



How to File an Employment Insurance Appeal (Appeal Division)



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1. Who We Are and What We Do

The Social Security Tribunal of Canada is a quasi-judicial administrative tribunal that is independent of the Department of Employment and Social Development Canada. The Tribunal has the mandate to hear and make decisions on appeals of reconsideration decisions that were made by the Canada Employment Insurance Commission (CEIC).

If you disagree with a CEIC reconsideration decision related to a claim for Employment Insurance benefits, you may appeal this decision to the Tribunal.

The Tribunal's mandate is to offer fair, impartial and efficient appeal processes for Canadians.

The Tribunal consists of a General Division and an Appeal Division. All appeals to the Tribunal must start at the General Division, first level of appeal. Where a party believes the General Division decision contains an error, the party may file an appeal at the second level of appeal, the Appeal Division. All decisions are made by a single member.

The Tribunal understands that the appeal process may seem long and that waiting for a decision can be difficult. However, the Tribunal must follow the laws and regulations to render quality decisions in a timely manner.

1.1. Who can appeal

To appeal to the Appeal Division, a party must have a General Division decision that the party believes contains an error.

Any decision issued by the Tribunal's General Division related to a claim for Employment Insurance benefits may be appealed to the Appeal Division.

Any person who is the subject of a General Division decision can appeal that decision to the Appeal Division. This includes a claimant, an employer, an added party and the Canada Employment Insurance Commission.

2. Employment Insurance Appeal Process at the Appeal Division

2.1. Before appealing

The Appeal Division is the second level of appeal to the Tribunal. This means that parties can appeal to the Appeal Division only if they have already received a decision from the General Division.

A party cannot appeal to the Appeal Division simply because they do not agree with the decision of the General Division. An appeal before the Appeal Division is not a second opportunity for parties to present their case and show they are entitled to a benefit under the *Employment Insurance Act*. An appeal to the Appeal Division must meet the requirements of the legislation as described below.

Overview of the appeal process

The law sets out a two-step process for most appeals before the Appeal Division.

Step 1 | Leave to appeal, which means getting the permission to appeal from a Tribunal member, and

Step 2 | If leave to appeal is granted, a Tribunal member will make a decision on the merits of the appeal.

Step 1

At the leave to appeal stage, a party must show that their appeal has a reasonable chance of success based on one of the following three grounds:

- 1) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- 2) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- 3) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Step 2

If leave to appeal is granted, a member of the Appeal Division will decide the merits of the appeal, meaning that the member will decide if it is more likely than not that the General Division made at least one of the errors listed in the grounds of appeal above.

Exception

If the General Division summarily dismissed the appeal, a party can appeal to the Appeal Division without asking for leave to appeal. This means that the first step is not required and the Tribunal member will only decide the merit of the appeal (step 2).

2.2. When to appeal

As a general rule, the Tribunal must receive an appeal within **30 days** after the day that the General Division decision was communicated to the parties.

To make sure the deadline is not missed, parties should start counting days on the day immediately following the day the General Division decision was communicated (holidays and weekends are included in the 30 days).

Example (applies to all General Division decisions except summary dismissals):

If a party received the General Division decision on September 3, then September 4 is day 1. This means that the Appeal Division of the Tribunal must receive the appeal no later than October 3.

If October 3 falls on a Saturday or Sunday, the Tribunal must receive the appeal no later than the following Monday.

September							October						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
					1	2	1	2	3	4	5	6	7
3	4	5	6	7	8	9	8	9	10	11	12	13	14
10	11	12	13	14	15	16	15	16	17	18	19	20	21
17	18	19	20	21	22	23	22	23	24	25	26	27	28
24	25	26	27	28	29	30	29	30	31				

If the General Division summarily dismissed the appeal, the 30-day timeline does not apply. However, a party who wants to appeal the General Division’s summary dismissal to the Appeal Division should do so as soon as possible after receiving the General Division decision. A party can find out whether the General Division summarily dismissed the appeal by checking the cover letter of the General Division decision; the subject line of the letter will read “Decision – Summarily Dismissed.” A party can also call the Tribunal to confirm whether the General Division summarily dismissed the appeal.

2.3. How to appeal

How to request leave to appeal (for all General Division decisions except summary dismissals)

To file an application to appeal to the Appeal Division, parties must complete the Application to the Appeal Division – Employment Insurance form and send it to the Tribunal. Parties must also attach the General Division decision and include any required information in their submission.

If a party cannot access the Application requesting leave to appeal to the Appeal Division form online, they can contact the Tribunal and it will send them the form. See section 8 for contact information.

Under the law, leave to appeal is a mandatory first step for all appeals to the Appeal Division, except for appeals of General Division decisions that were summarily dismissed.

How to appeal a summary dismissal decision from the General Division

To appeal a General Division summary dismissal decision, parties must complete the Application requesting leave to appeal to the Appeal Division form and send it to the Tribunal. Parties must also attach the General Division decision and include all required information in their submission. If, for any reason, a party cannot access the Application to the Appeal Division – Employment Insurance form online, it can contact the Tribunal and it will send them the form.

Reasons to appeal

At the General Division, it is sufficient for a claimant to explain why they disagree with the reconsideration decision of the Canada Employment Insurance Commission (CEIC). However, when appealing to the Appeal Division, a party must first obtain permission to appeal to the Appeal Division (known as “leave to appeal”) by proving that the appeal has a reasonable chance of success. To do this, a party must show that the General Division either:

- a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

As such, if a party wants to appeal a decision to the Appeal Division, they must clearly explain how the member of the General Division made a mistake in the General Division decision.

Late appeals

This section does not apply to appeals of a summary dismissal decision from the General Division.

If an applicant files an appeal after the 30-day deadline, the appeal may not be accepted. Applicants who apply late will need to explain why the appeal is late in the Application to the Appeal Division – Employment Insurance form. Please find this form at <http://www1.canada.ca/en/sst/forms.html>, or contact the Tribunal to obtain a copy.

A member of the Appeal Division will decide whether to allow the appeal to move forward. Applicants may include documents that support their explanations, such as a copy of a doctor's report. To establish that it is in the interest of justice to allow the appeal to move forward, applicants should explain:

- The reason the appeal is late
- The arguments to support the appeal and show that it has a chance of success
- The steps taken that show that they were always planning to appeal
- Why allowing the late appeal would not be unfair to the other party

A member of the Appeal Division cannot allow the appeal to proceed if more than 12 months have passed since the General Division decision was communicated to the parties.

If the member of the Appeal Division refuses to allow the appeal because it was late, the Appeal Division will close the appeal file. If parties disagree with the Appeal Division's decision, they may file an application for judicial review with the Federal Court.

Where to submit an appeal

Parties may send appeal documents to the Tribunal by mail, email or fax. See section 8 of this document for contact information.

2.4. Key steps in an appeal

Step 1 | To start an appeal, parties must complete the Application to the Appeal Division – Employment Insurance form and submit it to the Tribunal. Parties must also submit a copy of the General Division decision and any relevant information to the Tribunal.

Step 2 | The Tribunal will send a letter to the party confirming that it received the appeal. If the appeal is missing information, the Tribunal will ask the party to provide it. The appeal process will not start until the Tribunal receives any missing information. If the appeal appears to be late the Tribunal will inform the party of this. The appeal process will not start until a Tribunal member decides if the appeal can move forward.

Step 3 | The appeal will be assigned to a Tribunal member.

Step 4 | The Tribunal member will consider, based on the documents in the file, whether leave to appeal (permission) should be granted and will provide reasons for their decision. If leave is not granted, the appeal does not continue and the file will be closed.

This step does not apply if the General Division had summarily dismissed the appeal.

Step 5

If leave is granted, parties will have 45 days to send submissions regarding the appeal. After the 45 days, whether or not submissions are received, the Tribunal member will decide whether to:

- a) make a decision based on the parties' documents and submissions on file, or
- b) schedule a hearing.

Step 6

If the Tribunal member decides to conduct a hearing, parties and their representatives (if applicable) will receive a Notice of Hearing that will state the type of hearing and other information, such as the date, time and location of the hearing. The Tribunal member may hold a hearing:

- by teleconference;
- by videoconference;
- in-person; or
- by written questions and answers.

Step 7

After the hearing, the Tribunal member will make a decision on the appeal. The Tribunal will send the parties the decision in writing. The Tribunal has service standards that identify the timelines in which parties can expect the decision to be issued (please see section 6 in this document).

Step 8

If a party disagrees with the Appeal Division's decision, they may go to the After Receiving the Appeal Division Decision section for information on their options.

2.5. Hearings

Tribunal members will decide on most applications for leave to appeal based on the information in the appeal file, also known as a "decision on the record."

Once the Tribunal member grants leave to appeal, the Tribunal member will then decide to make the decision based on the record or will schedule a hearing.

Hearings are open to the public. However, all or part of a hearing may be held in private if the Tribunal member finds it necessary based on the circumstances of the case. A party may ask the Tribunal member to hold all or part of a hearing in private. This request must be made at the beginning of the hearing.

Types

The Tribunal may hold a hearing:

- by teleconference;
- by videoconference;
- in-person; or
- by written questions and answers

The Tribunal member will decide what type of hearing will be held.

Teleconference hearings

A teleconference hearing takes place by telephone.

A Notice of Hearing will be sent to the parties and their representative (if they have one). The Notice of Hearing will indicate the date and time of the teleconference hearing and will include the teleconference number to call. The parties are responsible for calling the number provided in the Notice of Hearing.

If parties have a witness, or witnesses, they must ensure that the witnesses are able to call the teleconference number at the scheduled date and time.

Parties are encouraged to dial-in 10 minutes before the time set for the teleconference hearing.

The Tribunal makes an audio recording of every teleconference hearing. Parties may contact the Tribunal to ask for a copy of the recording.

Videoconference hearings

A hearing by videoconference takes place using videoconference equipment so that the participants can hear and see one another from different locations. For example, the parties may be in one location and the Tribunal member in another.

A Notice of Hearing will be sent to you and your representative (if you have one). The Notice of Hearing will advise you of the date, time and location of the videoconference hearing.

The Tribunal will normally schedule the videoconference at a location nearest to the address you have provided to the Tribunal. This will usually be at a local Service Canada office.

If parties have a witness, or witnesses, parties must ensure that the witnesses are available to attend the videoconference hearing at the scheduled date, time and location.

Parties are encouraged to arrive at least 30 minutes before the time set for the videoconference hearing.

The Tribunal makes an audio recording of every videoconference hearing. Parties may contact the Tribunal to ask for a copy of the recording.

In-person hearings

For an in-person hearing, all parties and the Tribunal member attend the hearing in the same location.

A Notice of Hearing will be sent to you and your representative (if you have one). The Notice of Hearing will advise parties of the date, time and location of the in-person hearing.

The Tribunal will normally schedule the in-person hearing at a location nearest to the address you have provided with your appeal. This will usually be at a local Service Canada office.

If parties have a witness, or witnesses, parties must ensure that their witnesses are available to attend the in-person hearing at the scheduled date, time and location.

Parties are encouraged to arrive 30 minutes before the time set for the in-person hearing.

The Tribunal makes an audio recording of every in person hearing. Parties may contact the Tribunal to ask for a copy of the recording.

Written questions and answers hearings

Hearings by way of written questions and answers are conducted without the parties present. The Tribunal member will ask questions, in writing, of one or more of the parties and the parties will have to provide their answers in writing.

The Notice of Hearing will set out the questions, who must answer them, and the date by which the Tribunal must receive the answers. The Tribunal must receive the answers to the questions by the deadline identified in the Notice of Hearing.

The Tribunal will send the answers received from each party to all the other parties, with a deadline for any additional input. The Tribunal member may also ask follow-up questions.

After the deadlines have passed, the Tribunal member will decide the appeal based on the information in the appeal file.

How to prepare for a hearing

- 1) When preparing for the hearing, a party should consider what will help the Tribunal member understand the reasons for the appeal.
- 2) A party may want to read the General Division decision again and review all the documents that they have received from the Tribunal. In addition, a party may wish to listen to the audio recording of the General Division hearing. Parties may ask for an audio recording of the General Division hearing by writing to the Tribunal by email or letter, or by completing and submitting an Audio Recording of Hearing Request form to the Tribunal.
- 3) Parties may want to consult the following sources of law: the *Employment Insurance Act*, the *Employment Insurance Regulations*, as well as decisions from the Supreme Court of Canada, the Federal Court of Appeal and the Federal Court.
- 4) Parties may also want to consider previous decisions from the Social Security Tribunal.
- 5) Parties should be prepared to address questions such as the following:
 - Why is the error an error of law? Is a specific portion of the decision of the General Division contrary to a provision of the *Employment Insurance Act*, a

provision of the *Employment Insurance Regulations*, a decision of the Supreme Court of Canada, a decision of the Federal Court of Appeal or a decision of the Federal Court?

- Why is it that the error of fact was made in a perverse or capricious manner or without regard for the material before it? What are the page numbers of the documents that were before the General Division that establish that it is this type of error? At what time into the recording (for example, 30 minutes and 40 seconds after the hearing before the General Division started) did a witness explain a fact that establishes that it is this type of error?
 - Why is it that the General Division did not have jurisdiction over a specific issue? What is the provision of the law that provides such jurisdiction? If the General Division did not have jurisdiction, which tribunal or court has jurisdiction?
- 6) All Tribunal hearings are held in either English or French. If a party has limited English or French skills, they must contact the Tribunal as soon as they receive the Notice of Hearing, and the Tribunal will provide an interpreter at no cost to the party.
 - 7) Parties must have their paperwork organize and bring all their documents to the hearing. They must make sure to bring the complete and paginated record provided by the Tribunal.
 - 8) Parties are encouraged to arrive sufficiently in advance of the start time of the hearing.

How to request a change in hearing date

Within 2 days of receipt of the Notice of Hearing

Any party can request a change of hearing date by contacting the Tribunal by telephone within 2 business days of receiving the Notice of Hearing. Tribunal staff will set a new hearing date. This is an administrative change that is available only once to each party.

Beyond 2 days of receipt of the Notice of Hearing

If more than 2 business days have passed since a party received the Notice of Hearing or if an administrative change has been previously granted, a party wishing to change the hearing date will have to request an **adjournment**.

Requesting an adjournment

An adjournment request to the Tribunal must be in writing (letter, email or fax) and the party requesting it must explain why they cannot attend the hearing on the date and time set out in the Notice of Hearing. The Tribunal member will decide whether to grant the adjournment request.

If the Tribunal member grants the request, the Tribunal will set a new hearing date. If the request is refused, the hearing will proceed as scheduled.

If the Tribunal member allows a party's request for an adjournment, the Tribunal member will not grant that same party a second adjournment request unless there are exceptional circumstances.

Unless the parties receive notice from the Tribunal that the hearing date has been changed, the hearing will go ahead on the date and time identified in the Notice of Hearing.

Hearing structure

The Tribunal member presides over the hearing.

The time required for a hearing varies depending on the complexity and the number of issues under appeal.

A Tribunal hearing (other than a written questions and answers hearing) follows a set structure:

Start of the hearing

At the start of a hearing, the Tribunal member will offer opening remarks and explain how the hearing will be conducted.

Submissions

Every party will have a chance to present their case.

The party who appealed to the Appeal Division will be asked to explain why they believe that the General Division:

- a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

The other party or parties will also have the opportunity to present their arguments.

Before the end of the hearing, each party will get one last chance to state why they believe the Tribunal member should decide in their favour and make a factual or legal argument if they wish.

Conclusion and decision

The hearing generally concludes with closing remarks from the Tribunal member. The Tribunal member will then decide the matter and write their decision.

The Tribunal will send the decision by mail to each party and their representative, if they have one.

2.6. Decisions

The Tribunal will send the decision by mail to each party and their representative, if they have one.

Members strive to meet the Tribunal's service standards and issue timely decisions. Exceptional cases, such as Charter cases, group appeals, late appeals, cases in abeyance, or those with added parties, will generally take more time to process. Another reason for the Tribunal not to meet the proposed standards would be where requests for extension of time are granted to ensure that natural justice is respected. In addition, there are several factors beyond the Tribunal's control that may prevent it from adhering to the service standards, such as a surge in the volume of cases, the complexity of cases and the availability of members.

The Tribunal publishes, on its website, all decisions from the Appeal Division. However, the name of the claimant and those of personal acquaintances (when applicable) are replaced by initials and personal information, such as date of birth, address and social insurance numbers, is replaced with an X.

After receiving the Appeal Division decision

If a party disagrees with the Appeal Division's decision, an application for judicial review may be filed before either the Federal Court of Appeal or the Federal Court, depending on the decision being judicially reviewed. The cover letter accompanying the decision of the Appeal Division will indicate if the request for judicial review should be made to the Federal Court of Appeal or the Federal Court.

In limited circumstances, parties may also be able to submit an application to the Appeal Division to rescind or amend the Appeal Division decision.

3. Representatives

Parties to an appeal can represent themselves before the Tribunal.

Parties also have the right to name a representative (such as a friend, family member, lawyer or other professional) at any time during the appeal. To do so, parties must complete and sign the Appointment of a Representative and Authorization to Disclose form. This form gives the representative permission to act on the party's behalf. Once a representative is named, the Tribunal will communicate and share information with the representative. It is the representative's responsibility to share all information related to the appeal with the party who has engaged the representative. Whether represented or not, all parties will receive the Notice of Hearing and the Tribunal's decision directly from the Tribunal.

If a party decides to change their representative or to no longer use a representative, the party must complete and send a revised Appointment of a Representative and Authorization to Disclose form to the Tribunal as soon as possible.

Parties are responsible for all costs related to representation.

Some parties may qualify for Legal Aid services or for a free consultation with a lawyer. Local or national organizations may also advise parties. The Tribunal cannot provide any legal advice or recommend a representative.

3.1. Role of a representative

A representative can help throughout the appeal by preparing or obtaining documentation in support of the appeal, preparing the Notice of Appeal, questioning witnesses at the hearing and making submissions. A representative may:

- represent a party for the entire appeal, including the hearing;
- help a party until the hearing and the party attends the hearing alone; or
- represent a party at the hearing whereas it is the party who has managed the appeal until then.

A witness is a person who provides evidence to the Tribunal. A representative is not normally a witness.

4. Costs

There is no fee to file an appeal with the Tribunal. However, parties may have to cover some or all of the following:

- Photocopying
- Sending documents to the Tribunal by Canada Post or a courier service
- Paying a health professional to write a report on your behalf (if you so choose)
- Hiring a representative to appear on your behalf
- Translating documents from another language into either English or French
- Taking time off work to participate in your hearing
- Paying the expenses of your witness(es) to participate in the hearing (if required)
- Travelling to the hearing (if an in-person or videoconference hearing is selected)

Note that subsection 63 (1) of the *Department of Employment and Social Development Act* reads:

"Any party who is required to attend a hearing may, if the Chairperson in any particular case for special reasons considers it warranted, be reimbursed for their travel or living expenses up to the amounts determined by the Chief Administrator of the Administrative Tribunals Support Service of Canada, or be paid any allowance, including compensation for lost remuneration, in accordance with the rates fixed by that Chief Administrator."

5. Interpreters and translation

Parties have the right to communicate with the Tribunal in either of Canada's official languages: English or French.

5.1. Interpreters

For hearings heard in-person, videoconference or teleconference, the Tribunal will provide interpretation services for persons who cannot communicate effectively in English or French. In such cases, the Tribunal will provide and pay for an interpreter. An interpreter will translate questions and answers, and anything else that is said at the hearing. Please note that an interpreter cannot represent a party.

If a party needs an interpreter for the hearing, contact the Tribunal as soon as possible.

5.2. Translation of documents

All documents submitted to the Tribunal must be in English or French. Any documents sent to the Tribunal in a language other than English or French will not be accepted. They will be returned to the party who submitted the documents.

Documents in a language other than English or French must be translated into English or French. The translation is the responsibility of the party who wishes to file the document.

All translations must include the translator's contact information (address, telephone number and email address) and a signed and dated declaration from the translator that the translation is complete and accurate. The Tribunal must be provided with both the document in its original language and the translated version.

Parties are responsible for these translation costs to English or French. The Tribunal may verify the translation to ensure that it is accurate.

6. Service Standards

The Tribunal is constantly striving to provide Canadians with efficient and high quality services. To that end, the Tribunal has set service standards for each section and division, and is making every possible effort to meet them.

These service standards were developed in 2015, based on a series of assumptions, an analysis of the Tribunal's capacity, in terms of both members and staff, the specific caseload volumes in each Section/Division, the evolving state of our operational systems, the current legislation and regulations, reasonable expectations of parties and experience to date. These service standards may be revised from time to time as circumstances change.

The Tribunal's service standards apply to general caseloads. Exceptional cases, such as group appeals, constitutional cases, late appeals, cases in abeyance, or those with added parties, will generally take more time to process.

There are several other factors beyond the Tribunal's control that may prevent it from adhering to its service standards, such as a surge in the volume of cases, the complexity of cases, the availability of members and their capacity to meet performance expectations. In addition, the Tribunal may not meet the service standards if parties request, and are granted, adjournments or an extension of time.

For the Appeal Division – Employment Insurance section, the following service standards are in effect:

Decisions on Leave to Appeal:

85% of decisions on leave to appeal will be made within 60 days from filing of leave application.

Final Decisions – where leave has been granted:

85% of final decisions will be made within 7 months from the date leave to appeal was granted.

7. Other Tools Available

When preparing for your hearing, we invite you to consult the following tools also available on our website:

- **Employment Insurance reference tool** - <https://www1.canada.ca/en/sst/rdl/refei.html>
- **Organizations that can help** - <https://www1.canada.ca/en/sst/organizations.html>
- **Laws, regulations and practice directions** - <https://www1.canada.ca/en/sst/legislation.html>
- **Code of Conduct for Members** - <https://www1.canada.ca/en/sst/rdl/memcodcon.html>

8. Contact Us

The Tribunal provides service in English and French. The fastest way to send the Tribunal information is by email.

8.1. To reach the Tribunal

Mailing address



Social Security Tribunal of Canada
PO Box 9812
Station T
Ottawa, ON K1G 6S3



Email

info.sst-tss@canada.gc.ca



Telephone

From 7:00 a.m. to 7:00 p.m. Eastern Time - Monday to Friday:
1-877-227-8577 (toll-free in Canada and the United States)
613-437-1640 (from outside Canada and the United States, call collect)



Fax

1-855-814-4117 (toll-free in Canada)
1-613-941-5121 (long distance charges may apply)



TTY

For those who are deaf or hard of hearing
1-866-873-8381 (toll-free in Canada and the United States)
1-613-948-8181 (from outside Canada and the United States, call collect)

8.2. Mail from the Tribunal

The Tribunal will mail you important information about your appeal, such as hearing date, deadlines and decisions. It is in your best interest to open and respond to any letter from the Tribunal as soon as possible.

It is important to notify the Tribunal of any change to your contact information. You can update your mailing address and/or telephone number quickly and easily by contacting the Tribunal through any of the communication methods listed above.