

Written Appeals

1.0 This Practice Direction:

- explains how the Tribunal decides which appeals can be decided as a written appeal
- identifies the types of appeals that the Tribunal decides as a written appeal
- explains how the Tribunal decides an appeal on the basis of written submissions (“written appeals”).

2.0 What is a Written Appeal?

2.1 To ensure that hearing time is used efficiently, the Tribunal has adopted various pre-hearing procedures, including deciding a small group of appeals as written appeals.

2.2 In a written appeal, a Tribunal Panel or Vice-Chair decides the appeal by reviewing the case materials including written submissions from the parties.

3.0 Selecting Appeals for Written Hearings

3.1 Tribunal staff identify appeals that are appropriately handled as written appeals as early as possible, usually after the Tribunal receives the Notice of Appeal form and a copy of the decision being appealed. This helps to avoid confusion about the steps that the worker or employer must complete to have their appeal decided.

3.2 Where pre-hearing staff identifies an appeal that can be handled as a written appeal, the Tribunal writes to the worker and employer (if they are both participating) to:

- advise that the appeal will proceed as a written appeal
- explain the steps for providing documents and obtaining written submissions from the parties, and
- provide a copy of the *Practice Direction: Written Appeals*.

3.3 An appeal may be selected to be decided as a written appeal when:

- there is a discrete issue under appeal
- the facts are generally not in dispute

- the medical evidence (if required) is complete and
- testimony would not add to the information already in the case materials.

Generally, the law, policy and medical issues in written appeals are not as complicated as those in appeals selected for an oral hearing.

3.4 Some issues that are often found to be suitable for a written hearing process include:

- employer requests for Second Injury and Enhancement Fund (SIEF) relief
- loss of earnings/temporary disability (for periods of time under 4 weeks)
- commutations
- applications for an increase in an award for permanent impairment (NEL, pension quantum increase or quantum reassessment (for pre-1990 accidents arrears dates) where no claim for loss of earnings benefits is involved
- hearing loss claims where the issue is the level of impairment
- entitlement to health care benefits
- ongoing entitlement to section 147(4) benefits.

4.0 First Phase of a Written Appeal

4.1 After determining that an appeal is suitable for the written process, the Tribunal orders the WSIB file.

4.2 The Tribunal then writes to the appellant to:

- advise that the appeal will proceed as a written appeal
- explain the steps for providing documents and written submissions and
- provide a copy of the written appeals procedures.

4.3 The Tribunal then contacts the respondent to:

- send a Response form, together with the Notice of Appeal and a copy of the decision being appealed, to the respondent

- ask the respondent to return the completed Response form within three weeks if s/he wants to participate in the appeal
- advise the respondent that the appeal will proceed as a written appeal
- explain the steps for providing documents and written submissions
- provide a copy of the written appeals procedures.

4.4 When the Tribunal receives the WSIB claim file, staff review the appeal information in more detail to confirm that the appeal continues to meet the criteria for a written appeal process. If the review indicates that an oral hearing is required, the Tribunal sends a letter to the participating parties explaining that the appeal must be prepared for an oral hearing.

5.0 Final Phase of a Written Appeal

5.1 Two-Party Appeals

Where both the appellant and the respondent are participating in the appeal, the following steps take place in the final phase of a written appeal:

- the Tribunal prepares the case materials for the appeal. The case materials for a written hearing are usually the Case Record, any addenda and a Casebook (if one has been created for the issue appealed)
- the Tribunal sends the case materials to the parties
- if either party is unrepresented, the Tribunal also sends information about organizations they can contact to obtain help with their written submissions
- the Tribunal asks the worker and employer to provide their written submissions within one month or to confirm that they will not be making submissions. If a party wants to reply to written submissions, they must do so within a further two weeks. If a party does not send any submissions within the one-month period, the Tribunal assumes that they have no submissions to make
- at the end of the six-week period, staff sends all of the case materials and any worker and employer's submissions to the Tribunal's scheduling staff so that they can assign the appeal to a Tribunal Vice-Chair

- the Tribunal Vice-Chair reviews all of the case materials and writes a decision
- the Tribunal sends a copy of the decision to the worker and the employer.

5.2 One-Party Appeals

Where only the appellant is participating in the appeal, the final phase of a one-party written appeal is the same as for a two party appeal as described above except:

- the Tribunal does not send any information to the other party except the final decision
- the Tribunal asks the appellant to provide their written submissions within one month or to confirm that s/he will not be making submissions. If a party does not send any submissions within the one-month period, the Tribunal assumes that s/he has no submissions to make.

5.3 If the worker or employer needs more than a month to prepare the written submissions, s/he may write to request additional time. Such requests should identify how much additional time is required and the reasons.

6.0 Objections to a Written Hearing

6.1 If parties disagree that the case meets the criteria for the written process (outlined in 3.3), they must write to explain the reasons they believe that an oral hearing is required for the appeal.

6.2 Tribunal staff will review the objection and if the reason(s) given confirms that the appeal does not meet the criteria for written hearing (for example, if the medical documents are in dispute), the Tribunal will process the appeal to be scheduled as an oral hearing.

6.3 In all other cases, the Tribunal continues to process the appeal as a written case, and requests that the party objecting provide written submissions in support of the appeal, as in the ordinary case. These submissions may include further submissions describing why the appeal should be determined by an oral hearing. When the appeal comes before the Vice-Chair to be considered, the Vice-Chair assigned to the appeal considers the request for an oral hearing before considering the merits of the appeal.

- 6.4** Where the Vice-Chair agrees that an oral hearing is required, the Vice-Chair directs Tribunal staff to prepare the appeal for an oral hearing.
- 6.5** Where the Vice-Chair does not agree an oral hearing is required, s/he decides the appeal based on the case materials. For this reason, the arguments submitted by a party should be complete.

7.0 Written Submissions

Written submissions should:

- be easy to read
- clearly identify the issue(s) in the case
- outline the relevant facts in the order they occurred
- explain how the evidence proves the facts are as they are, rather than as others say they are
- identify any relevant law and policy, and connect it to the facts in the case
- state what outcome or benefits are being requested
- clearly identify, describe and number the pages of any documents that are referred to in the submissions refer specifically to the medical reports if the issue is a medical one.

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 Workplace Safety and Insurance Appeals Tribunal