

# Workers' Compensation:

**Your right to appeal**



On January 1, 1998, workers' compensation law changed, including the official names of the Board and the Appeals Tribunal. The Workers' Compensation Board (WCB) is now the Workplace Safety and Insurance Board (WSIB). In this booklet we call it "the Board".

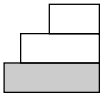
The Workers' Compensation Appeals Tribunal (WCAT) is now the Workplace Safety and Insurance Appeals Tribunal (WSIAT). In this booklet we call it "the Appeals Tribunal".

Also, "vocational rehabilitation plans" no longer exist. Now there are "labour market re-entry assessments and plans".

This booklet is about appealing Board decisions in your claim. It explains the types of decisions that can be appealed, the time limits to appeal old and new decisions, and general appeal procedures.

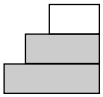
In the workers' compensation system there are 3 levels of decision-making. They are:

- first level (the Board's Adjudicator level),
- second level (the Board's Appeals Branch), and
- third level (the Appeals Tribunal).



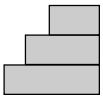
### **First level (the Board’s Adjudicator level)**

These are the initial Board decisions made in your claim. In the past, there were different types of adjudicators, but now all first-level decisions are made by Claims Adjudicators.



### **Second level (the Board’s Appeals Branch)**

If you appeal a first-level decision, the Board’s Appeals Branch decides your appeal. These second-level decisions are made by Appeals Resolution Officers. In the past, these decisions were made by Appeals Officers, Hearing Officers, Reinstatement Officers, Mediation Officers, or an Appeal Board.



### **Third level (the Appeals Tribunal)**

If you appeal a second-level Board decision, the Appeals Tribunal decides your appeal. This is the final level of appeal. Decision-makers at the Appeals Tribunal are not employees of the Board. But if there is a Board policy that applies to your appeal, the Appeals Tribunal must follow that policy.

At each of these 3 levels, the Board or the Appeals Tribunal may try to settle an appeal with “mediation”. A mediator tries to get everyone involved to agree to a settlement so that there will be no appeal hearing. You do not have to agree to mediation at all. If you try mediation, but you are not happy with the settlement being offered, you do not have to agree to it. Instead, you can have your right to workers’ compensation decided at an appeal hearing.



## What decisions can I appeal?

You can appeal most first-level decisions made by the Board. The Board calls these appeals “objections”. Objections are decided by the Board’s Appeals Branch.

You can appeal many decisions made by the Board’s Appeals Branch. These appeals are decided by the Appeals Tribunal. But, you cannot appeal some kinds of decisions to the Appeals Tribunal. There is no right to appeal decisions about:

- employer-requested health examinations,
- requests for payment of benefits in a lump sum (commutations) for injuries that occurred after January 1, 1990, or
- *some* overpayment issues (if you have an overpayment decision, get legal advice to find out whether you can appeal it).

The new law has changed appeal rights. To find out if **your** decision can or cannot be appealed, check with someone who knows workers’ compensation law. You may also want legal help to decide if it is a good idea to appeal the Board decision. In some appeals, there is a risk that you may lose benefits you already have been given by the Board. There is a list of places to go for legal help at the end of this booklet.



## Are there time limits to appeal?

Yes. The 1998 changes to workers' compensation law introduced time limits for appeals. All the Board decisions in your claim have either a **30-day** or **6-month** time limit. The time limit to appeal a decision depends on:

- when the written decision was made,
- what the decision is about, and
- who made the decision.

**Important:** If you have missed a time limit, file your appeal right away. Follow the instructions in this booklet or get legal help.

The time limit to appeal Board decisions made before January 1, 1998 was **July 1, 1998**. This is for **any** type of decision by a first-level or second-level decision-maker.

The time limit to appeal Board decisions made **on or after January 1, 1998** is:

**30 days** from the Board decision if

- the decision was made by a first-level decision-maker (Claims Adjudicator), **and**
- the decision is about your return to work or a labour market re-entry assessment or plan.

**6 months** from the Board decision if

- it is a decision by a first-level decision-maker, but it is **not** a decision about your return to work or a labour market re-entry assessment or plan, **or**
- it is **any** decision by a second-level decision-maker (Appeals Resolution Officer).

For decisions made on or after January 1, 1998, the Board's written decision should tell you the time limit you have to appeal that decision.



## **How do I file my appeal?**

To file an appeal you must write a letter saying you want to appeal the decision. If you have not received a decision letter, but you were told that your claim is denied or your benefits will stop, you must first get this decision in writing from the Board.

In your letter you should include:

- your name and address,
- your Board claim number or numbers,
- the date of the written Board decision that you are appealing,
- the title of the person who made the decision (for example, the Claims Adjudicator), and
- a statement that you are appealing the decision because it is wrong.

If you know the reasons why the Board’s decision is wrong, you can put these reasons in your letter. If you are not sure why the decision is wrong, you can write that you will explain your reasons later.

Keep a copy of the letter you send. Make a note of the date that you sent your letter to the Board or the Appeals Tribunal.



## Where do I send my letter?

Where you should send your appeal letter depends on who made the decision you want to appeal.

**To appeal a decision by a Claims Adjudicator**, you must send your letter to the Claims Adjudicator at the address shown on the decision letter.

**To appeal a decision by an Appeals Resolution Officer**, you must send your letter to the Appeals Tribunal to the following address:

Workplace Safety and Insurance Appeals Tribunal  
505 University Avenue, 7th Floor  
Toronto, Ontario M5G 1X4

Or you can fax your letter to the Appeals Tribunal. The fax number is **416-326-5164**. If you fax your letter, be sure to keep a copy of the confirmation report from the fax machine that shows it was sent and received.



## What happens after I file my appeal letter?

Sending your appeal letter means there may be a **hearing**. Before a hearing happens, you must file more papers about why you appealed and the evidence you have. This can be difficult. If you need legal help, start looking for it right away. There is a list of places to go for legal help at the end of this booklet.

### **If you have appealed to the Board:**

When the Board receives your appeal letter, they will send you a letter confirming this. If you have met the time limit to appeal, the letter from the Board will confirm this also. The Board will send your employer a copy of this letter.

You will be sent an Objection Form and a copy of your Board file. If you do not get a letter or an Objection Form within 4 to 6 weeks of sending in your appeal, call the Board.

You may need legal help to fill out the Objection Form. Mention everything that you want the Board to consider. Be sure to keep a copy of the completed form.

Send the completed Objection Form to the address shown on it at the bottom of the second page. There is no time limit to do this.

When the Board receives your Objection Form, the Claims Adjudicator will read it and consider your claim again. If they do not change their decision, the Board will tell you this by letter and will send your file to the Appeals Branch. The Board will also tell your employer you are appealing and will ask if your employer wants to take part in the appeal.

Once your file is at the Appeals Branch, the Board will send you a form called a “60-Day Decision Option”. If you choose this option, your appeal will be decided without an in-person hearing. This means your appeal will be decided based on the documents in your case instead of by hearing from you in person or any witnesses you may have. If you think you might want to choose this option, get legal help before you give up your right to an in-person hearing. If you do not want the 60-Day Decision Option, then **do not** send this form back to the Board.

Eventually, an Appeals Resolution Officer (ARO) will contact you to determine what the issues are in your appeal. The ARO will also ask whether or not you want an in-person hearing. Again, get legal advice before you give up your right to a hearing.

## **If you have appealed to the Appeals Tribunal:**

A new appeals process came into effect at the Appeals Tribunal on March 15, 2001. Now there is a 3-step appeal application, with 3 different forms. The first form is called the “Notice of Appeal”. The second is the “Readiness Form”. The third form is called the “Confirmation of Appeal”.

As soon as you receive a negative decision from an ARO, you should contact the Appeals Tribunal to request a Notice of Appeal form. Complete and send the Notice of Appeal form to the Tribunal **within the 6-month time limit**. You may need legal help to fill out this form.

After the Tribunal receives your Notice of Appeal, they will send you a blank Readiness Form. The Tribunal will not do anything more until you send in the completed Readiness Form telling them that you are ready to proceed.

Once you do that, the Tribunal will send you a Case Record (the part of your Board file related to the issues under appeal) and a blank Confirmation of Appeal form. The Tribunal will also send a copy of the Case Record to your employer.

The Confirmation of Appeal form requires more information from you to get the appeal ready for the hearing (for example, new medical evidence, and

witnesses and what they will say). The Tribunal will try to offer you a hearing within 4 months from the date you file the Confirmation of Appeal.

You must return the completed confirmation of Appeal Form **within 2 years** after you sent in your Notice of Appeal. If you do not, the Tribunal could dismiss your appeal.



## **What if I missed a time limit to appeal a decision?**

The Board and the Appeals Tribunal have the power to extend the time limits for appeals. Contact them or write a letter appealing the decision right away. Follow the same instructions earlier in this booklet on writing an appeal letter. Explain in your letter why the time limit was missed. Some reasons that the Board or Tribunal may consider are:

- serious health problems,
- length of the delay,
- whether you knew about and understood the time limit, and
- the importance of the issue.

You may want to get legal help, but notify the Board or Tribunal right away.

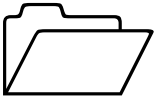
If you send in a late appeal, but the Board or Appeals Tribunal does not extend the time limit for you, get legal help. There may be other things that can be done to have your appeal considered.



**Can my employer appeal a decision that gives me benefits?**

Yes. Your employer can appeal decisions made by the Board about your benefits. Your employer has the same time limits as you to appeal Board decisions.

If your employer appeals a decision in your claim, you will get a form that asks if you want to participate in the appeal. You should send back a completed form if you want to be involved. When there is a hearing at the Board or the Appeals Tribunal, you have the right to participate in the hearing. You should bring a representative who knows about workers' compensation law.



## **Can my employer get a copy of my Board file?**

Your employer can get a copy of most of the information in your Board file if there is an appeal made in your claim. The Board will send your employer all non-medical information related to the appeal without asking you.

If your employer has asked for the medical information from your file, the Board will tell you about this in a written notice. You can try to stop your employer from seeing medical reports that are not relevant to the issues being appealed. If you want to do this, act quickly. Write to the Board and say you do not want your employer to see your medical information. For example, you may object to the release of some medical reports because they are personal and have nothing to do with your work injury. You must send your letter within the time set out in the notice the Board sends you.

If you do object to any medical reports going to your employer, you can get a hearing about this at the Appeals Tribunal. This might delay other appeals in your claim — either your employer's appeals or your appeals.

Any information your employer gets from your Board file must be kept confidential.



## Where can I get legal help?

- **Community legal clinic:** Clinic lawyers and community legal workers give free legal help to people with low incomes. Some clinics take workers' compensation cases. The community legal clinic nearest you is listed under "Legal Aid" in the white or yellow pages of your phone book. You can also visit Legal Aid Ontario's Web site at <[www.legalaid.on.ca](http://www.legalaid.on.ca)>.
- **Office of the Worker Adviser (OWA):** The OWA gives free legal help with workers' compensation cases to non-unionized workers. If there is an office in your area, it will be listed in the Government blue pages of your phone book under the Labour section. If there is no listing for your area, call toll-free **1-800-435-8980** or **416-325-8570** in Toronto, or visit their Web site at <[www.gov.on.ca/lab/owa](http://www.gov.on.ca/lab/owa)>.
- **Member of Provincial Parliament (MPP):** Staff at your MPP's office may be able to help you. To find out who your MPP is, call Elections Ontario toll-free at **1-888-668-8683**, or visit their Web site at <[www.electionsontario.on.ca](http://www.electionsontario.on.ca)>.
- **Union:** Call your staff representative. If he or she cannot help you, ask for the staff person who knows about workers' compensation law.

- **Injured workers' group:** Your local injured workers' group may be able to help you. To find out if there is a group near you, call the Ontario Network of Injured Workers' Groups (ONIWG) at **905-387-1894** or visit their Web site at  [<www.oniwg.on.ca>](http://www.oniwg.on.ca).
- **Legal Aid certificate:** This certificate pays all or part of your lawyer's fees. Contact your nearest legal aid office to learn whether you qualify. The phone number is listed under "Legal Aid" in the white or yellow pages of your phone book. You can also visit Legal Aid Ontario's Web site at  [<www.legalaid.on.ca>](http://www.legalaid.on.ca) or call toll-free **1-800-668-8258**.
- **Lawyer Referral Service:** If there is no community legal clinic near you and you want help finding a lawyer who practices workers' compensation law, you can call the Lawyer Referral Service at **1-900-565-4577**. The call costs \$6.00. They should give you the name of a lawyer who will talk with you for free for 30 minutes. For more information you can visit their Web site at  [<www.lsuc.on.ca>](http://www.lsuc.on.ca).

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It is not a substitute for getting legal advice  
for your particular situation.

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