

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

PROTOCOL FOR ASSISTANCE & FUNDING IN WORKERS' COMPENSATION CLAIMS

I. General Principles

Workers' Compensation claims are not part of the Collective Agreement. As such, OECTA does not have the statutory duty to represent members for such claims and will not provide staff or legal support in all cases. While this Protocol outlines the general parameters for assistance with these claims and funding decisions, OECTA reserves the right to participate in a workers' compensation claim or approve funding at its sole discretion.

Worker's compensation claims raise various matters of significant concern to OECTA membership:

- Workers' compensation issues are integral to worker wellness and employer accountability for workplace accidents.
- Workers' compensation issues may be tangentially related to collective bargaining issues such as accommodation of disabled workers in the workplace, workplace hazards and safety, workload, and employer occupational health practices.
- To the extent that workers' compensation successfully denies meritorious claims, particularly claims with long-term disability issues, the cost of financial support of disabled members is offloaded to benefits plans that the Association has negotiated as part of the Central Terms of the collective agreement, arguably having some impact on the cost of those benefit plans.
- Workers facing workers' compensation issues can be among our more vulnerable members, particularly where lengthy absence or permanent impairment is involved.
- The Workplace Safety and Insurance Board's (WSIB) response to injuries and workplace accidents particular to teachers and teaching may best be addressed by the benefit of collective response and the broad-based teaching expertise OECTA brings to its representation of members.

The goals OECTA seeks to balance in providing assistance to members with workers' compensation claims include, but are not limited to:

- Quality representation of members.
- Efficient and cost-effective handling of claims.
- Timely processing of claims.

OECTA also has an interest in:

- Maintaining or establishing a quality reputation with the WSIB/WSIAT as a provider of quality representation in this area.
- Identifying broader trends in:
 - (a) the WSIB's response to teacher-specific entitlement issues;
 - (b) teacher-specific workplace hazard and safety issues;
 - (c) teacher health issues; and
 - (d) Provincial labour community issues of worker injury and compensation.
- Establishing precedents in the area relating to teaching issues.
- Working with advocates in the injured worker community to support justice for injured workers.

OECTA will consider providing assistance to members in workers' compensation claims on a case-by-case assessment. Such assistance may be from local or provincial representatives, depending on the stage of the claim and scope of involvement anticipated (Section II below). The involvement of legal counsel is at the discretion of OECTA Provincial in accordance with the handbook. OECTA will not extend assistance in claims that OECTA has assessed as not meeting its Criteria for Representation, or at its sole discretion. (Section IV below).

II. Stages of a Workers' Compensation Claim and Worker Representation

There are four stages of a workers' compensation claim where members may benefit from representation:

Stage I:	Pre-Objection
Stage II:	Reconsideration of Case Manager Decisions
Stage III:	Appeal of Case Manager (CM) Decisions to Appeals Resolution Officer (ARO)
Stage IV:	Appeal of ARO Decisions to Workplace Safety and Insurance Appeals Tribunal (WSIAT)

Stage I: Pre-Objection

This stage is triggered by the worker's filing of a claim and extends through to the WSIB's decision on entitlement or other issues. The worker is responsible for filing their own claim and ensuring that their doctor completes a Form 8 or CMS8 in the case of a claim for occupational mental stress. The member is required to report the incident or illness to the employer as soon as reasonably possible. OECTA Provincial will not normally commence a claim for a worker. The local unit should assist the member with the filing of a claim where the member requests such support.

Assistance would not be required at every step in this stage of a workers' compensation claim. In many cases, however, such assistance would be particularly helpful through provision of early intervention with the workers' compensation to provide persuasive information before a formal decision is made. Examples of where OECTA representation by the unit could be useful in this stage of the claim, include the following:

- Addressing worker questions concerning claim filing and WSIB processing.
- Representing members in Return to Work (RTW) issues involving the employer and the WSIB: these include returns to modified duties, negotiating work-hardening programs, etc.
- Early intervention with the WSIB to ensure that relevant information is being provided before a decision is made (eg. identifying relevant witnesses, addressing issues with available medical information, etc.)

If OECTA provides advice to a member at this stage of the claim, it will typically be through OECTA local representatives. Local release officers will have direct knowledge of local issues and school board processes that may assist in this stage of the claim. The local release officer should obtain access to the member's claim file by having the member complete and sign a Direction of Authorization form and submitting it to the WSIB. OECTA Provincial Staff Officer is an ongoing resource to local representatives.

Stage II: Reconsideration of Case Manager Decisions

Initial decisions of the Case Manager against an injured worker involving entitlement to a claim, Loss of Earnings (LOE), or entitlement to health care benefits will be challenged via a written submission known as a Reconsideration, which is prepared by the injured worker with the assistance of a local release officer.

1. Deadlines

Written decisions of a Case Manager have a **six month appeal time limit**. The deadline is commonly set out in the decision letter that is sent to the worker. To protect this appeal time limit, the worker must submit an Intent to Object Form (ITO) as soon as possible following the date of the negative decision and it must be on file with the WSIB within six months of the date of the Case Manager's decision letter. It is not necessary to complete Section 6 of the Form when it is submitted and it is advisable to include the statement "*additional information to follow in the near future*" in Section 7. It is also possible that there may be numerous decisions made by the WSIB in any one claim (e.g. initial entitlement, assessment of workplace restrictions, duration of benefits, return to work). Each WSIB decision that the worker disputes must be listed on an ITO. The local unit should assist the member with the ITO.

2. Access

A complete copy of the claim file should be requested from the WSIB when the ITO is submitted. The printed copy of a claim file is known as Access. Receipt of the claim file is the first full opportunity to know what the WSIB considered in the course of making its decision. Once the file is reviewed, the local parties can determine what, if any additional information, is required to support arguments to the case manager that might convince him/her to change the negative decision. It may be necessary to obtain additional medical information. A written submission will be prepared by the local release officer and the injured worker, and the package will be provided to the WSIB.

Contact may be made by phone to the WSIB on straightforward issues or by a letter to the WSIB requesting Reconsideration and addressing errors on the face of the WSIB's decision, providing witness contact information or statements, or alerting the WSIB to a policy it did not already consider.

3. Early Intervention

Early substantive submissions at this stage with additional information can be particularly useful where there is something on the face of the CM's decision that may be readily corrected: e.g.

- the CM has clearly failed to consider a ground for entitlement; the CM has clearly misunderstood a fact not necessarily in dispute between the worker and accident employer;
- the CM makes reference to one WSIB policy but clearly has not applied another relevant policy;
- the CM has failed to obtain information from a relevant witness or the CM has misunderstood something in respect of the particular workplace or teaching practice.

Where the claim comes down to disputes concerning issues turning on medical support, such as cases where the CM has explicitly relied on the opinion of the WSIB medical consultant, it is most prudent to wait for Access before formally processing the claim as it will disclose the WSIB medical advisor's opinion. Once Access is received, the claim may be more completely assessed and additional information may be gathered to provide to the WSIB with a request for Reconsideration. OECTA Provincial Staff Officer is an ongoing resource to local representatives.

Stage III: Appeal of Appeals Resolution Officer (ARO) Decisions

1. Deadlines

A claim file is forwarded to the Appeals Branch of the WSIB where a Reconsideration decision upholds a previous negative decision. At this point the member may request continued assistance from OECTA. All deadlines relating to the claim must be met locally before a claim file is referred to the Provincial Office. The local unit officer will ensure initial appeals paperwork such as the Direction of Authorization and Objection to Release of Medical Information are submitted to the WSIB within specified timeframes.

2. Transfer to Provincial Office & Legal Counsel

The Staff Officer will arrange for a file to be established on the Provincial File Management System and the local officer will upload the WSIB file documents and any other information on file relating to the claim. The Staff Officer will review the file and make a determination whether it does or does not merit consideration by the Provincial Executive for referral to OECTA legal counsel.

If OECTA is no longer involved with the appeal of the claim, the Association, through the local office, will continue to be involved to support the member for reasons such as return to work/workplace accommodation and for issues that may arise under the collective agreement. The member may move the file forward on his/her own or with a private representative at his/her own expense but OECTA will not be involved with that appeal in any way.

OECTA legal counsel may recommend obtaining additional information (especially medical) prior to making a recommendation to the Staff Officer regarding the chances of success relating to moving an appeal forward before the ARO.

3. ARO Appeals at Provincial Office

Once the file is ready for hearing, OECTA legal counsel will submit an Appeals Readiness Form to the Appeals Branch. The Appeals Branch will assign the file to an ARO and arrangements will be made to hear the matter. Hearings before the ARO can be live or in writing. The Staff Officer, in consultation with OECTA legal counsel, will decide if a live hearing or a hearing in writing will be requested.

In a case where the worker advances an appeal to the ARO, the employer will be given the chance to participate via an Employer Participation Form. If the employer is going to participate in the appeal, the employer will have access to the complete medical records contained in the file. Up to this point in the claim, the employer only received medical information relating to functional abilities. The worker will be sent documents relating to the release of the medical information to the employer. The worker has the right to object to the release of medical information to the employer but in practicality this is limited to an entire document that may not be germane to the claim or a reference in a document that is not germane to the claim. In the case of the former, the worker could ask that the document not be provided to the employer and in the latter, the worker could ask that the particular reference in the document be redacted. The local unit officer should assist the member with the review of medical information and submission of the form. The WSIB will make a decision on the request and a negative decision can be appealed to WSIAT.

Stage IV: Appeal of Appeals Resolution Officer Decision to the Workplace Safety and Appeals Tribunal (WSIAT)

The appeal of an ARO decision is completed before the Workplace Safety and Insurance Appeals Tribunal (WSIAT). As with the ARO Appeal process, OECTA legal counsel will review the negative decision and may recommend obtaining additional information (especially medical) prior to making a recommendation to the Staff Officer regarding the chances of success relating to moving an appeal forward before WSIAT.

1. WSIAT Appeals at Provincial Office

Once a decision is made to provide funding for a WSIAT appeal, legal counsel will complete the following:

- filing a Notice of Appeal (which must be filed within 6 months of the ARO decision under appeal),
- obtaining the updated access of the claim file,
- collecting any additional witness, medical information or other evidence,
- filing the Confirmation of Appeal with the Tribunal office.

The hearing before the WSIAT involves witness testimony and cross-questioning as well as legal argument. School boards who participate in the appeal normally have representatives. Sometimes the representative is an in-house school board worker's compensation staff person but, more commonly, the school boards are represented by a workers' compensation advocate (paralegal) from an organization such as School Boards Cooperative or by legal counsel.

Once the file is ready to be heard, a Confirmation of Appeals Form is submitted to the WSIAT and the hearing will be scheduled. Decisions of the WSIAT are final but subject to Judicial Review.

Decisions on whether to challenge a WSIAT decision via Judicial Review are made by the Staff Officer and Legal Counsel.

III. Employer Appeals

A worker's entitlements under the *Workplace Safety and Insurance Act (WSIA)* are as much at stake in an employer appeal as they are in a worker appeal. If the employer succeeds in an appeal on one issue, that outcome may affect numerous other decisions in the worker's claim.

School boards have the ability to object to any WSIB decision made in favour of an injured worker. In some cases, the employer does this to meet the time limit but may not actually proceed with the appeal. In other cases, the appeal proceeds to a hearing before an ARO.

1. Employer Appeals - Deadlines

The worker will receive notice of this objection when the employer has provided the WSIB with an ITO Form. It is up to the worker to respond by the deadline. The member should contact the local unit officer if they receive any such notice of employer appeal. If the claim otherwise meets the OECTA criteria for representation, the Staff Officer will recommend referral to OECTA legal counsel to the Provincial Executive. The unit officer will assist the member in completing the Worker Participation Form, the Objection to Release of Medical Information, and WSIB Direction of Authorization Form and will ensure it is returned to the WSIB within the notice time frame.

2. Employer Appeals at Provincial Office

Once an ARO is appointed to the appeal, the Staff Officer, in consultation with OECTA legal counsel, will decide what further assistance OECTA would provide. If the claim otherwise meets the OECTA criteria for representation, OECTA provincial staff may anticipate areas of weakness in the case and offer to seek additional medical or factual information to bolster it in the face of the employer appeal.

If an employer's appeal to an ARO fails or if a worker's appeal to the ARO succeeds, the employer may decide to appeal the ARO decision to the WSIAT. If the claim otherwise meets the OECTA criteria for representation, the Staff Officer, in consultation with OECTA legal counsel, will recommend what additional assistance OECTA should extend to the member in responding to the employer appeal.

IV. Criteria for Representation on Workers' Compensation Appeals

In the interests of its membership as a whole, OECTA extends assistance to members in appeals of denied workers' compensation benefits. Such assistance will not be extended in every instance. The criteria applied to determine whether assistance will be extended include, but are not limited to:

Threshold Assessment of Likelihood of Success

Subject to the restrictions listed below, OECTA will conduct an assessment of the claim and any medical support available. OECTA may consider providing funding for legal representation where it has been determined that there is a substantial likelihood of success. Assistance may also be provided in cases where OECTA has assessed the claim as involving a test case issue likely to be of importance to OECTA membership more broadly and standing a reasonable chance of success.

The same assessment will be made irrespective of whether the appeal has been filed by the worker or the employer.

Where a member has both an LTD claim and a workers' compensation claim for the same absence and the member is seeking assistance from OECTA for both cases, OECTA will consider the requests together to determine whether OECTA will provide assistance in both claims. Approval for funding for a workers' compensation appeal does not guarantee approval of funding for an LTD claim, and vice-versa.

Representation through Legal Counsel

Notwithstanding this criteria, OECTA provincial will determine whether and/or when OECTA legal counsel will be involved in the representation of a worker in a workers' compensation appeal.

In the event that OECTA agrees to retain legal counsel to act as the worker representative, the worker will be asked to enter into a retainer agreement between the worker and OECTA clarifying the role of OECTA legal counsel and outlining the terms of their involvement.

Restrictions on Representation

The OECTA will not assess worker appeals and will not provide representation to workers in circumstances including, but not limited to:

- The member has already independently retained a worker representative in the course of the claim. This includes members who had another worker representative involved at an earlier stage of the claim and are now seeking the involvement of OECTA. It also includes members who ceased using OECTA assistance to retain their own representative.
- The member has missed a time limit in the course of the claim, particularly for initiating the claim, for filing an Intent to Object Form, or a Notice of Appeal Form.
- Where the issue in dispute concerns the Loss of Earnings (LOE) of ten (10) or fewer school days.
- The issue in dispute concerns employer access to the Second Injury Enhancement Fund.
- The accident at issue or condition giving rise to a recurrence claim initially arose when the worker was not an OECTA member.
- The issue in dispute concerns the calculation of the member's earnings for benefit calculations.
- The issue in dispute concerns the provision of health care benefits for less than six weeks.

- The member has failed to contact the Association within a reasonable time period following denial of the claim or receipt of other important correspondence from the WSIB.

Where OECTA is willing to assess the claim, OECTA will not provide representation where it determines the following:

- There is evidence that the worker has failed to cooperate with the Association.
- Significant and necessary evidence from a witness is not available.

Once OECTA has determined that it will provide a member with assistance in a workers' compensation appeal, such assistance will be extended on the basis of several conditions:

- The worker fully cooperates with OECTA and/or its legal counsel in providing information OECTA has assessed as necessary for the assessment, preparation or advancing of the claim.
- The worker responds to all inquiries from OECTA and/or its legal counsel in a timely manner.
- The worker provides OECTA and/or its legal counsel with any and all signed medical releases OECTA determines are necessary to proceed.
- The worker agrees with the strategy and other decisions OECTA and/or its legal counsel communicate with respect to advancing the claim. Where there is disagreement, the worker will be free to appoint an independent representative at his/her own expense or represent himself/herself.
- The OECTA representative on the workers' compensation claim will be given full access to any and all information collected for other purposes concerning the worker and his/her medical condition or accident, including but not limited to any information gathered in the collective bargaining process or in respect of assistance provided in an LTD claim.
- In cases where OECTA Provincial determines that legal counsel will be retained as the worker representative, the worker agrees to execute the release required by OECTA, and the WSIB Direction of Authorization Form.
- OECTA will be free to continue to assess the claim as the matter is prepared or more information is obtained. If, in the course of representing the worker in the process of the appeal, OECTA receives additional information causing it to reassess the merits of the claim and determines the claim has less than a 50% chance of success and does not involve a test case with sufficient chance of success, OECTA will discontinue its representation and the worker will be free to retain independent representation or represent themselves.

References:

Workplace Safety and Insurance Board: www.wsib.ca

Workplace Safety and Insurance Appeals Tribunal: www.wisiat.on.ca

OECTA WORKERS' COMPENSATION CLAIMS PROCESS CHART

CLAIM PROCESS	LOCAL	PROVINCIAL	LEGAL
Stage I – Pre-Objection	X		
	<ul style="list-style-type: none"> - The worker is responsible for filing their own claim - The member is required to report the incident or illness to the employer as soon as reasonably possible. - The local unit should assist the member with the filing of a claim where the member requests such support, including: <ul style="list-style-type: none"> o Addressing worker questions o Assisting with Return to Work issues involving the employer o Early intervention with WSIB to provide all relevant information 		
Stage II - Reconsideration	LOCAL	PROVINCIAL	LEGAL
	X		
	<ul style="list-style-type: none"> - The worker is expected to submit an Intent to Object Form (ITO) as soon as possible (no latter than 6 months) following the date of the negative decision - The local unit should assist the member with the ITO. - A complete copy of the claim file should be requested from the WSIB when the ITO is submitted. - Reconsideration: A written submission will be prepared by the local release officer and the injured worker, and the package will be provided to the WSIB. 		
Stage III – ARO Appeal	LOCAL	PROVINCIAL	LEGAL
	X	X	X
	<ul style="list-style-type: none"> - All deadlines relating to the claim must be met locally before a claim file is referred to the Provincial Office. - The Staff Officer will arrange for a file to be established on the Provincial File Management System and the local officer will upload the WSIB file documents and any other information on file relating to the claim. - The Staff Officer will review the file and make a determination whether it does or does not merit consideration by the Provincial Executive for referral to OECTA legal counsel. - OECTA legal counsel may recommend to the Staff Officer that an appeal should proceed before the ARO. - If an appeal moves forward, the file is managed by the Staff Officer and OECTA legal counsel 		
Stage IV – WSIAT Appeal	LOCAL	PROVINCIAL	LEGAL
		X	X
	<ul style="list-style-type: none"> - OECTA legal counsel may recommend to the Staff Officer that an appeal should proceed before WSIAT. - If an appeal moves forward, the file is managed by the Staff Officer and OECTA legal counsel 		