



Practice Direction #9

Evidence

1.0 This Practice Direction

- defines evidence
- explains the different types of evidence that may support a case
- explains how the WSIAT determines if audio or visual recordings are admissible
- explains what weight is given to audio or visual recordings

2.0 Definition of Evidence

“Evidence” is information that proves or disproves a fact. Evidence can take many forms, including

- testimony
- affidavits
- written statements
- medical reports
- expert opinions
- surveillance evidence
- audio or visual recordings – this includes audiotapes, videos, film and photographs
- information gathered from the Internet
- physical objects

2.1 The WSIAT obtains a copy of all documents in the WSIB file and shares it with the parties. Parties to an appeal are expected to submit any other relevant evidence that is not contained in the WSIB file.

3.0 Admissibility of Evidence

- 3.1 The WSIAT has the authority to accept oral or written evidence as it deems appropriate. This evidence might or might not be admissible in a court.
- 3.2 The WSIAT takes a broad approach to matters of evidence. Parties are allowed to use evidence in WSIAT proceedings that is
- relevant
 - valuable to help a Vice-Chair or Panel
 - disclosed in the proper time frame
- 3.3 The WSIAT generally admits hearsay evidence. But the WSIAT may give it less weight depending on the circumstances (see section 4.0 on weighing evidence).
- 3.4 A Vice-Chair or Panel can decide to exclude evidence that would otherwise be admissible. This happens when the prejudicial effect of the evidence outweighs its probative value.
- Evidence is probative if it proves a fact in issue.
 - Evidence is prejudicial when there is danger that it will be misused and distort the hearing process.
 - Evidence is not prejudicial when it undermines a party's position on the merits.
 - Evidence also is not prejudicial when it is personal or private.
- 3.5 Opinion evidence is generally inadmissible. The exception is the admission of expert evidence (review Practice Direction #11 – Expert Evidence).
- 3.6 The Vice-Chair or Panel decides whether to admit audio or visual evidence. This includes surveillance evidence. The Vice-Chair or Panel may consider any relevant factors including the following criteria
- a. how relevant it is to the issue in dispute
 - b. if it should be excluded due to special circumstances (like flaws in the evidence or that it was obtained improperly)
 - c. if the evidence is shown to be authentic (review Practice Direction #10 – Surveillance Evidence).

3.7 If a party objects to evidence being admitted, they should raise this before their scheduled hearing date, if possible. The Vice-Chair or Panel will decide whether to admit the evidence or not. This will usually happen at the start of the hearing.

4.0 Weighing Evidence

4.1 The Vice-Chair or Panel will determine how much weight is given to evidence by considering factors such as the

- credibility of the witness presenting the evidence
- reliability of the evidence

4.2 Evidence from the internet is approached with caution. This is because of concerns about whether it is reliable. Internet evidence may be found to be unreliable when

- the author is unknown
- the author's expertise is unknown
- it cannot be authenticated

4.3 The Vice-Chair or Panel will determine how much weight to give to medical evidence by considering

- **Consistency** – Is the report internally consistent? Is it consistent with other evidence from the same practitioner? Are the medical opinions the same?
- **Credentials** – Does the practitioner have sufficient qualifications and expertise in the subject matter of the report?
- **Knowledge of the Facts** – Is the opinion based on incomplete, exaggerated or incorrect facts? When comparing opinions, are they based on the same understanding of the facts?
- **Neutrality** – What was the purpose of the report? Does the report advocate for the patient?
- **Objective Evidence** – Does the report include objective, clinical medical testing or observation, or only subjective reports from the patient?
- **Opportunity to Observe** – Has the practitioner conducted a direct examination of the worker? How long did they observe the worker?

- **Quality** – Is the report detailed and thorough? Are the findings and conclusions well-explained? Does it contain unsupported claims?
- **Responsiveness** – Has the practitioner answered the questions asked? Does the report address the issue at hand? Was there an updated opinion when presented with new facts?
- **Timing** – Was the report completed close to the events in question?

4.4 The Vice-Chair or Panel will determine how much weight to give to audio or visual recording or surveillance evidence by considering

- if it has been properly authenticated
- if it has been edited or is a selected snapshot and not a whole picture
- the quality and clarity of the recording
- the length of the recording
- any strengths and weaknesses in the recording procedures
- if the subject in the recording has had a chance to explain the activity in the evidence
- if the Investigator attended the hearing

5.0 References and Resources

5.1 Legislative Authority

Workplace Safety and Insurance Act, 1997, sections 131 (the WSIAT can determine its own practice and procedure) 132 (the WSIAT's powers regarding proceedings including the power to accept such oral or written evidence as the WSIAT considers proper, whether or not it would be admissible in a court) and 125(4) (the WSIB shall give the WSIAT a copy of its records relating to the appeal promptly upon being notified of the appeal)

5.2 Decisions

WSIAT Decision No. 1639/03 (evidence)

WSIAT Decision No. 307/90 (use of hearsay evidence by the WSIAT)

WSIAT Decision No. 688/87 (admissibility of audio or visual evidence)

WSIAT Decision No. 755/20 (credibility)

WSIAT Decision No. 588/10 (credibility and reliability)

WSIAT Decision No. 930/19R (credibility and weighing medical evidence)

5.3 Related Practice Directions

#4 – How to Prepare an Appeal at the WSIAT

#8 – Disclosure

#10 – Surveillance Evidence

#11 – Expert Evidence

#12 – Summonses and Production of Documents

#13 – Medical Information Requested by the WSIAT

#38 – Transcripts of Workplace Safety and Insurance Board (WSIB) Hearings