

NORTHWEST TERRITORIES AND NUNAVUT Workers' Compensation Appeals Tribunal



2023

ANNUAL REPORT

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Honourable Vince McKay
NWT Minister Responsible for the WSCC

Honourable Pamela Gross
NU Minister Responsible for the WSCC

Dear Honourable Ministers:

In accordance with the *Workers' Compensation Act*, I am pleased to present the Northwest Territories and Nunavut Workers' Compensation Appeals Tribunal's 2023 Annual Report.

Sincerely,

Colin Baile
Chairperson

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OVERVIEW

The Northwest Territories & Nunavut Workers' Compensation Appeals Tribunal is an independent quasi-judicial tribunal, which hears appeals of decisions made by the Workers' Safety and Compensation Commission's (the "WSCC") Review Committee. Review Committee decisions may be appealed by a Worker or an Employer who is impacted by the Review Committee decision. The Tribunal may only hear matters for which the Review Committee has made a decision. One Tribunal Member normally adjudicates an appeal, however a panel of three may be struck to hear an appeal.

The Tribunal may confirm, vary or reverse any decision of the WSCC's Review Committee. While the Tribunal may make its own procedural rules, it must follow and apply the *Workers' Compensation Act* (the Act) of both the Northwest Territories and Nunavut. The Tribunal must also follow WSCC policies when deciding an appeal unless the Tribunal determines a policy does not apply to a case.

The workers' compensation system provides compulsory, no-fault mutual insurance for workers and employers. One of the corner stones of this system is the immunity from action. This means employers and workers cannot be sued as a result of a workplace accident. There are however very specific circumstances where such immunity may be challenged. Applications from any party to a court action may apply to the Tribunal for a determination of whether a person is immune from action under the Act.

The Northwest Territories Minister responsible for the Workers' Safety & Compensation Commission appoints Tribunal Members in consultation with the Nunavut Minister responsible for the Workers' Safety & Compensation Commission.

TRIBUNAL MEMBERS AND STAFF – 2023

Tribunal members are appointed by the Ministers responsible for the WSCC. Appointments to the Tribunal are merit-based requiring Adjudicators to have several years of experience as a lawyer and administrative tribunal adjudicator, or equivalent qualifications.

Colin Baile – Chairperson (Yellowknife)

Michael Chandler – Adjudicator (Iqaluit)

Cayley Thomas – Adjudicator (Yellowknife)

Cynthia Levy – Adjudicator (Yellowknife)

Maria Jobse – Registrar/General Manager

OPERATIONS

During this reporting period, one appeal and no Section 63 applications were received. Six Appeal decisions were issued. Two judicial review applications were made in 2023 regarding Tribunal decisions.

The Tribunal publishes its decisions in a redacted form on the CanLII online database. The decisions can be found at <https://www.canlii.org/en/nt/ntwcat/>.

FINANCIAL OPERATIONS

In 2023 the Tribunal's total expenditures were \$417,244 which was 71% of the Tribunal's budget of \$588,240.

TRIBUNAL MANDATE AND PROCEDURAL AUTHORITIES

The Appeals Tribunal (the Tribunal) is governed by the *Workers' Compensation Act* (the Act) of each Territory. The Tribunal's authority is defined in the Acts as hearing appeals of decisions made by the WSCC Review Committee. The Tribunal also hears applications under Section 63 of the Act to determine whether an employer is barred from action.

The Act allows the Tribunal to create its own procedures. These procedures are outlined in the *Rules of the Appeals Tribunal*. The Tribunal is ordinarily not bound by WSCC decisions or opinions. The Tribunal must apply WSCC policies where the Tribunal determines the policy applies to the circumstances of an appeal.

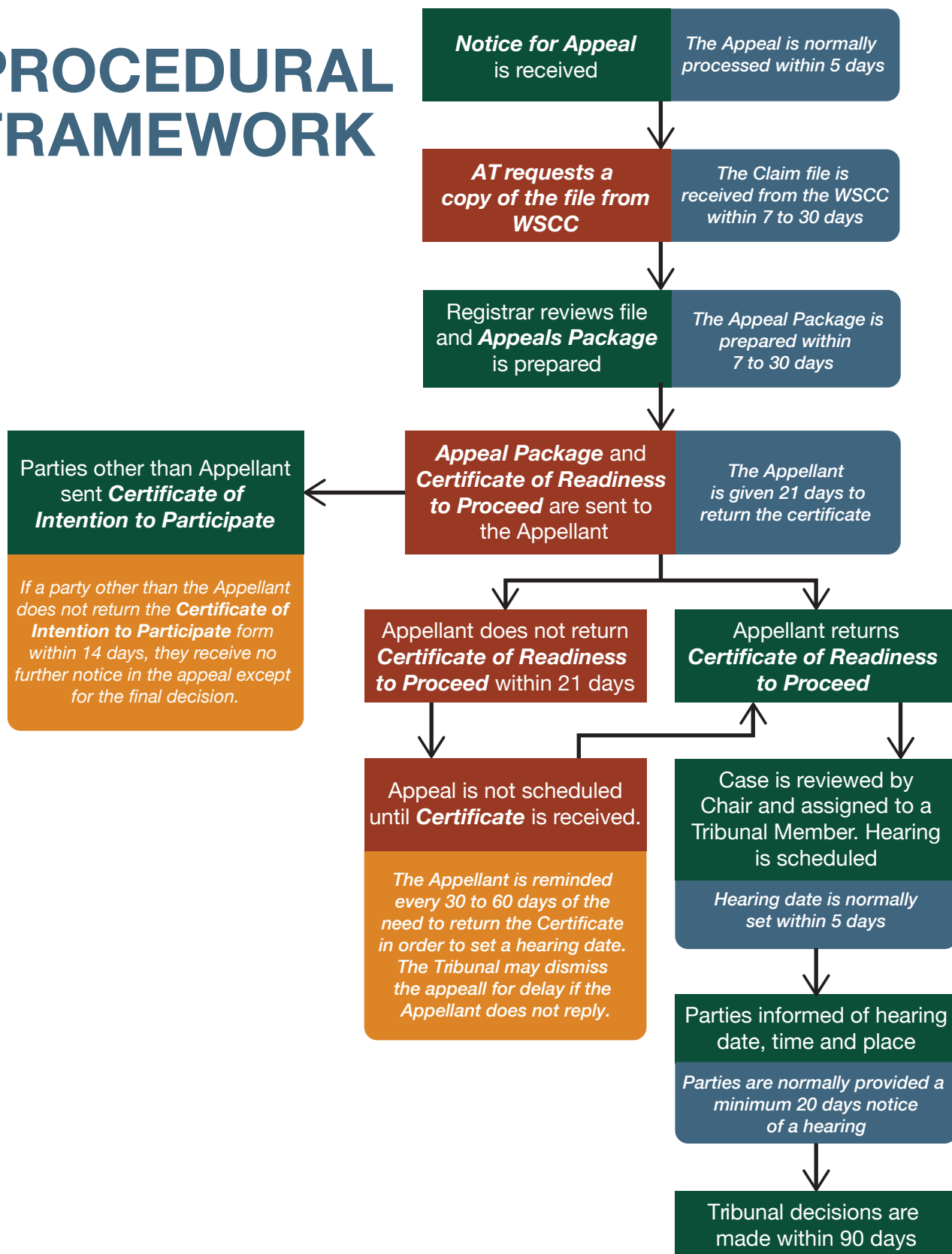
The Tribunal is an independent body, being administratively and legally separate from the WSCC.

The Appeals Tribunal is guided by the Act, principles of procedural fairness, and court decisions. Within this framework, the Tribunal endeavors to maintain a balance between fairness, efficiency, and access to justice.

Appeals are most often heard by documentary submissions, however hearings may also be conducted by teleconference, videoconference, or in-person. Tribunal decisions are written. The Act requires decisions to be made within 90 days of receiving all the evidence.

Tribunal decisions are final and conclusive. The Act provides for the WSCC's Governance Council to direct the Tribunal to rehear an appeal should the Governance Council determine the Tribunal has not properly applied one of its policies or failed to comply with the Act/Regulations. The Tribunal may reconsider a decision on the basis of new evidence. Appeals may be dismissed for delay of proceeding where the Tribunal determines procedural deadlines have not been met.

PROCEDURAL FRAMEWORK



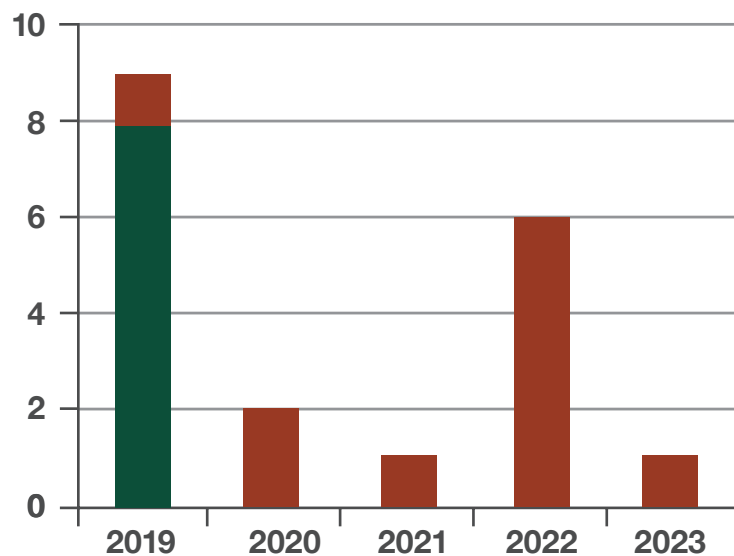
STATISTICS

Please refer to the Appendix for specific data.

APPEALS AND REQUESTS FOR REVIEWS RECEIVED

In 2023, one appeal was received.

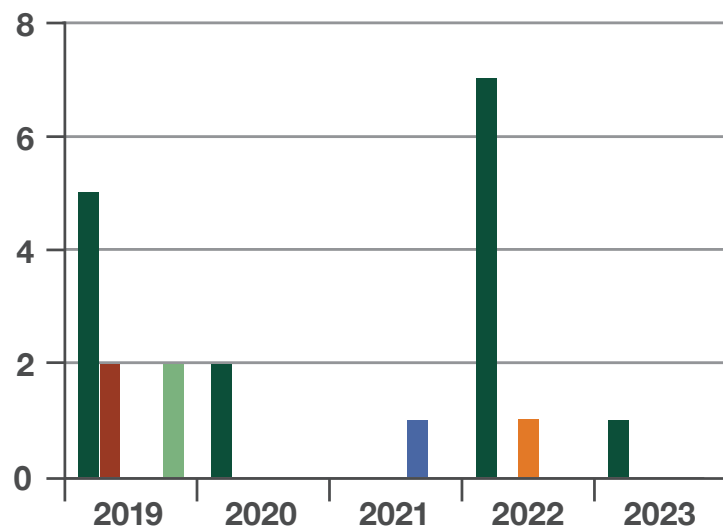
- Requests for Rehearing
- Appeals Received



ISSUES APPEALED

The one appeal received in 2023 addressed the issue of claim entitlement.

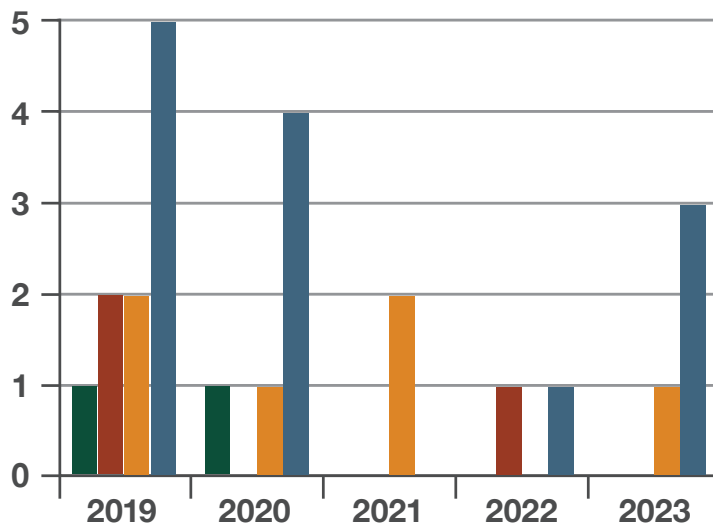
- Claims
- Pensions
- Revenue/Employer
- Rehabilitation
- Time Limit



TYPES OF HEARINGS

Of the four hearings conducted in 2023, three were documentary hearings, and one was a telephone conference hearing.

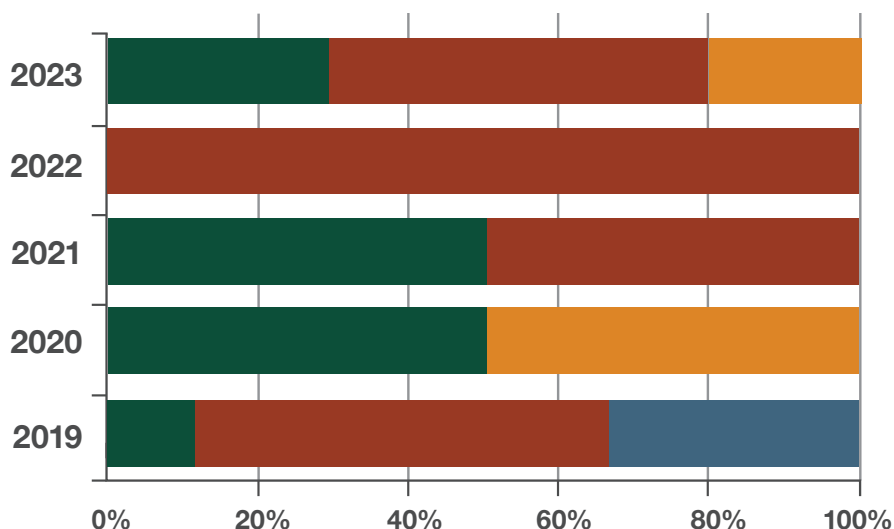
- In-Person
- Video Conference
- Telephone
- Documentary



DECISION OUTCOMES

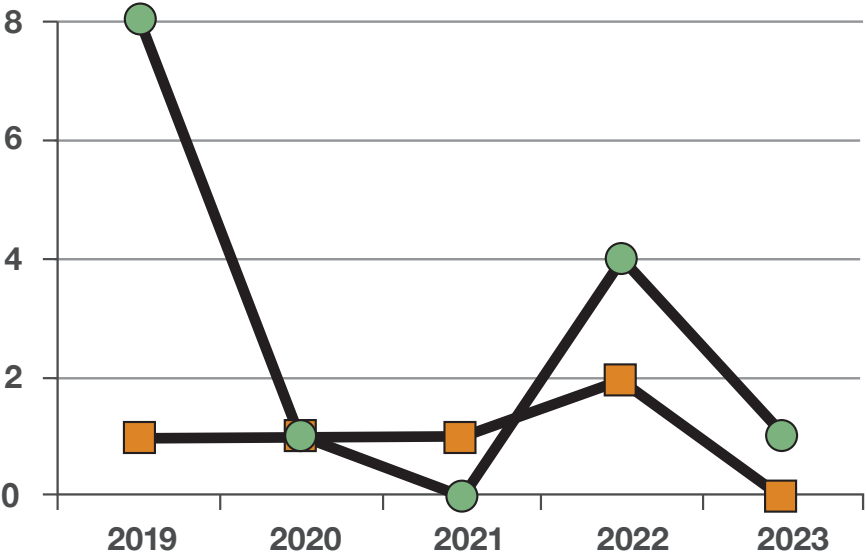
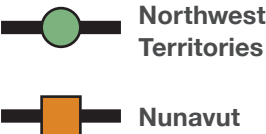
In 2023, the Tribunal issued six decisions, half of which upheld the appealed Review Committee decision.

- Reversed
- Upheld
- Varied
- Cancelled by Appellant



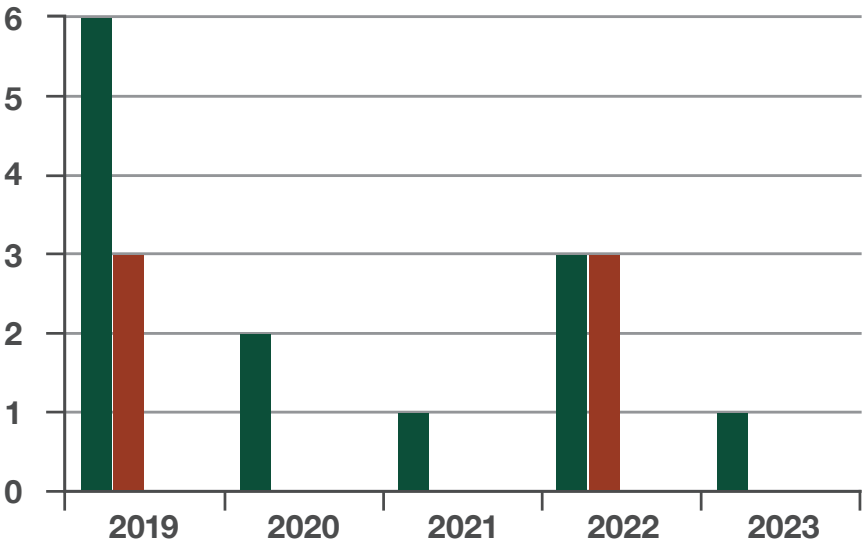
APPEALS BY TERRITORY

The one appeal received was an NWT claim.



TYPE OF APPELLANT

The appeal received in 2023 was a Worker appeal.

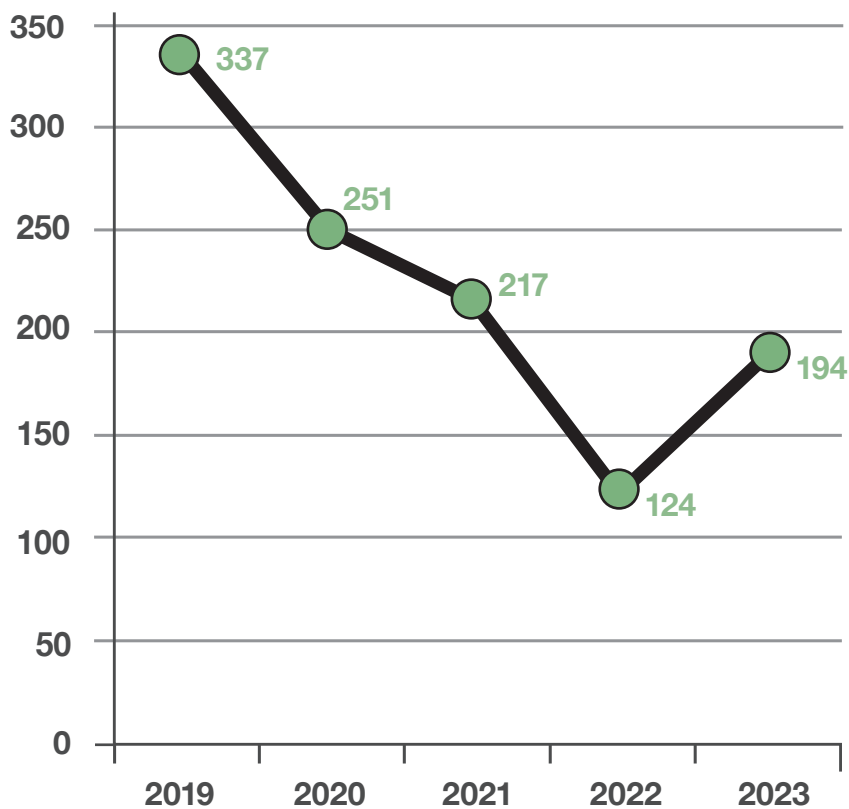


TIME FROM FILING TO DECISION

The time required for appeals to be completed continues to decrease.

Note: this time includes that attributed to the activities of Appellants and WSCC, as well as the Tribunal.

—●— Average Days



DECISIONS OF 2023

The *Workers' Compensation Acts* requires the Appeals Tribunal to conduct hearings in camera. Because Tribunal decisions contain personal information such as medical and financial information, they are not made public. Several years of the Tribunal's decisions can now be viewed at <https://www.canlii.org/en/nt/ntwcat/> in a redacted format.

The following are summaries of the Tribunal's decisions made in 2023.

1 **Decision 2023 NTNUWCAT 1 | Entitlement-hand injury | WSCC decision was upheld**

- Employer Appeal
- The Worker did not participate
- <https://canlii.ca/t/jxfz2>

The Worker alleged he injured his hand while working at a remote site in Nunavut. The Worker's claim for compensation was denied. The Worker sought a review of the denial decision and the WSCC Review Committee overturned the previous decision, granting the Worker compensation. The Employer appealed that decision to the Appeals Tribunal. The Employer alleged the Worker's injury occurred before he traveled north for his rotation. The Appeals Tribunal found the Worker sustained an injury resulting from a workplace injury. The appeal was denied and the Review Committee's decision was upheld.

2 **Decision 2023 NTNUWCAT 2 | Entitlement- Mental Stress | WSCC decision was upheld**

- Worker Appeal
- The Employer did not participate
- <https://canlii.ca/t/jxfz1>

The Worker made a claim for compensation for mental stress resulting from several allegations of bullying, harassment, discrimination, and employer wrongdoing in the workplace. The WSCC denied the Worker's claim as did the WSCC Review Committee. The Appeals Tribunal found the Worker suffered from Major Depressive Disorder and Generalized Anxiety Disorder resulting from mental stress in response to workplace events. The Appeals Tribunal also found the events fell within the definition of "labour relations", were not traumatic in nature, and were not intended to do the Worker harm. These findings resulted in the appeal being dismissed and the WSCC decision was upheld.

3 Decision 2023 NTNUWCAT 3 | Additional Temporary Benefits, Permanent Disability Benefits | WSCC decision was reversed

- Worker Appeal
- The Employer did not participate
- <https://canlii.ca/t/jxfz3>

The Worker injured his back while working in Nunavut. During the next six years, the Worker's compensation claim was closed then reopened four times. He was denied Temporary Total Disability (TTD) benefits for a specific period of time and sought permanent disability benefits (Pension). The WSCC's Review Committee found the Worker was not entitled to any further TTD and did not address the Pension benefits issue. The Worker appealed that denial decision to the Appeals Tribunal. Both pre hearing and post hearing, the Appeals Tribunal sought additional information from the Worker. The Worker refused to provide access to a subsequent workers' compensation claim from a different jurisdiction, and information about his earnings for the period in question. The Appeals Tribunal found the Worker was not entitled to any compensation benefits after 3-months post injury.

4 Decision 2023 NTNUWCAT 4 | Entitlement- Mental Stress Benefits | WSCC decision was reversed

- Employer Appeal
- The Worker did participate
- <https://canlii.ca/t/k1lf2>

The Worker alleged he suffered a psychological injury due to his workplace. The Worker's claim for compensation was denied several times. The WSCC's Review Committee overturned that decision and found the Worker was entitled to compensation due to cumulative workplace harassment. That decision was appealed by the Employer. The Appeals Tribunal determined the Worker's mental stress arose from labour relations and therefore was not compensable under section 12(b) of the Act. The Employer's appeal was allowed and the WSCC decision reversed.

5 Decision 2023 NTNUWCAT 5 | Subsistence Allowance | WSCC decision was upheld

- Worker Appeal
- The Employer did not participate
- <https://canlii.ca/t/k23z6>

The Worker has an accepted compensation claim which, in part, includes 12 physiotherapy appointments per year. The appointments are some distance away from the Worker's home and required him to drive about 45 minutes. The WSCC stopped providing the Workers with a meal allowance for these appointments. The Worker appealed that decision. The Appeals Tribunal determined the Worker was able to eat breakfast before leaving for his appointment and eat lunch upon his return home in keeping with WSCC policies. The appeal was denied and the WSCC decision was upheld.

6 Decision 2023 NTNUWCAT 6 | Employer Cost Relief | WSCC decision was varied

- Employer Appeal
- The Worker did not participate
- <https://canlii.ca/t/k23z5>

Due to the severity of the Worker's injury and the rating of the Worker's pre-existing condition, the WSCC assessed a cost relief of 25% to the Employer's experience account. The Employer appealed this decision seeking a greater cost relief. The Appeals Tribunal determined the severity of the incident was "minor" and the significance of the Worker's pre-existing condition was "moderate". This determination led to a cost relief of 75%.

APPENDIX

APPEALS/REQUESTS FOR REHEARING RECEIVED

	Appeals	Requests for Rehearing	Total Received
2019	8	1	9
2020	2	0	2
2021	1	0	1
2022	6	0	6
2023	1	0	1

ISSUES APPEALED

	2019	2020	2021	2022	2023
Claims	5	2	0	7	1
Pensions	2	0	0	0	0
Revenue/Employer	1	0	0	1	0
Rehabilitation	0	0	1	0	0
Appeal Time Limit	1	0	0	0	0
TOTAL RECEIVED	9	2	1	8	1

TYPE OF HEARING

	2019	2020	2021	2022	2023
In-Person	1	0	0	0	0
Video Conference	0	0	1	1	0
Telephone	1	2	0	0	1
Documentary	4	0	1	1	3

DECISION OUTCOMES

	2019	2020	2021	2022	2023
Reversed	1	1	1	0	2
Upheld	5	0	1	1	3
Varied	0	1	0	0	1
Cancelled by Appellant	3	0	0	0	0

APPEALS BY TERRITORY

	2019	2020	2021	2022	2023
Northwest Territories	8	1	0	4	1
Nunavut	1	1	1	2	0

TYPE OF APPELLANT

	2019	2020	2021	2022	2023
Workers	6	2	1	3	1
Employers	3	0	0	3	0
Dependents	0	0	0	0	0
WSCC	0	0	0	0	0

AVERAGE DAYS FROM FILING TO DECISION

	2019	2020	2021	2022	2023
Average days	337	251	217	124	194

SECTION 63 APPLICATIONS

	2019	2020	2021	2022	2023
Count	1	0	0	1	0

JUDICIAL REVIEW APPLICATIONS

	2019	2020	2021	2022	2023
Count	0	0	0	0	2



NORTH-WEST TERRITORIES AND NUNAVUT
**Workers' Compensation
Appeals Tribunal**



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