WSIB Dispute Resolution and Appeals Process Value-For-Money Audit Consultation

Submissions of the Office of the Worker Adviser

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I. Introduction

This submission is the Office of the Worker Adviser's response to WSIB's invitation to answer questions regarding the implementation of recommendations made by KPMG in the recent value for money audit of the internal appeals system (VFMA report). We appreciate the invitation to provide feedback.

The Office of the Worker Adviser (OWA) is an operational service agency of the Ministry of Labour. The OWA's statutory mandate is to "educate, advise and represent workers who are not members of a trade union and their survivors."[1] Since its inception in 1985, the OWA has and continues to represent more injured workers and survivors in their WSIB claims than any other organization in the province.

We are concerned that the consultation document has invited comments on a narrow set of questions concerning how the KPMG-recommended changes will be implemented rather than on whether the changes are advisable at all. Our submission goes beyond the questions posed by the consultation document to address the proposed fundamental changes to the appeals system. We welcome further dialogue with the WSIB about these issues.

II. Overall Concerns about the VFMA Report and the WSIB's response

VFMAs vs. consultations

Over time, the results of value for money audits (VFMAs) have taken on a larger role in our workers' compensation system, supplanting the role of public consultations. In our view, this is wrong-headed and unfortunate.

VFMAs are neither public nor transparent. They are not conducted by experts, lack detail and rigour and lack legitimacy in the eyes of stakeholders. KPMG's report on the internal appeals system reveals a misunderstanding of basic concepts, including the duty of fairness required in administrative justice systems.

Public consultations formerly played a larger role in the WSIB's changes to policy and procedure. Consultations are an effective tool: they are public and transparent, involve knowledgeable participants, and offer concrete proposals. As a result, stakeholders have greater confidence and an increased sense of the legitimacy of the exercise. The consultation

[1] *Workplace Safety and Insurance Act, 1997,* SO 1997, c 16, Sch A, s 176(1) [WSIA].

process is a better process for our complex workers' compensation system as it affects peoples' rights and entitlements.

In contrast to the VFMA process, the last time that the WSIB undertook an overhaul of the internal appeals system was in 2012 with the Appeals Modernization public consultation. The consultation paper was available in June 2012 and submissions were due in October 2012, giving those who wished to make submissions about four months to consider and respond to the proposals. Submissions were invited on all aspects of the proposed changes. In contrast, this time, the consultation was announced in early June, giving those interested just over a month to respond and the invitation was limited to questions about implementation of changes.

KPMG is a consulting firm, not subject-matter experts. In our view, the WSIB should take a more critical view of their recommendations. While the *WSIA* requires the WSIB to conduct yearly value for money audits, there is no requirement that the WSIB implement the changes that are recommended by the auditors. We recommend that the WSIB reconsider implementing the report's proposed changes as they are not the solutions to the problems identified with appeals.

Issues and solutions identified by the VFMA report

The VFMA report says that the main problem with the internal appeals system is that it takes too long. It identifies fragmentation of appeals, lack of timelines for registering an appeal and the litigious nature of the appeals process as impeding the efficiency of the system.

Their most significant recommendation—that a one-year time limit be instituted for the ARF—would dramatically speed up the timeline for many appeals. Ultimately, this would make the appeals system less efficient. In most cases it would render the internal appeals system a useless step as parties would be forced to proceed even though they did not have time to adequately prepare. At worst, it will lead injured workers to abandon their appeals out of frustration at the unfairness and complexity of the process. In the long run, it will speed cases along to the Tribunal prematurely, where workers will face longer waits for hearings as the Tribunal's backlog of appeals dramatically increases.

Appeals often take a long time due to fragmentation. Appeals are fragmented because decision-making at the operating level is fragmented: different decision-makers issue separate decisions on multiple issues and at different times. Extensive delays in the medical system also hold up the obtaining of evidence necessary for full and fair adjudication of issues, such as accurate diagnoses or medical reports. A rigid approach to time limits and restriction of the AROs' jurisdiction means that cases cannot be decided holistically as issues are excluded.

Artificially accelerating appeals system timelines will exacerbate fragmentation in appeals by pushing individual issues before related issues are decided. The overall resolution of a case will still take substantial time as it will require more hearings, not fewer.

The WSIB's stated goals for internal appeals

The VFMA report includes the following comment from the WSIB about their goals for the internal appeals process:

> The WSIB is committed to continually streamlining ASD's processes and services to
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> a. improve and simplify overall accessibility, including access to justice;
> b. provide personalized service and an enhanced customer experience;
> c. provide quality services in an accessible, convenient and timely manner; and
> d. ensure decisions are fair, transparent, evidence-based and based on a holistic approach that promotes decision finality.[2]

We agree that these are desirable goals.

The WSIB proposes to adopt a number of the VFMA report's recommendations:

- Adding a mediation-arbitration process;
- Imposing a one-year time limit on the ARF;
- Creating criteria for in-person or online hearings;
- Expediting 30-day return to work decisions;
- Enforcing the 30-day decision implementation expectation; and
- Excluding certain types of decisions from the appeals process

None of these recommendations will meet the WSIB's goals of improving access to justice, quality of service and quality of decision-making. A mediation-arbitration-type process would only work in a small number of cases. The one-year time limit on the ARF will force parties to start the appeals process sooner, but it will result in poorer quality of decision-making at the ARO level as cases that are not ready for hearing will be forced ahead, leading to more appeals to the Tribunal. Expediting return to work decisions will continue fragmentation of decision-making. Enforcing the 30-day decision implementation guideline may improve one aspect of quality of service (speed) but will not ensure correct implementation. Excluding some decisions from the appeals process eliminates access to justice altogether.

[2] VFMA report, p. 30

III. Our recommendations for improvement to the system

The Board should use its investigative powers

In the past, the Board would exercise its investigative powers by interviewing witnesses and requesting additional medical information from healthcare providers. Over the past 15 years, the Board has, to a large extent, stopped investigating claims. The burden and cost of gathering evidence has been shifted onto workers.

If the Board returned to its role in gathering evidence, quality decision-making would occur earlier in the life of a claim. Often the relevant evidence is not obtained until a worker retains a representative and the representative identifies the additional information required.

Improve the quality of operating-level decision-making

The biggest driver of the number of appeals is the poor quality of decision-making at the operating level. In 2021, 35% of workers' appeals were allowed or allowed in part by the ASD and upwards of 70% of workers' appeals were allowed or allowed in part by the WSIAT.[3] Making correct decisions at the first instance will decrease the number of appeals.

Decision-making could be improved by ensuring more complete evidence is on file (as described in the point above). In addition, it is our experience that operating level decision-makers tend to ignore or reject the opinions of treating doctors over those of Board medical consultants. Training decision-makers to properly assess the opinions of treating doctors and do a more critical review of the medical consultant's opinion would also improve front-line decisions.

When a worker claims unemployability, we have come to expect that we will have to take the appeal to the Tribunal. Unemployability is close to impossible to win at the Board, even when clearly supported by medical opinion. As we understand it, operating level decision-makers face substantial disincentives to allowing full LOE benefits. Making decisions based on cost, rather than the evidence, leads to incorrect decisions. Decision-makers should be given the discretion to make the decisions the evidence supports.

Finally, if Board decision-makers followed the Tribunal's interpretation of the legislation and policy, there would also be fewer appeals. In our system, the Tribunal is the authority on the interpretation of the law and the Board ought to adopt the same interpretations. This would result in fewer appeals to the Tribunal and improve the overall efficiency of the system.

[3] These numbers are from "Decision Outcomes for Worker Appeals, 2000 – 2021," a document produced in response to a FOI request, attached.

The role and powers of the ARO

Our appeals system was conceived as an inquisitorial rather than adversarial system. To this end, the ARO should take a more active role in an appeal. AROs should talk to the parties before the scheduled hearing to identify and solve problems in advance. For example, if the ARO notes that evidence on a point is missing, the party would then have a chance to obtain that evidence prior to the hearing. In two-party appeals, this could happen in a case conference in order to preserve the integrity and transparency of the process. In the past, this was a common practice.

AROs should also explore opportunities to narrow the issues in dispute by talking to the parties in advance. The ARO then would have a good understanding of the whole file and the issues and would be best placed to decide whether the hearing should proceed in writing, by an in-person oral hearing or an online oral hearing. Again, this used to be done.

AROs should take a broader view of their jurisdiction[4] in order to fairly decide the issue in the appeal before them. An example provided in the draft ASD P&P is that if the worker has appealed the reduction of their LOE benefit following the closure of work transition, but not the original SO decision, the ARO may take jurisdiction over the issue of the suitability of the SO. This will decrease the number of appeals as workers will not have to place appeals on hold while they request time extensions. It will allow system resources (representatives and decision-makers at the Board and Tribunal) to focus on the substantive issues in claims and shorten the timeframe for resolution.

Previously, the ASD P&P specifically allowed AROs to consider the benefits flowing from their decisions. This aspect of the AROs jurisdiction is not in the 2020 version of the ASD P&P. AROs should have the authority to decide the "benefits flowing" from their decision in order to avoid the ping-ponging of the claim between the ASD and the operating level. So long as there is sufficient evidence in the claim file to make the further decision, the ARO should do so. This will make appeals more efficient as the file will not then have to return to the operating level for another decision but will instead proceed to implementation.

Allowing a right of reply in the written hearing process

Currently, when an appeal is heard in writing, the parties do not have a right of reply to the other party's submissions. This makes for an unfair and inefficient process that does not match the process in an oral hearing.

Allowing a formal right of reply allows for focused arguments and the efficient use of resources. It ensures fairness by making sure parties can address evidence and arguments raised by the

[4] This is a complicated issue that will be discussed more fully in the OWA's submissions to the ASD P&P consultation. Taking an overly broad view of jurisdiction has the potential to create unfairness.

other side and does not force a party to anticipate the other side's arguments. This is standard practice at the Tribunal.

Streamlining the reconsideration process

Currently, whenever a party submits an ITO or a new piece of evidence, the case is reconsidered at the operating level. This process often delays scheduling a hearing at the ASD and places a burden on the WSIB's operating level staff to repeatedly review decisions. It does make sense to reconsider a decision when an unrepresented worker submits new evidence. In cases of represented workers, we recommend that reconsiderations at the operating level be done at the request of a party rather than automatically.

This is not an exhaustive list. We welcome further consultation on ways to improve the internal appeals system.

IV. Group 1 Questions: Alternative Dispute Resolution

The Report recommends using mediation and mediation-arbitration at both the operating level and at the ASD and uses the Alberta WCB system as an example. The consultation document suggests that the Board is considering the mediation-arbitration model used in family law cases in Ontario. The Alberta WCB process and the Ontario family law mediation are quite different models.

Ontario's family law mediation-arbitration model recommends that both parties have legal representation throughout the process. A neutral third party is chosen by the opposing parties as the mediator. At the outset, the parties decide whether the mediation will be "open" (what is said in mediation can form part of the record) or "closed" (contents of the mediation remain confidential) and whether they will proceed to arbitration or to trial if mediation fails.[5]

Family law-style mediation-arbitration does not map onto our system. The central premise that the opposing parties are choosing a mediator they both trust would be absent; the worker and employer do not get to choose a neutral third party to mediate their dispute. With a Board decision-maker acting as mediator, there is no option to keep what is said in mediation confidential. Given the proposed expedited timelines, it is unlikely that most workers would obtain representation. The key components of mediation in the family law context are missing in the workers' compensation context.

Caution must be used when including mediation as part of dispute resolution. Mediation is open to abuse as the weaker party may be pressured into accepting something against their interest. In Ontario's family law mediation program, the mediator is to meet with the parties prior to ensure that the parties have equal negotiating power. Given the proposed expedited

[5]https://www.ontario.ca/page/family-mediation

timelines for re-employment issues, most workers would be unrepresented and the resulting power imbalance would create an unfair process with unfair outcomes.

The VFMA Report refers to the practices at WCB Alberta as an example of mediation and early dispute resolution. This is a mischaracterization of the Alberta approach. Alberta WCB staff at both the operating level and at the review level do not engage in what is considered "mediation" in the legal sense. It is better described as an "inquisitorial" model of decision-making.

To commence a "review" in Alberta (the "review" level is the internal appeals process), the worker may fill out an online form or write to the Board identifying the decision they want reviewed. The form asks for the date of the decision, the issue, why the decision should be changed and the desired result. But using the form is not mandatory nor do they appear to have mandatory contents for the request letter other than identifying the decision. On receiving the review request, the operating level will contact the party to explain the reasons for the decision and discuss the reasons for objecting. The worker is referred to the worker advisor office for legal advice. The wait time for service from the advisory office is three to four weeks. If the worker or worker advisor identifies gaps in evidence, they point it out to either the operating level or the Resolution Specialist (equivalent to our Appeals Resolution Officer) and the WCB will investigate, by talking to witnesses or requesting more information from healthcare providers. If the worker is waiting for a specialist appointment or report, the request for review is put on hold. The Resolution Specialist will follow up every six months about the status of the additional evidence.[6]

If the matter is not resolved, there is a hearing conducted by a Resolution Specialist. The hearing may be in-person, by video conference or by writing. The hearing is informal, beginning with the appellant's presentation, followed by the respondent. The Resolution Specialist will then ask questions of the parties and their representatives. The hearing, while informal, is not a mediation or a mediation-arbitration; there is no negotiation.

Alberta's Resolution Specialists are trained in alternative dispute resolution. "Active listening" is a key component of that training and they bring that skill to hearings.[7]

There are strengths to the Alberta example: the operating level assists the worker in identifying the issue in dispute by explaining the decision and the reasons for it and, if there is missing evidence, the Board will take steps to obtain it. The Resolution Specialist seems to take the role of inquisitor at hearings rather than mediator.

The type of "mediation" used in the Alberta system could help the WSIB's internal appeals system run more smoothly as the operating level seems to offer some assistance to the

[6] https://www.wcb.ab.ca/claims/question_claim.asp. We also spoke with a worker advisor from Alberta's Worker Advisor Office to gain a better understanding of the process.
[7] From discussion with an Alberta worker advisor.

workplace parties in articulating their objection and in obtaining evidence. The type of mediation used in Ontario family law would be applicable in a small number of appeals, where there are two opposing parties, both parties are represented and both agree to mediation.

1. What appealable issues do you think are appropriate for this mediation-arbitration model?

The consultation document identifies re-employment and co-operation issues as amenable to mediation. We can see that a type of mediation might be useful in cases where the issue is whether there is suitable work for the worker with the injury employer. We already have Return to Work Specialists setting up return-to-work meetings for that purpose. Perhaps training RTWS in alternative dispute resolution techniques, rather than setting up a separate "med-arb" process that would only be useful in a small number of appeals would be the best use of resources.

2. What principles should guide the mediation-arbitration approach? What else should we consider?

A mediation-arbitration process should be voluntary. If it is not voluntary, it is not really mediation; rather, it is merely an informal hearing without the safeguards of a proper hearing.

The worker should always have the opportunity to seek legal presentation and not be forced, unrepresented, into a dispute resolution process on an arbitrary timeline.

3. If mediation does not resolve the issue, what factors should be considered to determine whether an oral hearing or a hearing in writing should be used for the arbitration component by the Appeals Resolution Officer?

The factors used to decide whether a hearing should be oral or in writing should be the same as for other appeals at the ASD as set out in the current Practice and Procedure document. For example, if the issue is about whether the job offered by the employer is suitable and there is a factual dispute about job suitability, the hearing should be oral.

The parties should not have their right to a hearing abridged due to an informal ADR process. "Evidence" provided by a representative is not the same as testimony under oath and should not be treated as such. In addition, losing the right to an oral hearing would discourage parties from agreeing to mediation.

The concept of "fairness" is the guiding principle in determining the type of hearing that is appropriate in administrative law. When an issue can only be fairly decided through an oral hearing, an oral hearing should be granted. This decision should always be made on its own merits and not on arbitrary criteria.

4. To ensure expediency, what would be a reasonable timeframe for the mediation component? Is 30 calendar days reasonable?

The mediation process should be voluntary. If a worker chooses mediation, the worker should be told that they have a right to legal advice and/or representation if they are unrepresented. If the worker has a representative and the representative has a copy of the worker's claim file, 30 days may be adequate.

There needs to be flexibility if the worker is unable to secure representation within 30 days. In addition, if there is a need for additional medical evidence, for example regarding restrictions, the mediation component should be postponed until the evidence is obtained. Representatives also need time to prepare for a proceeding, whether it is a formal hearing or ADR, and they should be allowed that time.

5. How might alternative dispute resolution be used by front-line decision-makers? If there is a dedicated team of front-line operational experts delivering alternative dispute resolution, how much should other front-line decision-makers be trained in the approach?

The operating staff could assist parties in gaining a better understanding of the decision and reasons as is done at the Alberta WCB. The person best placed to do this would be the person who made the decision.

As explained above, the Alberta process is neither true mediation nor alternative dispute resolution. It is better described as an inquisitorial or investigative model and has more in common with the WSIB's historical approach to handling claims than ADR. The operating staff should listen, ask questions, explain decisions and obtain missing evidence. Decision-makers could be trained in this approach and encouraged to exercise the WSIB's investigative mandate.

Return to Work Specialists, who organize return to work meetings with workers and employers, may benefit from training in alternative dispute resolution.

6. What factors should we consider in making the above information mandatory to initiate the dispute resolution and appeals process?

There should be a difference between what information is necessary to register an objection and what information is necessary to initiate a dispute resolution process (i.e., commence formal appeal proceedings). To maintain access to justice and avoid a legalistic system, a minimal amount of information should be required on the intent to object form.

Our workers' compensation system is complicated. Injured workers are generally not sufficiently knowledgeable about the Act and Board policy to specifically identify or articulate all the issues in dispute. Many issues are only spotted on review of a claim file by an experienced advocate. It should be enough that the worker identifies the decision that is

disputed and perhaps why they think it is incorrect in ordinary layperson's terms. It should not be something as formal as identifying issues and the requested remedy.

To require that an ITO identify the legal issues in dispute and the legal remedy requested would add a procedural burden that could later operate to prevent the fair adjudication of the worker's claim. If the Board makes it mandatory to identify all of the issues, it suggests that, if a worker failed to identify an important issue on the ITO, the issue could not be appealed. For example, if a decision dealt with the date of injury and the amount of LOE benefits payable, the worker might only identify LOE benefits as the issue in dispute. The date of injury decision might be key to the worker's level of LOE. If the worker is barred from appealing the date of injury because of missing this issue on the ITO, it would lead to a waste of resources as the worker pursued the missed time limit.

There should not be any expectation that the worker has to know the magic words or legal jargon to describe issues or their reasons for disagreement. The Board could develop an on-line ITO that includes drop-down boxes with options to choose the main issues. The Alberta WCB has such a form and its list of issues are: temporary total benefits, medical aid, wage loss, NELP, re-employment benefits and other (please specify). The Board could develop a form that allowed people to pick LOE, NEL, health care, return to work. It should also include a checkbox for "all issues in the decisions" as the Tribunal's current NOA does.

Mandatory fields for the ITO should be minimal to avoid turning an on-line ITO, which could be a tool to make objecting accessible, into a barrier. The more there are mandatory fields, the more likely that an attempt to file an ITO will fail.

An online ITO should not be the only way to register an objection to an appeal. Many workers do not have access to the technology or the ability to navigate it. To ensure accessibility, both oral objections and written objections, (which may be sent through the mail), should remain options.

7. What factors should we consider when implementing 30-calendar-day timeframes for each step in the above reconsideration process?

This question is unclear. We think that the WSIB is proposing the following:

- after an ITO is submitted, the operating level has 30 days to make a reconsideration decision;
- if supplemental information is required, the operating level would have 60 days instead of 30 days to issue a reconsideration decision;
- following the reconsideration decision, the parties have 30 days to complete ADR; and
- 30 days after ADR, the operating level has another 30 days to issue another reconsideration decision.

This would seem to be a lot of reconsiderations. In our experience, absent submissions from a representative and/or additional evidence, the operating level is unlikely to change a decision on reconsideration. With tight timeframes, it is unlikely that a worker would be able to obtain a copy of their file, a representative and additional medical that would all be necessary to make the reconsideration process useful.

Because this question is so unclear, we do not think that the Board can rely on the responses to the question. If the Board does plan to rely on these responses, the question should be asked again in a clearer fashion.

Reconsiderations should be done when new information is submitted or when a party requests a reconsideration. Speeding up reconsideration decisions by imposing 30-day timelines will not improve the quality of decision-making at the operating level if the worker is unrepresented and has not obtained the relevant evidence. Indeed, such aa reconsideration step would just add an additional 30 days to the process with no added value.

8. 30-day time limits on all decisions

The consultation document does not ask about whether amending the Act to replace 6-month time limits with 30-day time limits is advisable even though the VFMA report made this recommendation. We strongly oppose moving to 30-day time limits.

The VFMA report says that its jurisdictional scan supports a 30-day time limit to appeal. This is somewhat inaccurate; according to the jurisdictional scan appended to the report, only the Newfoundland WCB and the social benefits system (ODSP and OW) have 30-day time limits. Alberta has a one-year time limit and British Columbia has a 90-day time limit. New South Wales' State Insurance Regulatory Authority appeals system has no time limits.[8] The report does not mention that Manitoba[9] and Saskatchewan WCBs,[10] like New South Wales SIRA, have no time limits. In our view, a jurisdictional scan does not support shortening the time limit to appeal.

Currently, many injured workers and their survivors have difficulty meeting the six-month time limit. One of the reasons for prolonged litigation is that the worker has missed a time limit. In such cases, we, along with the Board and the Tribunal, must divert scarce resources to resolving the time limit issue instead of the worker's real, substantive issues. System resources are better spent on adjudicating the underlying merits of the case than on whether a time limit is met or ought to be extended.

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[8] VFMA report, pp. 41 to 44

[9] Government of Manitoba website at: https://www.gov.mb.ca/labour/wao/appealing.html

[10] Saskatchewan WCB website at: https://www.wcbsask.com/appealing-decision-your-workers-injury-claim#:~:text=There%20is%20no%20time%20limit,to%20WCB%20benefits%20and%20compensation.

Shortening the time limit will decrease access to justice, make the system more difficult for workers and increase the length and complexity of appeals.

V. Group 2 Questions: One year time limit on the ARF

Whether there should be a one-year time limit on the ARF

The OWA strongly opposes placing a one-year time limit on the ARF.

Implementing a one-year time limit for the appeals readiness form is a bad idea for the following reasons:

- Appeals won't be "ready" as the worker is forced to file an ARF within one year;
- It creates a second time limit that unnecessarily complicates the system, even for experienced representatives;
- The Alberta example does not support a one-year ARF deadline on top of our current deadline to object.

The ARF process was introduced as part of the "appeals modernization" in 2012-2013. Its purpose was to prevent cases that were not "ready"—i.e., the worker did not have a representative, the file needed more medical information—from proceeding to a hearing. Imposing an artificial deadline on the ARF will not cause doctors to provide information faster or shorten wait lists for legal representation; that is, it will not ensure that cases are "ready" when they are scheduled for hearing. Instead, it will just force cases to proceed to hearing when they are not ready.

A one-year time limit from the date of the original decision is too short a timeline for getting a file appeal-ready. The worker needs to obtain a representative and then the representative needs a copy of the claim file, time to review the file, and time to gather additional evidence.

At the OWA, workers are waitlisted for up to six months. After we submit an authorization to obtain a copy of the file, we receive it in about a week. For other representatives, the process can take weeks or months. We then review the file, interview the worker and make a decision as to whether to offer representation. Frequently, there is inadequate medical information on file and we must write to doctors or other healthcare providers for more information. It is not unusual for it to take three or four months to get copies of a doctor's chart notes and longer to get a medical opinion on causation. If a specialist report is needed, that will take even longer. Often there is a lengthy delay just getting to see a specialist, let alone obtaining a report.

By the time the worker retains a representative, a significant portion, if not all, of the one year period following the date of the decision has passed. If the worker does have a representative, it can then take weeks or months to get a copy of the file. It takes further time to prepare for hearing.

Occupational disease cases have special challenges. These cases often require both occupational hygiene reports and medical opinions regarding causation. Family doctors do not have the knowledge or expertise to provide opinions on causation and workers have few options to obtain the necessary reports. One option is to retain a private expert, but that is beyond the means of most workers. OHCOW is the best resource for workers, but they have waiting lists and it is not unusual for it to take a year or two to obtain OHCOW reports.

Outcomes of a time limit on the ARF: poorer decision-making, more litigation, more abandonment of meritorious appeals

For the most part, a time limit on the ARF will have one of two undesirable outcomes:

- workers will miss the time limit;
- cases with insufficient evidence and/or no legal representation will be scheduled for hearing.

When a worker misses a time limit, the fair adjudication of their claim will be delayed while the worker appeals the missed time limit. Because the WSIAT applies broader criteria for extending time limits, the worker would appeal the missed time limit to the Tribunal if it was not extended by the WSIB. Adjudicating a missed time limit may add a year or more to the appeal. If the worker is unrepresented or was unable to obtain the relevant evidence, the decision will be based on incomplete evidence and argument and will likely be appealed to the WSIAT. The usual two outcomes will prolong litigation, reduce the quality of decision-making at the ASD and likely increase appeals to the WSIAT.

Of course, appeals to the WSIAT may not necessarily increase. Instead, workers who are discouraged by these procedural barriers and inability to have a fair hearing may abandon their appeals. This would lead to an increased burden on other benefits systems like the Ontario Disability Support Program or Ontario Works.

Alberta Example

The VFMA report points to the Alberta example as evidence that a one-year deadline for an ARF is workable. However, the Alberta process is completely different, rendering it a poor analogy. In Alberta, a workplace party has one year from the date of decision to request a review by filing a form identifying the decision, stating the reason for requesting a review and what they want changed. Filing this form starts the review process. Either party may ask that the review be put in “postpone” status if more time is required to obtain evidence.[11]

More importantly, at any point in time after a decision, if a party submits “new evidence,” the Board will make a new decision and the time limit starts again. The new time limit is provided

[11] A worker advisor with the Alberta WCB worker advisory told us about the “postpone status”

to the workplace party whether the Alberta WCB changes their original decision or not. The "new evidence" rule that restarts the clock also includes changes to "appeal findings" and "review findings". This means that a party can review and appeal a decision about one topic (such as secondary entitlement), and if successful, all the other decisions regarding loss of earnings or return to work are then reconsidered. The workplace parties then have new time limits to launch a review/appeal.[12]

Alberta's one-year deadline from the date of the decision is more similar to our 6-month deadline to file an ITO. It is not at all like the filing of an ARF.

Other structural changes to the appeals system are needed should a time limit on the ARF be introduced

The introduction of a time limit on the ARF would effectively cancel bookmarking of appeals. Bookmarking allowed a wait and see approach as to whether it would be necessary to pursue the appeal at all. Removing bookmarking would eliminate a fundamental aspect of how the appeals system is set up. This system has been a central aspect of the appeals system since 1998. Many bookmarked appeals never go ahead and thus do not place any burden on the system. Implementing an ARF time limit without other structural changes would unreasonably force workers to appeal or push them out of the system and onto ODSP and OW.

If the Board does adopt a one-year time limit, it would require other structural changes to the appeals system, namely:

- If new evidence is submitted after the deadline, the operating level must make a new decision that includes the right to object and a new time limit (as reconsideration decisions were done in the past by the WSIB); and
- Other decisions that are affected by this new decision would also need to be reviewed, decided and include a new time limit.

What follows are answers to the questions in the consultation document.

1. If we were to implement a new one-year time limit from the decision date to submit an appeals readiness form on January 1, 2024, how should we manage appeals from before this date where an ARF has not yet been submitted?

a. Should appeals from before this date be exempt from the requirement to send an appeal readiness form within one year?

[12] Alverta WCB Policies & Information, Policy 01-08 Part II
https://www.wcb.ab.ca/assets/pdfs/public/policy/manual/printable_pdfs/0108_2_app1.pdf

Yes. It would be unfair to apply the one-year time limit retroactively. Those who filed ITOs prior to the transition date may never have received notice of the one- year time limit.

b. If we were to make appeals from before this date exempt from the requirement to send an appeal readiness form within one year, what would a reasonable time limit be? Would one year from the new effective date be reasonable?

No. Appeals from before the effective date should be forever exempt from the requirement to send an appeal readiness form within one year as there is no way to ensure that everyone who ever filed an ITO had notice of the one-year deadline. Notice of new time limits is fundamental to procedural fairness.

2. Under what extenuating circumstances should we consider extending the one-year time limit for submitting the ARF?

An administrative justice body like the WSIB should not terminate injured workers' appeal rights lightly. If a one-year time limit for the ARF is introduced on top of the existing deadline to file an intent to object, there must be mechanisms for both asking for a postponement of the deadline to file an ARF as well as asking for an extension if the ARF deadline is missed. Reasons for granting more time in advance of the time limit should include:

- The party needs more time to gather evidence
- The party is unrepresented and is seeking a representative
- The party has been placed on a wait list for representation

Reasons for granting a time extension to a party who missed the time limit to file an ARF should include all of the reasons set out in the ASD's Practice and Procedure document, including that the party demonstrated intent to file within the time limit. The "intent within the time limit" reason should be expanded to include evidence of intent beyond documentation in the claim file.

In addition to these criteria, extensions should be granted whenever the party relied on someone else to file the form. This last criterion is accepted by the Alberta WCB as a reason to extend time limits. The Alberta allows extensions of time when there is a "justifiable reason":

> Examples of a justifiable reason for an extension of the time period might include, but are not limited to:
>
> - There was a lack of proper notice that left you unaware of the decision and you took reasonable and timely steps to file the request for review once you became aware of the decision
> - You relied on someone else that you trusted to file the request for review on your behalf, it was reasonable for you to rely on that person and, once you became aware

that the person had failed to file the request for review, you took reasonable and timely action to file

- You were unable to request a review due to diagnosed mental or physical incapacity or you were prevented from doing so because of some other valid reason[13]

To bring WSIB decision-making in line with that of the WSIAT, the Board ought to adopt more expansive criteria for granting time extensions. The WSIAT has followed Ontario Court of Appeal decisions and applies the "justice of the case" principle—a balancing of the reasons and length of the delay, evidence of intent within the time limit and the merits of the appeal--in deciding time extensions. We recommend that the WSIB follow the Tribunal's caselaw on extending time limits.

3. Is January 1, 2024 a reasonable start date for the new one year time limit? How much time would you need to make sure you have enough notice for a start date?

We continue to disagree with adding another time limit to our current system. January 1, 2024 is not reasonable date to commence such a fundamental change to the entire system. It will affect how waiting lists are managed, when retainers may be offered and how representatives work on their files.

We propose postponing consideration of an ARF deadline to evaluate if other changes at the ASD effectively streamline the appeals system. In particular, the ASD's proposals (as set out in the draft P & P) that AROs bundle issues, take a broad view of their jurisdiction and deal with benefits flowing from their decisions are likely to improve the efficiency of the system and the quality of decisions, resulting in fewer appeals to the WSIAT.

Over the past two years, we have dealt with changing over to a primarily digital environment for dealing with claim files and hearings. In the next year, the workplace parties and their representatives are facing substantial procedural changes at the WSIAT. At the OWA, we are undergoing a replacement of our electronic case management system that will have impacts on many internal procedures and how we do our work. All of the changes disrupt how we do our work and it takes time to adjust.

[13] https://www.wcb.ab.ca/assets/pdfs/public/policy/manual/printable_pdfs/G2.pdf, p. 4

VI. Group 3 Questions: In-person or Online Hearings

1. What other factors should we consider in determining whether the oral hearing should be offered in person or online?

The overall consideration is whether an in-person hearing is necessary for a fair hearing of the case. The following factors, most of which are found in the Tribunal's criteria for in-person/online hearings,[14] should be considered:

- Whether a party has the technology and the ability to use it;
- Whether the internet speed available to a party is sufficient for a video hearing;
- Whether a party requires a Human Rights Code related accommodation that cannot be met through a video hearing;
- Whether a party is able to participate in a video hearing due to health issues;
- Whether there is a language barrier that is best overcome with an in-person hearing;
- Whether, due to the complexity of the issues or the evidence, an in-person hearing is preferable;
- Any other reason that would affect a party's ability to fully participate

Accommodation needs are highly individual and should be tailored to the individual's circumstances. For example, some people with hearing loss may prefer an on-line hearing as it allows them to hear the proceedings with greater ease. Another person with hearing loss, who uses a sign-language interpreter, may be able to better understand the proceedings if conducted as an in-person hearing.

The consultation document includes "geographical location" as a factor and it is unclear why it should be. As we understand it, an online hearing is the default and an in-person hearing will be granted only if the worker has reason to need an in-person hearing. For example, if the worker who uses a sign-language interpreter requests an oral hearing, it should not be denied on the basis that the worker lives outside of a major urban area. The worker has a disability that requires accommodation and the travel expenses of either the worker or the decision-maker should not trump the duty to accommodate.

VII. Group 4 Questions: Expedite RTW Decisions & Appeals

The Board has agreed to implement the VFMA report's Recommendation 3.1:

> We should make sure that return-to-work decisions with a 30-calendar-day time limit are prioritized and expedited through the appeals process.

[14] WSIAT Interim Guideline on Resumption of In-person hearings found at https://www.wsiat.on.ca/en/publications/Interim%20Guideline%20In-Person%20Hearings.pdf

A voluntary expedited process on return-to-work decisions is welcome. If the parties have determined that they are ready to proceed, that is, they have obtained a representative and the relevant evidence, then a speedy hearing would be helpful to the system.

Proceeding with return-to-work decisions when the parties are not ready is a waste of time and resources and will lead to poor decisions that will then be appealed. Instead of a timely and fair resolution of a case, the matter will just be moved along to the WSIAT.

1. What factors should we consider in expediting return-to-work issues when there are multiple issues in an appeal?

The main factor to consider is whether the appeal is ready to proceed: does the worker have a representative, does the representative have a copy of the file, has the relevant evidence been collected and has the representative had time to prepare for the hearing.

Currently, return-to-work decisions often occur early in the life of the claim. These are often provisional decisions and ongoing medical investigation or treatment often results in further return to work meetings and decisions. Suggesting that a RTW mediation will result in cases being finalized more quickly does not reflect the complexity of the process. Return to work is a process and the resources of the legal representative as well as Board staff are potentially significant if there is a requirement to meet tight timeframes.

The proposal to expedite RTW issues is only reasonable if the parties are ready to proceed. If there are multiple issues in an appeal, expediting return to work issues would lead to fragmented decision-making.

VIII. Group 5 Questions: Appeals Implementation

1. What factors should we consider in reinforcing the 30-calendar-day timeline for appeal implementation.

We agree that appeals decisions should be implemented promptly by the WSIB, preferably within a few weeks of the decision. However, it is more important in the long run that implementation be correct than it be completed quickly. Incorrect implementation creates headaches—and ultimately greater delay—for everyone involved.

We object to delays in implementation when the only reason for the delay is because implementation means a substantial retroactive payment to the worker. We have seen cases in which it took more than six months for the worker to receive payment and the only discernible reason for the delay was the size of the payment. We have been told that payments were delayed because it required the sign-off of a director or vice-president. This process should be strictly limited to 30 days as it is not an adjudicative function but a file review.

It is important that standard timeframes are known and published for all workplace parties and representatives to know what to expect. If the standard timeframes cannot be met, the reasons for delay and expected timeframe for completion should be communicated in writing to the workplace parties. This allows for time needed for more complex adjudication and for transparency.

Sometimes there is a delay in implementation because the operating level is waiting for documents that the worker must obtain from third parties. The time could be shortened if the worker were advised in advance of the decision about the documents that would be required. To facilitate this, it would be helpful if the Board would include an information sheet on its website about what documents are needed to implement a favourable initial entitlement, LOE or personal care decision.

We suggest that the WSIB consult with the staff responsible for implementation to identify the factors that affect their ability to quickly and accurately implement decisions.

IX. Group 6 Questions: Excluding decisions from Appeals

1. If we were to exclude decisions that rely on standardized calculations from our internal appeals process, what are some factors we should consider?

Our position is that no decisions should be excluded from the internal appeals process. The parties should have the option of requesting that a decision be excluded from internal appeals and proceed directly to the WSIAT, but not be forced to do so.

It would appear that this recommendation is aimed at excluding what amount to be pure arithmetic problems from the appeals process. However, it is rarely the case that NEL, LOE or personal care decisions are disagreements about math.

In our experience, most NEL appeals are not about challenging standard calculations, but are about missed diagnoses, missed ROM deficits and, when the AMA Guides provide a range, rating the worker at the bottom of the range. NEL appeals are not about standardized calculations but about what was left out of the calculation. For some NEL calculations, it is about challenging the NEL Clinical Specialist's judgement on where in a range the extent of the worker's impairment lands.

To improve quality of decision-making and expedite NEL internal appeals, the Board should consider assigning NEL decisions to AROs who specialize in NEL appeals rather than eliminating the right to an internal appeal.

It is unclear what LOE "calculations and decisions" the Board might be considering for direct appeal to the WSIAT. LOE decisions are usually complicated, involving issues of earnings' basis, whether the SO is suitable and available, or whether suitable work was offered to the worker.

LOE annual review decisions, after the first review that reduces LOE, is sometimes just a math calculation. That decision is never a standalone decision. To streamline the appeals process, it makes sense to bundle the appeal of the annual LOE review decision with the appeal of LOE decisions coming before and after.

It is also unclear what personal care allowance decisions the Board might consider as falling into the category of "standardized calculations" as most of those decisions are about the number of hours of care per week that a worker is entitled to. A determination is needed about whether the evidence on file supports the number of hours awarded by the WSIB. That is a substantive issue, not one of standardized calculations.

Trying to exclude decisions that are solely based on standardized calculations would be difficult to implement in practice. A decision that may appear to be based on standardized calculations may actually involve substantive issues as described in the above examples.

2. Are there other decision types that we should exclude from our internal appeals process?

No. The workplace parties have a right, under the Act, to object to decisions. Looking at the appeals system as a whole, excluding the internal appeals process would push more appeals onto the Tribunal and would not improve the overall efficiency of the system.

3. Sometimes in different claims for the same person, an issue in dispute may be active with WSIAT while another issue is active with us. Should there be options to request for us to exclude some decisions from our internal appeals process to pursue the holistic resolution of the issues for the person or business at the WSIAT? Under what circumstances would this be best? What else should we consider?

Yes. There should be a process, set out in the P&P, where a party can ask that an operating decision be made a final decision of the Board. Such a process would promote holistic resolution of the issues by moving that issue to the WSIAT. For example, if the worker has appealed an LOE review decision to the Tribunal and the final LOE review decision is waiting for an ARO hearing, the worker should have the option of having the final review sent directly to the Tribunal.

The process should not be automatic but done only at the request of a party. Under the Act, the workplace parties have a right to object to Board decisions and a right to a hearing. The duty of fairness in the exercise of the powers of a statutory delegate require that the objecting party receives a fair hearing. The Board should not eliminate the right to be heard simply to accelerate the appeals process.

While this process is currently in place at the ASD, most parties and representatives are unaware of it. If the process is described in the P & P, a publicly available document, more representatives are likely to use it.

X. Conclusion

We urge the WSIB to reconsider adopting the changes recommended by the VFMA report without further consultation and reflection on how such changes will affect the appeals process and those who use it.

The Office of the Worker Adviser is committed to working with the WSIB, system partners and stakeholders to improve dispute resolution in the workers' compensation system. In these submissions, we have raised a number of serious concerns regarding the proposed changes. We have recommended alternative solutions that we believe will ameliorate the weaknesses in the system identified by the auditors. We look forward to working with the WSIB in the future to address the challenges facing the appeals system.

We would like to thank the WSIB for considering our submissions and look forward to the results of the consultation.

Submitted on behalf of the
OFFICE OF THE WORKER ADVISER,

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July 21, 2023

wsib cspaat ONTARIO

Workplace Safety and Insurance Board
Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

Decision Outcomes for Worker Appeals - 2000 to 2021

Request ID: 6556
Requested By: Natasha Mohabir, Privacy, Access and Risk Manager, Compliance Services
Requested Date: April 12, 2022
Prepared By: Corporate Business Information & Analytics

Data Definitions/Notations:

Includes all appeal decisions between January 1, 2000 and December 31, 2021 where the objection origin was the worker, the worker representative or a dual objection.
Excludes appeals that were returned or withdrawn.
Excludes appeals where the objection origin was the employer or employer representative.
Virtual Hearings are oral hearings where the hearing location is "teleconference" or videoconference".

Data Source:

Appeals Branch Tracking System as of April 12, 2017 for appeals decisions between 2000 and 2016.
InfoCenter as of March 31, 2022 for appeals decisions between 2017 and 2021.

Decision Outcomes for Worker Appeals

Decision Outcome	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
# of Worker Appeal Decisions	**6,800**	**6,203**	**6,002**	**6,084**	**5,984**	**6,048**	**5,774**	**5,620**	**5,288**	**5,539**	**5,603**	**6,392**	**7,864**	**9,096**	**7,570**	**6,792**	**5,550**	**4,106**	**3,530**	**3,329**	**3,319**	**4,305**
% Allowed	29%	30%	28%	29%	27%	27%	28%	27%	28%	26%	23%	21%	19%	18%	17%	18%	19%	18%	18%	20%	20%	19%
% Allowed in Part	19%	18%	18%	17%	17%	17%	17%	18%	17%	17%	16%	15%	16%	17%	16%	14%	15%	14%	14%	14%	15%	16%
% Denied	52%	51%	53%	54%	55%	56%	56%	55%	55%	58%	61%	64%	65%	65%	67%	68%	66%	68%	68%	67%	66%	65%

Decision Outcomes for Worker Appeals by Method of Resolution

Method of Resolution/Decision Outcome	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Oral Hearing	**2,372**	**2,255**	**2,414**	**2,456**	**2,357**	**2,326**	**2,299**	**2,334**	**2,052**	**2,198**	**2,028**	**1,834**	**1,510**	**1,814**	**1,480**	**1,298**	**1,012**	**819**	**709**	**689**	**271**	**586**
% Allowed	33%	33%	32%	30%	30%	31%	31%	31%	33%	31%	28%	26%	26%	25%	26%	27%	29%	29%	31%	29%	28%	26%
% Allowed in Part	27%	26%	23%	24%	23%	23%	23%	25%	25%	23%	24%	22%	24%	29%	28%	22%	25%	21%	20%	19%	22%	22%
% Denied	40%	40%	45%	46%	47%	46%	45%	44%	42%	46%	48%	52%	50%	46%	46%	51%	46%	50%	50%	53%	51%	52%
Hearing in Writing	**4,428**	**3,948**	**3,588**	**3,628**	**3,627**	**3,722**	**3,475**	**3,286**	**3,236**	**3,341**	**3,575**	**4,558**	**6,354**	**7,282**	**6,090**	**5,494**	**4,538**	**3,287**	**2,821**	**2,640**	**3,047**	**3,719**
% Allowed	27%	29%	26%	28%	25%	25%	25%	24%	25%	22%	21%	19%	17%	17%	15%	15%	16%	15%	15%	17%	19%	18%
% Allowed in Part	14%	13%	15%	12%	14%	13%	12%	13%	11%	13%	11%	12%	14%	14%	13%	13%	13%	12%	13%	12%	14%	15%
% Denied	58%	58%	59%	60%	61%	62%	63%	63%	63%	65%	68%	69%	69%	69%	72%	72%	70%	72%	72%	70%	67%	67%

Decision Outcomes for Worker Appeals with Virtual Hearings

-Prior to 2019 there were less than 5 virtual hearings per year therefore results have been summarized for 2000-2018.

Method of Resolution/Decision Outcome	2000-2018	2019	2020	2021
Virtual Hearings	**40**	**6**	**67**	**330**
% Allowed	33%	0%	34%	25%
% Allowed in Part	18%	17%	22%	21%
% Denied	50%	83%	43%	55%

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Workplace Safety and Insurance Board
Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

Outcomes by Issue Category for Worker Appeals - 2000 to 2021

Request ID: 6556
Requested By: Natasha Mohabir, Privacy, Access and Risk Manager, Compliance Services
Requested Date: April 12, 2022
Prepared By: Corporate Business Information & Analytics

Data Definitions/Notations:

Includes all appeal issue decisions between January 1, 2000 and December 31, 2021 where the objection origin was the worker, the worker representative or a dual objection.
Excludes appeals that were returned or withdrawn.
Excludes appeals where the objection origin was the employer or employer representative.
Appeal issues are not mutually exclusive to an appeals decision as an appeal can have multiple objection issues.

Data Source:

Appeals Branch Tracking System as of April 12, 2017 for appeals decisions between 2000 and 2016.
InfoCenter as of March 31, 2022 for appeals decisions between 2017 and 2021.

Outcomes by Issue Category for Worker Appeals

Issue Category/Issue Outcome	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Loss of Earnings	**291**	**579**	**861**	**1,065**	**1,298**	**1,556**	**1,709**	**1,776**	**1,827**	**1,907**	**2,127**	**2,546**	**3,348**	**4,401**	**3,266**	**2,922**	**2,525**	**1,722**	**1,522**	**1,453**	**1,517**	**1,967**
Allowed	106	210	310	390	479	546	600	640	726	661	654	668	787	1,007	757	656	590	407	350	372	394	527
Allowed in Part	37	100	136	179	201	281	284	325	326	348	359	416	561	687	521	433	371	229	193	194	227	261
Denied	148	269	415	496	618	729	825	811	775	898	1,114	1,462	2,000	2,707	1,988	1,833	1,564	1,086	979	887	896	1,179
Other	**5,404**	**4,225**	**4,021**	**3,704**	**3,303**	**3,011**	**2,692**	**2,455**	**1,984**	**2,061**	**1,879**	**1,721**	**1,982**	**2,231**	**1,975**	**1,643**	**1,361**	**1,023**	**822**	**817**	**786**	**1,005**
Allowed	1,806	1,403	1,245	1,194	1,039	901	838	765	611	575	461	348	386	436	386	316	287	210	140	156	163	238
Allowed in Part	619	525	469	426	386	318	276	261	182	191	162	139	165	182	147	131	116	84	63	55	57	60
Denied	2,979	2,297	2,307	2,084	1,878	1,792	1,578	1,429	1,191	1,295	1,256	1,234	1,431	1,613	1,442	1,196	958	729	619	606	566	707
Non-Economic Loss (NEL)	**1,141**	**970**	**1,009**	**1,084**	**1,168**	**1,103**	**1,051**	**1,085**	**1,105**	**1,071**	**1,140**	**1,301**	**1,804**	**2,357**	**1,943**	**1,610**	**1,223**	**978**	**787**	**625**	**831**	**1,209**
Allowed	381	328	276	258	310	282	288	305	287	290	258	235	364	507	320	247	215	143	122	94	130	209
Allowed in Part	47	38	47	44	60	56	43	50	51	57	48	52	87	169	123	107	78	73	46	34	37	78
Denied	713	604	686	782	798	765	720	730	767	724	834	1,014	1,353	1,681	1,500	1,256	930	762	619	497	664	922
Initial Entitlement	**1,406**	**1,344**	**1,272**	**1,201**	**1,147**	**1,218**	**1,146**	**1,142**	**1,005**	**1,159**	**1,070**	**1,271**	**1,422**	**1,684**	**1,364**	**1,300**	**1,137**	**966**	**860**	**907**	**713**	**1,032**
Allowed	525	543	482	472	398	420	401	367	344	354	325	373	351	412	322	331	283	246	228	217	190	236
Allowed in Part	71	76	57	51	58	52	47	42	38	33	28	46	49	54	48	36	37	40	41	28	28	48
Denied	810	725	733	678	691	746	698	733	623	772	717	852	1,022	1,218	994	933	817	680	591	662	495	748
New Condition	**719**	**634**	**606**	**634**	**677**	**635**	**620**	**584**	**551**	**618**	**555**	**677**	**754**	**982**	**859**	**875**	**825**	**636**	**419**	**393**	**420**	**520**
Allowed	190	169	123	143	164	121	150	154	133	135	107	112	110	140	146	136	131	99	68	70	73	98
Allowed in Part	44	26	37	28	34	38	28	33	24	34	28	29	33	38	37	43	36	28	14	17	15	24
Denied	485	439	446	463	479	476	442	397	394	449	420	536	611	804	676	696	658	509	337	306	332	398
Recurrence	**821**	**674**	**614**	**529**	**515**	**504**	**520**	**399**	**396**	**398**	**389**	**443**	**610**	**691**	**624**	**517**	**417**	**372**	**277**	**233**	**239**	**283**
Allowed	300	233	225	198	177	175	191	158	148	150	116	108	133	167	138	111	107	71	65	73	57	83
Allowed in Part	60	66	45	27	32	28	33	24	25	20	20	23	27	26	35	24	16	18	14	7	9	12
Denied	461	375	344	304	306	301	296	217	223	228	253	312	450	498	451	382	294	283	198	153	173	188
Health Care	**280**	**298**	**277**	**289**	**241**	**272**	**266**	**243**	**294**	**334**	**329**	**391**	**485**	**712**	**643**	**536**	**447**	**274**	**217**	**211**	**193**	**282**
Allowed	100	132	86	92	85	71	79	75	90	93	76	76	86	134	109	87	77	49	27	45	27	53
Allowed in Part	37	26	31	32	25	31	22	31	19	27	33	31	42	48	52	42	34	12	10	9	17	15
Denied	143	140	160	165	131	170	165	137	185	214	220	284	357	530	482	407	336	213	180	157	149	214
Psychotraumatic	**207**	**227**	**213**	**218**	**216**	**314**	**344**	**303**	**269**	**307**	**414**	**542**	**737**	**755**	**516**	**488**	**353**	**255**	**193**	**179**	**198**	**368**
Allowed	47	49	62	48	56	74	81	76	76	68	108	108	152	153	92	88	70	44	37	39	42	101
Allowed in Part	5	6	<5	<5	<5	13	7	10	9	11	18	25	30	29	18	14	12	10	8	6	9	18
Denied	155	172	147	167	157	227	256	217	184	228	288	409	555	573	406	386	271	201	148	134	147	249
Chronic Pain	**434**	**411**	**393**	**380**	**354**	**374**	**371**	**339**	**303**	**318**	**338**	**435**	**537**	**568**	**454**	**434**	**314**	**221**	**165**	**131**	**105**	**165**
Allowed	95	103	90	71	85	76	82	70	51	52	68	52	63	61	51	48	39	34	24	25	18	36
Allowed in Part	7	<5	<5	<5	<5	5	5	<5	<5	<5	6	<5	<5	12	<5	6	<5	<5	-	-	-	<5
Denied	332	304	301	305	267	293	284	267	250	265	264	381	470	495	399	380	273	186	141	106	87	127
Traumatic Mental Stress (TMS)	**-**	**-**	**8**	**35**	**63**	**67**	**49**	**46**	**50**	**50**	**64**	**66**	**71**	**62**	**57**	**72**	**48**	**43**	**27**	**79**	**45**	**84**
Allowed	-	-	<5	-	11	20	8	5	12	8	6	9	11	7	9	7	7	12	<5	<5	7	8
Allowed in Part	-	-	-	-	<5	-	-	-	-	<5	<5	<5	<5	<5	-	-	-	-	-	-	-	-
Denied	-	-	6	35	51	47	41	41	38	39	56	56	58	54	48	65	41	31	25	75	38	76
Chronic Mental Stress	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**12**	**85**	**56**	**72**
Allowed	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	10	<5	5
Allowed in Part	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	<5	<5
Denied	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12	75	53	65
SIEF	**69**	**62**	**68**	**61**	**50**	**57**	**48**	**49**	**62**	**41**	**20**	**21**	**25**	**26**	**8**	**8**	**<5**	**5**	**8**	**8**	**36**	**11**
Allowed	34	33	32	27	23	25	21	25	29	17	6	5	8	11	<5	<5	-	<5	<5	<5	9	5
Allowed in Part	8	9	<5	9	<5	<5	<5	<5	7	8	<5	<5	6	<5	<5	<5	-	-	<5	<5	8	<5
Denied	27	20	35	25	23	28	23	20	26	16	13	12	11	13	5	<5	<5	<5	<5	<5	19	<5

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Workplace Safety and Insurance Board
Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

Outcomes for Worker WSIAT Decisions - 2012 to 2021

Request ID: 6556
Requested By: Natasha Mohabir, Privacy, Access and Risk Manager, Compliance Services
Requested Date: April 12, 2022
Prepared By: Corporate Business Information & Analytics

Data Definitions/Notations:

Includes all WSIAT decisions between April 1, 2012 and December 31, 2021 where the appellant was the worker or both (referring to both the worker and the employer).
Excludes WSIAT decisions that were withdrawn, abandoned, adjourned, or interim.
Excludes WSIAT decisions where the appellant was the employer, board, other or respondent.
WSIAT decisions at the claim level so a WSIAT decision that pertains to multiple claims will be counted more than once.

Data Source:

WSIAT Database from Legal Services Division for WSIAT decisions between 2012 and 2017.
InfoCenter report 3116 WSIAT Outcome Report For Claims as of April 12, 2022 for WSIAT decisions between 2018 and 2021.

Outcomes for WSIAT Decisions

Decision Outcome	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
# of Worker Appeal Decisions	**1,691**	**2,191**	**2,272**	**2,589**	**3,130**	**3,565**	**2,320**	**2,360**	**1,398**	**1,577**
% Allowed	33%	33%	34%	35%	38%	36%	36%	34%	35%	38%
% Allowed in Part	21%	24%	24%	23%	25%	29%	29%	34%	31%	35%
% Denied	45%	43%	42%	42%	38%	35%	35%	32%	34%	27%

Outcomes for WSIAT Decisions by Method of Resolution

-Method of resolution not available prior to 2018.

Method of Resolution/Decision Outcome	2018	2019	2020	2021
Alternate Dispute Resolution (Mediation)	**59**	**83**	**96**	**197**
Allowed	24%	47%	47%	40%
Allowed in Part	76%	52%	53%	60%
Denied	0%	1%	0%	0%
File Review	**592**	**539**	**497**	**261**
Allowed	41%	42%	37%	42%
Allowed in Part	14%	20%	21%	21%
Denied	45%	38%	42%	37%
Hearing	**1,650**	**1,723**	**801**	**1,112**
Allowed	34%	31%	33%	36%
Allowed in Part	33%	37%	34%	34%
Denied	33%	32%	33%	30%

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Workplace Safety and Insurance Board
Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

Outcomes by Issue Category for Worker WSIAT Decisions - 2018 to 2021

Request ID: 6556
Requested By: Natasha Mohabir, Privacy, Access and Risk Manager, Compliance Services
Requested Date: April 12, 2022
Prepared By: Corporate Business Information & Analytics

Data Definitions/Notations:

Includes all WSIAT decisions between January 1, 2018 and December 31, 2021 where the appellant was the worker or both (referring to both the worker and the employer).
Excludes WSIAT decisions that were withdrawn, abandoned, adjourned, or interim.
Excludes WSIAT decisions where the appellant was the employer, board, other or respondent.
WSIAT decisions at the claim level so a WSIAT decision that pertains to multiple claims will be counted more than once.
WSIAT issues are not mutually exclusive to a WSIAT decision as they can have multiple objection issues.

Data Source:

InfoCenter report 3116 WSIAT Outcome Report For Claims as of April 12, 2022 for WSIAT decisions between 2018 and 2021.

Outcomes by Issue Category for Worker WSIAT Decisions

-Results not available prior to 2018 as only the outcome of the overall WSIAT decision was captured prior to 2018 as opposed to the decision for each individual issue.

Issue Category/Issue Outcome	2018	2019	2020	2021
Loss of Earnings	**990**	**1,054**	**568**	**788**
Allowed	432	485	261	346
Allowed In Part	245	273	159	262
Denied	313	296	148	180
Non-Economic Loss (NEL)	**592**	**653**	**385**	**487**
Allowed	276	293	163	219
Allowed In Part	47	54	31	49
Denied	269	306	191	219
Other	**555**	**518**	**438**	**447**
Allowed	264	220	189	208
Allowed In Part	58	68	51	59
Denied	233	230	198	180
Initial Entitlement	**406**	**493**	**275**	**351**
Allowed	193	215	108	168
Allowed In Part	22	30	15	30
Denied	191	248	152	153
New Condition	**329**	**317**	**217**	**252**
Allowed	124	112	72	90
Allowed In Part	24	23	16	14
Denied	181	182	129	148
Psychotraumatic Disability	**188**	**208**	**102**	**126**
Allowed	89	102	38	54
Allowed In Part	6	7	<5	7
Denied	93	99	62	65
Recurrence	**174**	**200**	**102**	**119**
Allowed	93	109	51	55
Allowed In Part	6	9	<5	9
Denied	75	82	48	55
Chronic Pain Disorder	**192**	**188**	**84**	**84**
Allowed	63	59	28	34
Allowed In Part	<5	<5	<5	0
Denied	126	128	54	50
Health Care	**129**	**171**	**110**	**124**
Allowed	65	67	52	64
Allowed In Part	13	18	7	5
Denied	51	86	51	55
Traumatic Mental Stress (TMS)	**<5**	**<5**	**12**	**15**
Allowed	<5	0	<5	<5
Denied	<5	<5	8	14
CMS-Chronic Mental Stress	**0**	**<5**	**<5**	**23**
Allowed	0	0	<5	<5
Denied	0	<5	<5	19
SIEF	**11**	**<5**	**<5**	**<5**
Allowed	6	0	<5	0
Allowed In Part	<5	0	0	<5
Denied	<5	<5	<5	<5