or ambiguity. Or they will decide if a reconsideration is needed based on the threshold test process outlined in section 8.
- 14.3 The WSIAT may correct the omission, misstatement or ambiguity on its own without asking for submissions if the correction does not affect the substance of a decision.

15.0 Requests for Reconsideration from the Workplace Safety and Insurance Board (WSIB)

- 15.1 If the WSIB has difficulty implementing a decision, it may bring this to the WSIAT. The WSIAT will consider if there is ambiguity or a misstatement that can be clarified without asking for submissions from the parties.
- 15.2 The WSIAT will ask the parties for submissions on the threshold question. This happens if the WSIB raises an issue that may affect the substance of a decision.

16.0 Ontario Ombudsman

- 16.1 The Office of the Ombudsman of Ontario investigates complaints about provincial government organizations. The Ombudsman can help you resolve your problem. They can request changes to how provincial government agencies work. For more information, visit Ontario Ombudsman at www.ombudsman.on.ca.
- 16.2 An Ombudsman investigation might result in new evidence or submissions that are relevant to your reconsideration request. If you complain to the Ombudsman they may begin a formal investigation. In this case, the WSIAT will not process any reconsideration request until the Ombudsman's Office completes their investigation.
- 16.3 The WSIAT may begin a reconsideration process based on correspondence from the Ombudsman. Except for clarifications, the parties will be asked for submissions on the threshold test. This happens before the WSIAT decides to re-open a decision. In a case that involves the Ombudsman, the reconsideration process is flexible.

17.0 Reconsiderations of Section 31 Right to Sue Applications

- 17.1 Parties in right to sue applications have limited time to apply for reconsiderations. There is a different process (review Practice Direction #17 - Right to Sue Applications).

18.0 References and Resources

18.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 123(4) (WSIAT decisions are final), 129 (the WSIAT power to reconsider), and 131 (the WSIAT can determine its own practice and procedure)

18.2 Decisions

WSIAT Decision No. 871/02R2 (the reconsideration process and threshold test)

WSIAT Decision No. 585/98R (the WSIB's standing to request a reconsideration at the WSIAT)

Gowling v. Ontario Workplace Safety and Insurance Appeals Tribunal, [2004] O.J. No. 919 (Div.Ct) (upheld the WSIAT's high threshold test for reconsiderations)

Ratman v. Workplace Safety and Insurance Appeals Tribunal, 2022 ONSC 3923 (confirms delay in requesting a reconsideration can be a factor in deciding whether to reconsider a decision)

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 (discusses what is a reasonable decision that is justified, transparent and intelligible)

18.3 Related Practice Directions

#17 – Right to Sue Applications

#35 – Calculation of Time

#36 – Delivery and Filing Documents

#37 – WSIAT Hearing Recordings and Transcripts