

HEARING TIPS

Differences Between WSIB and WSIAT Hearings

This Fact Sheet applies to both Workplace Safety and Insurance Board (WSIB) and Workplace Safety and Insurance Appeals Tribunal (WSIAT) hearings, unless otherwise noted. An Appeals Resolution Officer (ARO) decides your case at WSIB, whereas a Vice-Chair or a three-person panel decide your case at WSIAT. You may request a panel consisting of a Vice-Chair, a person from the employer community, and a person from the worker community if, for example, your case involves new or significant medical or legal issues or significant credibility findings. For more information about how to arrive at the hearing stage, see OWA Fact Sheets 24 and 25 called “Appealing to WSIB” and “Appealing to WSIAT”.

Setting a Hearing Date

At the WSIB level, a scheduler will contact you to set a hearing date for an appeal before an ARO. Please ensure that you and all your witnesses are available before you confirm the hearing date, since it is difficult to change the date at a later time. If you require an interpreter for the WSIB hearing, you should advise the scheduler so that arrangements for an appropriate interpreter can be made.

At the WSIAT level, you will receive a letter with a proposed hearing date. If required, you must request a hearing date change within **two weeks** of the date of the WSIAT letter. If you do not call the scheduler within **two weeks**, a hearing date change will not be permitted except for a very good reason. If you have requested an interpreter, your Notice of Hearing will state that WSIAT is providing an interpreter. If it does not, remind the scheduler of your need for an interpreter.

Is Going to a Hearing Like Going to Court?

The rules at a hearing are simpler and less formal than the rules in court. You have basic rights at a hearing as you would in court. These rights are: to attend the hearing, to have a representative, to bring witnesses, to present relevant evidence, and to question your employer and/or its witnesses if they attend the hearing. Your employer has the same rights.

Will Your Hearing Expenses Be Paid?

Some costs, such as travel and related expenses, will be covered by WSIB or WSIAT if the hearing is held outside your own community. Travel expenses are only paid within the Province of Ontario. If you or your witnesses take time off work to attend a hearing, then WSIB or WSIAT will pay a limited amount. Please note that WSIB or WSIAT will not pay for the cost of your representative.

When There Is an Interpreter

You should speak with the interpreter before the hearing to ensure you understand each other. If you do not understand each other, then you will not be able to communicate effectively at the hearing. You may need to request an adjournment (a rescheduling of the hearing to a later date) so that the right interpreter can be found.

Can You Provide Additional Evidence Before the Hearing?

Once a hearing date is set, any additional evidence must be provided to the ARO **two weeks** before the hearing date; and at least **three weeks** in advance of the hearing date before WSIAT. At both levels, you must also provide the additional evidence to any other party (usually the employer) attending the hearing. If the evidence is not new, WSIAT will want to know why it was not submitted along with the **Confirmation of Appeal (COA)** form. See OWA Fact Sheet 25 called “Appealing to WSIAT”. If you do not provide the evidence within the **time limits** established above, you will need to bring it with you to the hearing.

Providing Additional Evidence at the Hearing

You must bring enough copies for yourself, the decision maker(s), and any other party. You must explain why you were not able to provide the information prior to the hearing, and you need to convince the ARO or Vice-Chair/panel that the evidence is relevant and important enough to be accepted at this late time. There are strict rules about submitting evidence ahead of time, partly to ensure there are no surprises at the hearing. The decision-maker may decide: to disallow your use of the late evidence; to let you use it, but adjourn the hearing to provide the other party with a chance to review and respond to the new evidence; or to let you use the late evidence and proceed with the hearing as scheduled.

The Structure of the Hearing

Hearings usually follow the same basic format and are tape-recorded. Before turning on the tape recorder (or going “on record”), the decision-maker will note who is present. Generally, any witnesses will be asked to leave at this point until their testimony is required. The decision-maker will formally begin the hearing as follows:

- the ARO or Vice-Chair will request that all parties identify themselves for the record
- the ARO or Vice-Chair will state the decision and issue under appeal
- you should raise any preliminary matters, such as requests for adjournments or requests to submit additional evidence at this time (adjournments are only granted in **exceptional** circumstances)
- both parties will have a chance to make an opening statement, identifying what the case is about and outlining the important facts that will be established, including what outcome or benefits are expected (this is **not** the time to argue your case)
- you will be sworn-in, which means you promise to tell the truth
- you will provide your evidence, the employer or its representative will cross-question you, and the decision-makers will ask you any questions they may have
- if you feel you need to add anything to clarify your answers, you can do so at this point
- you will then have an opportunity to call any witnesses and follow the same procedure
- the employer will then have an opportunity to present its witnesses in the same way
- finally, the parties will get a chance to make closing submissions (see OWA Fact Sheet 30 called “Submissions”).

It usually takes a day or less to complete the hearing process. If your case is very complicated, you may need to reconvene for another day or more. You may be asked to collect additional evidence after the hearing and forward it to the decision-maker by mail, along with any written submissions you wish to make.

When Do You Get a Decision?

A written decision will be sent to you in the mail several months after the hearing.

Oral Hearings → Do’s and Don’ts

Do:

- be clear, precise, and answer only the question asked
- be familiar with the file, how it is organized, and where relevant documents supporting your arguments are located
- stick to the point
- identify the evidence, policy, and law supporting your argument
- treat all parties with respect; be firm when necessary, but always be polite
- be honest, relaxed, and **think** before you speak, especially if something causes you anger or upset
- feel free to stand up and stretch if you need to, but first let everyone know what you are going to do
- ask for an explanation if you do not understand a question or statement.

Don’t:

- ignore gaps in your evidence or weaknesses in your case that you need to explain
- make your submission too long
- guess → if you do not know the answer to a question, just say so
- exaggerate, as this can damage your credibility and take away from the truth of your story.

IMPORTANT INFORMATION

There are time limits for appealing WSIB decisions. If you wish to appeal a decision, contact a qualified representative as soon as possible. For more information on time limits, see OWA Fact Sheets 24 and 25 called “Appealing to WSIB” and “Appealing to WSIAT”.

This Fact Sheet contains general information only. It is not a legal document. To see what the law says, you should look at the Workplace Safety and Insurance Act and WSIB policies. If you require help and do not have a union to assist you, contact the Office of the Worker Adviser:

- Our toll free telephone number is 1-800-435-8980 (English) or 1-800-661-6365 (French)
- or visit our website at: <http://www.owa.gov.on.ca>

Cette feuille-info est aussi disponible en français

