

**CHALLENGING A DECISION
ABOUT YOUR
EMPLOYMENT INSURANCE
CLAIM:**

RECONSIDERATION AND THE SOCIAL SECURITY TRIBUNAL

WARNING AND WAIVER

This guide explains how workers can challenge a decision about their Employment Insurance claim. The process for appealing other types of decisions, including decisions about other federal benefits, is different. This guide is not designed to assist employers or anyone other than workers who are claiming EI benefits.

Users of this guide should not rely on the guide for legal advice or as a substitute for legal advice. If you have a legal problem, you should consult a lawyer even if you plan to represent yourself. Getting legal advice is important because:

- This guide is produced for educational purposes;
- This guide cannot and does not cover all possible situations. It covers common situations, and your situation might be different;
- Certain decisions relating to Employment Insurance cannot be appealed using the process described in this guide; and
- The law, including statutes, regulations, and the rules about practices and procedure can change without warning and those changes may not be updated in this guide.

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This guide may contain inaccurate or misleading information. The Community Legal Assistance Society, its funders (including the Law Foundation of BC), its authors, its contributors, its editors, and the distributors of this guide are not responsible for:

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1. WHO SHOULD USE THIS GUIDE

This guide is for people who have already applied for Employment Insurance (“EI”) benefits, but disagree with a decision about their claim. If you have not yet applied for EI, and want some help doing so, you can find information from the government [here](#).

After you send in your EI application, you will get a letter confirming that it was received. If more than a month goes by and you still have not gotten a letter confirming that your application was received, you should call the Service Canada EI phone line to follow up. The number is 1-800-206-7218. Remember that it will take a few weeks before any decision is made about your application.

2. THE FIRST DECISION ABOUT YOUR EMPLOYMENT INSURANCE CLAIM

If you are reading this guide, you have probably received a decision about your EI claim that you disagree with. This guide will describe how you can challenge that decision.

A. Who Makes Decisions About Your EI Claim?

Most decisions about EI are made by the Canada Employment Insurance Commission (the “EI Commission”), which is the government agency in charge of running the EI program. The Commission is part of a larger government department called Employment and Social Development Canada.

However, the EI Commission does not usually deal directly with people about their EI claim. Most of the time, decisions, letters, and phone calls will come from Service Canada, which is an agency that helps run a number of different federal government programs, including EI. So, although we will talk about the EI Commission making the first decision about your EI claim, you will likely find yourself dealing with Service Canada.

B. Decisions that Cannot be Challenged Using this Guide

Certain decisions cannot be challenged using the process set out in this guide. This includes decisions about the following matters:

- A decision refusing to refer you to a course, program, or other employment activity;
- A decision refusing to provide you employment benefits under part II of the *Employment Insurance Act*. These are benefits to help people get back to work through training, work experience, hiring incentives for employers, wage supplements, or support starting a business;
- A decision about the Canada Emergency Response Benefit (CERB) or the Canada Emergency Student Benefit (CESB);
- A decision refusing to write off or forgive a debt you owe the government. But do not get confused. You certainly can challenge whether you owe the debt in the first place, including an overpayment of EI benefits, a penalty, or interest. It is only a decision about whether to write-off or forgive a debt you actually owe that cannot be challenged.

Also keep in mind that the Canada Revenue Agency (or the Minister of National Revenue, who is in charge of the Canada Revenue Agency) can sometimes make important decisions affecting your EI claim. This might include decisions about:

- How many hours you worked for a given employer;
- How much money you earned;
- When your employment started and ended; and
- Whether your work is even covered by the EI system.

There is a whole separate appeal process for challenging decisions by the Canada Revenue Agency that is not covered by this guide. You cannot challenge these decisions using the process set out in this guide. There will hopefully be information in the letter from the Canada Revenue Agency about how to challenge the decision.

If you find yourself dealing with decisions from both the Commission and the Canada Revenue Agency that you disagree with, make sure you challenge all of them using the right process. You should try to get legal advice if possible because these situations are complicated.

3. APPLYING FOR RECONSIDERATION

The first step when challenging a decision about your EI claim is to ask the EI Commission to reconsider its decision.

A. How to Request a Reconsideration

To request a reconsideration, fill out a form called “[Request for Reconsideration of an Employment Insurance \(EI\) Decision](#)”. You can also get this form from any Service Canada office. There is no fee for requesting a reconsideration.

Section 2 of the form asks you to list the decision you want to have reconsidered. You should write down the date of the decision you are challenging and what the decision is about. For example, “The June 1, 2020 decision saying I was fired for misconduct and cannot get employment insurance.” You also need to fill out the date you first found out about the decision. If someone told you about the decision before you got a formal letter, you need to write that date down too because your [deadline](#) starts from when you first found out about the decision, even if it was not in a formal letter. Make sure you list every decision you want to challenge if there are more than one.

Section 3 of the form asks you to explain why you think the decision is wrong in. If you have new evidence, explain why it is important.

You can mail in your [Request for Reconsideration form](#) or you can drop it off at any Service Canada office. The mailing address for each region of Canada is at the bottom of the form. If you are sending your form by regular mail, you need to make sure that you allow enough time for it to get there before the deadline. You should include any documents or other information that you think will help your case.

If there are other people involved in your case, such as your employer, those people may be able to request a reconsideration even if you choose not to request a reconsideration. For example, if the Commission gives you regular EI benefits, but your employer feels that you were fired for misconduct, your employer may request a reconsideration of that decision. If this happens, you will be notified and given a chance to say why the decision should not be changed.

B. The Deadline to Request a Reconsideration

The deadline to request a reconsideration is 30 days from when you first found out about the decision. Keep in

mind that you will sometimes find out about a decision over the phone before the decision is formally mailed out in a letter. You should count the 30-day deadline from the day you first found out about the decision, even if it was not in an official letter.

C. How to Count your Deadline

When you are counting your 30-day deadline, day 1 is the first day after you found out about the decision. For example, if you got the decision on November 2nd, start counting with November 3rd as day 1. Then include every single day after that, even weekends and holidays, until you get to day 30. This is your deadline. If your deadline ends on a weekend or a holiday when government offices are closed, you can file your appeal on the next day they are open. For example, if your deadline would normally end on Labour Day Monday, which is a statutory holiday, your deadline moves to the next day (Tuesday).

Keep in mind that some holidays are different in each province, and there have been some cases where the government has argued that Saturday is not a legal holiday in some provinces. If you are not in British Columbia, you should double check the situation in your province. However, the easiest way to avoid problems is to do everything well ahead of your deadline.

D. Extensions of Time

If you miss the deadline, there is a section on the form you can fill out to ask for an extension of time. You should explain:

- How there is a reasonable explanation for why you did not appeal in time;
- How you really did mean to appeal the whole time;
- How you will have some chance of winning if you get to appeal;
- How allowing you to appeal late will not prejudice (make life difficult for) the other people involved in the appeal, such as the Commission or your employer. For example, there may be prejudice to your employer if there is important evidence from former employees who they can no longer find due to your delay; and
- Any other information that you think is relevant to why you should get an extension of time.

Even if some of the factors are not in your favour, you can still get an extension of time based on the other factors that are in your favour.

E. Requesting a Copy of Your EI File

The Commission may share some information about why it made the decision against you, but it will not always give you a full copy of your EI file unless you [formally request it](#). To make sure that you have all the information about your EI claim, you should [request your EI file](#) right away because it can take up to 30 days, and often even longer, to get your file.

- If you want to make your request electronically over the internet, follow the link called “Make an On-line Request”.
- If you want to mail in your request, follow the link at the bottom of the page to download and print a “Personal Information Request Form”; You can then mail the completed form to:

*Employment and Social Development Canada
Access to Information and Privacy Coordinator
Phase IV, Level 12, Mail Stop 1203
140 Promenade du Portage
Gatineau, Quebec K1A 0J9*

List “Employment and Social Development Canada” as the federal institution (government agency) you are directing your request to.

F. How the Commission Makes the Reconsideration Decision

There is no formal hearing for a Request for Reconsideration. A reconsideration officer will investigate your claim and review the decision to see if it should be changed. The reconsideration officer will not be the same person who made the first decision about your EI claim. The reconsideration officer will likely phone you to ask questions. You should review your file and make sure that you have sent in all the information and documents that are helpful to your case. If you feel that you need to add more detail to what you wrote on your Request for Reconsideration form, you can also send in a brief written submission or statement setting out why your case should win. You should keep a copy of any documents or submission you send in. Keep in mind that it is always best to be short and to the point. Avoid a long, rambling submission. If you requested a copy of your EI file, but have not yet received it, you can try to ask the Commission to hold-off making a decision until after your file arrives and you have had a chance to review it.

There is no specific time line for when the reconsideration officer must make their decision. Often the reconsideration officer will tell you about the decision by phone before sending out a formal decision letter. Again, no matter how you find out about the decision, it is important to write down the date so you can figure out your deadline if you need to appeal further.

4. THE SOCIAL SECURITY TRIBUNAL GENERAL DIVISION

If the Commission refuses to change its decision after you request a reconsideration, you can appeal to the Social Security Tribunal (the “SST”). The SST was created by the federal government to deal with appeals about a few different social benefits like EI, the Canada Pension Plan (CPP), and Old Age Security (OAS). This guide only deals with the rules that apply to EI appeals. There are different rules that apply to CPP and OAS appeals.

The SST has two different divisions, or levels of appeal. The first level of appeal is the **SST General Division**. If you still disagree with the General Division’s decision, you can ask for leave (permission) to appeal to the **SST Appeal Division**. We will start by looking at the General Division.

Keep in mind that if there are other people involved in your case, like your employer, those people may also be able to file an appeal, even if you choose not to appeal. If this happens, you will be notified and given a chance to take part in the appeal.

A. The Deadline to Appeal

The deadline to appeal to the General Division is 30 days from when you first found out about the reconsideration decision. Again, sometimes a reconsideration officer will tell you about the reconsideration decision by phone and then send a written decision by mail later on. To be safe, you should [count your 30-day deadline](#) from the day you first found out about the reconsideration decision, even if it was not in an official letter.

If you miss the deadline to appeal, you can [ask for an extension of time](#). If the General Division will not give you an extension of time, you can [ask for leave \(permission\) to appeal that decision to the Appeal Division](#). Keep in mind that the SST cannot extend the deadline to appeal past one year from the date you first found out about the reconsideration decision. If more than one year has passed since you first found out about the reconsideration decision, you cannot appeal.

B. The Notice of Appeal

You start your appeal by filling out a form called “[Notice of Appeal – Employment Insurance – General Division](#)”. Make sure you get the form for appealing EI reconsideration decisions to the General Division. There are separate

forms for people appealing CPP or OAS decisions. There is no charge or fee for appealing. Make sure that you fill out all the required sections because your appeal will not be accepted if it is missing any mandatory information. You must also send in a copy of the reconsideration decision you are appealing with your Notice of Appeal. If your application is missing any information, the SST will send you a letter or email with a deadline to send in the missing information (30 days most of the time). If you do not send in the missing information before this deadline, your appeal will be late.

It is very important that you list the day you first found out about the decision in section 4 of your [Notice of Appeal](#). If you don't do this, the SST may treat your appeal as late even though it is not. If your appeal is late, you should fill out section 7 called "Late Appeal". If your appeal is not late, leave this section blank.

The [Notice of Appeal](#) asks you to state your reasons for appeal in section 5. Briefly explain why the reconsideration decision is wrong and why you should win your appeal. You do not need to spell out each and every detail of your case in the Notice of Appeal; however, you do need to provide enough information so that the SST can understand what your appeal is all about and why it has a chance of winning.

You can list any new documents that you want to submit in section 6 of the [Notice of Appeal](#). Make sure you send in copies with your [Notice of Appeal](#). If you come across other documents later on, you will still have a chance to send them in, but it is best to send the documents you do have right away. There is no need to resend documents that you sent in during the reconsideration process. Again, you must send in a copy of the reconsideration decision you are appealing. You can send your completed [Notice of Appeal](#) and any documents that you are sending with it to the SST by [mail, fax, or email](#). It is a good idea to keep a copy of your Notice of Appeal and everything else you send to the SST.

C. Representatives

If you have someone representing you, you should list them on your [Notice of Appeal](#) in section 8. This could be a lawyer, a union representative, a legal advocate, or even a friend or family member. Your representative should sign section 9 of your [Notice of Appeal](#). If your representative does not sign your Notice of Appeal, you will need to send in a form called "[Appointment of A Representative and Authorization to Disclose](#)" before your representative can do anything on your behalf.

Also keep in mind that if you are represented by someone, the SST will generally direct everything, including letters, phone calls, and emails, to that person, and not to you.

D. Your EI File

The SST will get a copy of your EI file and send it to you before the hearing. If you want to make sure that you get your file with lots of time to prepare, you can also [ask Employment and Social Development Canada to send your file directly to you.](#)

E. Communicating with the SST

You can communicate with the SST by [phone, fax, mail, or email](#). If the SST communicates with you in writing, be aware that there are rules that deem you to have received documents on a certain date even if you did not actually find out about the documents right away:

- If the SST sends something to you by regular mail, you are deemed to have received it 10 days after it was put in the mail.
- If the SST sends something to you by registered mail or a courier, you are deemed to have received it the day someone signs for it, or the day it is successfully delivered to your last known address.
- If the SST sends something to you by fax or email, you are deemed to have received it on the next business day after it was sent.

What can you do to protect yourself?

- If your contact information changes, you must tell the SST right away. It is a good idea to do this in writing and keep a copy of the letter.
- Check your mail every day. Do not go away without making sure that there is someone you trust checking your mail.
- If you miss a delivery and there is a notice on your door that you need to pick up a letter at a post office, do it right away.
- If you live with other people, make sure that they know to tell you right away if something comes for you.
- Check your email every day, including your junk mail folder.

F. Summary Dismissal

At some point after you send in your [Notice of Appeal](#), an SST General Division Member will review your file (the people who make decisions about appeals at the SST are called “Members”). If the SST Member determines that your

appeal has no reasonable chance of success, they must deny your appeal without any kind of hearing. This is called summary dismissal. Before dismissing your appeal, the SST Member will send you a letter and give you a chance to explain why your appeal should not be dismissed. The letter will have a deadline for you to respond and it is important that you do so. You should explain why your appeal has a chance of winning and respond to any specific questions or concerns in the letter. If your case is summarily dismissed, you can appeal to [SST Appeal Division](#). If your appeal is not summarily dismissed, the General Division will move forward with your appeal.

G. The Different Types of Hearings

Your hearing could happen in a few different ways:

- **In person hearings:** Everyone gets together in the same place, usually at a Service Canada centre.
- **Videoconference hearings:** You go to a Service Canada centre, where you and anyone else participating in the hearing are connected with the SST Member by video (you do not use your own computer).
- **Teleconference hearings:** You are given a conference call phone number and you call into the hearing using your own phone.
- **Written Questions and Answers:** The SST Member deciding your appeal sends you questions in writing. You write out your answers and send them back. Although this does not seem like a “hearing” because no one actually talks to each other, the rules allow this to happen.

Usually the SST will just pick one way for the hearing to happen. However, the SST can choose to combine more than one different method for holding the hearing. For example, the SST could decide to have you answer written questions before holding an in-person hearing.

Section 3 of the [Notice of Appeal](#) form lets you say how you think your hearing should happen. Many people (though not everyone) prefer to have an in person hearing where they can meet the SST Member and explain their side of the story. If you would like an in-person hearing, you should explain why an in-person hearing is needed to ensure your appeal is decided fairly. Below is a list of factors that may support an in-person hearing, but there could be others, so you need to think about your specific case:

- Credibility is a big issue in your appeal. Credibility means deciding who to believe and not believe. You should explain specifically what issues of credibility there are in your case. For example, maybe your employer claims that you said you were quitting, but you say that your employer is making that up.
- There are going to be several people at the hearing (maybe your employer is participating, or there are witnesses or an interpreter).

- The issues in your appeal are really complicated or complex.
- You have a disability that will make it hard for you to follow what is happening at the hearing unless you are there in person.
- You do not have access to a private telephone (although a videoconference might also be a possibility in this case).

Other people would rather not attend an in-person hearing, or even a videoconference. Some people get nervous at the idea of an in-person hearing. Others like how telephone hearings take up less time because there is no travel involved. If you would like a telephone hearing, you should also let the SST know.

H. Other Hearing Arrangements

You should let the SST know if you need any other arrangements to be made for the hearing:

- **Interpreters:** If you do not speak English or French, you should ask the SST to provide an interpreter. You can request an interpreter in section 3 of the [Notice of Appeal form](#). The SST will provide a professional interpreter at no charge. You will probably not be allowed to use a friend or family member to interpret and your hearing may be postponed if you do not request an interpreter in advance. Be very specific about what language and dialect you speak.

While you do not have to pay for an interpreter at the hearing, keep in mind that the SST will not pay to translate written documents. You are responsible for having all documents translated into French or English and the person who translates the documents must identify themselves and swear an oath or solemn affirmation that the translation is accurate. You must send in a copy of both the translated and the original document.

- **Accommodating disabilities:** If you have a disability that will require some unique accommodation from the SST at the hearing, you should let them know in advance.
- **Length of hearing:** Hearings usually last about one hour. For most appeals, this is more than enough time. However, if you think that you will need more time, you should let the SST know in advance. For example, if there are going to be a lot of witnesses at the hearing, or you are using an interpreter, you may need to ask for more time. Before asking for more time, ask yourself whether all your witnesses are truly needed. You should also remember that spending time on matters that are not important will only distract from the key points you want to make.
- **Private hearings:** Hearings are not necessarily closed to the public. If your appeal involves very sensitive personal information, you can ask the General Division to make sure that the hearing is private. The SST Member deciding your appeal will make a decision at the hearing, but it may be a good

idea to let the SST know in advance that you plan to make the request. Even if your hearing is closed to the public, keep in mind that there may be other people involved in your appeal, such as your employer, who may have a right to be there for some or all of the hearing.

- **Expedited (urgent) hearings:** If there are serious reasons why your hearing needs to happen right away, you can request an urgent hearing. Keep in mind that almost everybody is going to face some hardship while they wait for their hearing. You should only ask to jump the line if there are truly urgent reasons. For example, if you learn that you have an illness that could lead to death before a hearing is scheduled, you can ask that your hearing be held on an urgent or expedited basis.

I. The Notice of Hearing

If your appeal is not [summarily dismissed](#), the SST will send you a Notice of Hearing. The Notice of Hearing will explain how and when your hearing will happen. If your hearing is in person or by videoconference, the Notice of Hearing will also tell you where you have to go.

- **In person hearings:** The Notice of Hearing will say when and where the hearing will take place. You are responsible for ensuring that you and any witnesses are at the hearing on time.
- **Videoconference hearings:** The Notice of Hearing will say when the hearing will take place and where you need to go for the videoconference. You and any witnesses must go to the place listed on the Notice of Hearing. You cannot try to connect from your own computer.
- **Teleconference hearings:** The Notice of Hearing will say when the hearing will take place and how you call into the teleconference. You must make sure that you are at a working phone and call in on time. Try to use a landline to avoid problems with reception and dead batteries. If you must use a cell phone, plan ahead to make sure that you are in a quiet place where you know that you will have good reception. Make sure that your cell phone is fully charged, or even better, plugged in. Make sure that your witnesses know how and when to call in too.
- **Written questions and answers:** The Notice of Hearing will contain or enclose questions that you must answer and the deadline for sending in your response. When you respond, you should list the question number beside each of your answers so that the SST Member can figure out which question you are answering. If the SST Member has questions for someone else participating in the appeal, you will also be given a deadline to respond to that person's answers.

If you disagree with the type of hearing that the SST Member plans to hold, you should write to the SST right away

and explain why you disagree.

J. Rescheduling or Adjourning (Postponing) a Hearing

If the Notice of Hearing says that your hearing will take place on a day that you are not available, you can ask to have it moved to another day. You have two business days after you get the Notice of Hearing to call the SST and ask to have the hearing date moved. Make a note of who you spoke to and the date and time of the call. If you ask to move the hearing date after two business days, your request must be in writing. There is no specific form, so you can just send a letter, email, or fax explaining why you need to move the hearing date. The SST may or may not agree to move the hearing date. Never assume that the date of your hearing has changed until the SST confirms the change.

If the SST Member does change the date of your hearing and you do not show up on the new date even though you were notified, the hearing will go ahead without you. If you have already changed the date once, you will only get a second date change if there are exceptional (out of the ordinary) reasons. To avoid problems, it is a good idea to let the SST know in advance about any dates that you are not available.

K. Preparing for Your Hearing

Here is a list of things you can do to make sure that you are as prepared as possible for your hearing.

i. Review your EI file

It is critical that you understand the decisions and information in your EI file. Start by re-reading the reconsideration decision carefully to make sure that you understand the reasons for the decision. The reconsideration decision may not have a lot of detail, but your file should have a written argument (sometimes called representations or submissions) from the Commission that will hopefully explain more clearly why they decided against you.

When you review the documents in your file, make a note of the evidence in the file that helps you and the evidence that works against you. Using “sticky tabs” to label important documents can help you find them quickly at the hearing. If there is anything missing from the file that is helpful to your appeal, you should send it to the SST right away.

ii. Research the Law

Once you understand what the case is all about, it is important to know what laws and legal tests the SST will use to

decide your case. It is also helpful to read decisions from other cases that are similar to yours. It is impossible for this guide to review the law on all the different types of decisions that can be appealed. If possible, you should try to get legal help. If you have to research the law yourself, here are a few places you can start looking.

- ***The Employment Insurance Act and the Employment Insurance Regulations***

You should start by reading the sections of the [Employment Insurance Act](#) and the [Employment Insurance Regulations](#) that apply to your case.

If you cannot get legal advice and are having trouble figuring out what sections apply to your case, the SST's website has a list of [some important sections that apply to different issues](#) along with decisions that talk about how the law works. Keep in mind that this is not intended to be a complete list, but it may serve as a useful starting point.

Some libraries (like courthouse and law school libraries) have a book called the "Annotated Employment Insurance Act". Annotated means that below each section the author explains what the section means and talks about other cases that have dealt with that section.

- ***Information published by the government***

The Commission has a policy manual called the [Digest of Benefit Entitlement Principles](#) that provides more detail on a number of EI topics. Service Canada's [EI website](#) also has information on variety of EI topics.

- ***Court cases***

Sometimes it is useful to read cases that are similar to yours. Most of the very important EI decisions are made by the Federal Court of Appeal. You can search for those decisions using a free service called [Canlii](#). The SST also has a [list of cases grouped by the issue they talk about](#).

- ***SST Cases***

The SST is working hard to make more decisions available to the public. You can look up SST decision on [Canlii](#) or through the [SST's website](#).

- ***Old Umpire Decisions***

Before the SST was created in 2013, EI appeals were decided by the Office of the Umpire. The Office of the Umpire made all of its decisions available to the public and you can still [look up these decisions](#). These decisions can provide some helpful explanation about the law, but keep in mind that many of these decisions may now be outdated. The

government has created an [index of Umpire decisions that is organized by topic](#). You can click on the topic that matches what your case is about and look for similar decisions.

Those decisions are chosen by the government based on what they think is important. They are not chosen because they are helpful to workers. However, there is a separate [index of decisions created by workers' advocates that contains only decisions helpful to workers](#).

You can also do a [general search of all Umpire decisions](#). However, the decisions are not organized by topic so you will have to think carefully about what to search for.

iii. Getting New Evidence

Once you have reviewed your file and the law that applies to your case, think about what new evidence you can send in to help your appeal. You should also think about what evidence in the file works against you and try to find new evidence to counter it. It is very important that you send in all the evidence that you want the SST to look at. As we will discuss later, if you lose your appeal to the General Division, you will likely not be able to submit new evidence or call witnesses if you decide to appeal to the Appeal Division.

Once you have gathered up your new evidence, [email, mail, or fax](#) it to the SST. Include your name, address, telephone number, and appeal number so that the SST knows what file to put the documents in. Try to send your new evidence to the SST well ahead of the hearing. If you are sending documents by mail, remember that it can take several days to arrive. There is no need to resend documents that are already in your file from the reconsideration process. Keep a copy of everything you send the SST.

iv. Preparing a Written Submission

A written submission is simply a written description or outline of your appeal. A written submission usually goes into more detail than the description you wrote on your Notice of Appeal, but you should still avoid a very long or rambling submission.

You do not have to send in a written submission, but it can be very helpful. A written submission will serve as a guide for you and the SST Member deciding your appeal. It can often be difficult to organize your thoughts and remember everything you want to say when you are nervous or stressed at the hearing, so doing it in writing can be helpful.

Here is one way you could organize your submission, but do not worry too much about following this exactly. The most important thing is to get everything down in a way that makes sense to you.

Overview: Give a very brief (just a few sentences) overview of the decision you are appealing and the most important points about your appeal.

Orders you are seeking: Say what you are asking the SST Member to do. For example:

- *Allow my appeal and find that I am not disqualified from receiving EI.*
- *Allow my appeal and set aside the penalty imposed against me.*

Facts: Give your account of what happened. It is often best to write this as a timeline or chronology. List the date and what happened, where it happened, who was involved etc. If there is evidence in the file that backs up your side of the story, you should refer to it. Be “matter of fact”. Avoid using angry or disrespectful language.

Issues: List the issues the SST has to decide. For example:

- *Did I have just cause for leaving my employment?*
- *Did I knowingly provide false or misleading information to the Commission?*

Law: List any sections of the [Employment Insurance Act](#), [Employment Insurance Regulations](#), and any cases that are relevant to your appeal.

Argument: Explain why you should win your appeal given the facts and the law you have outlined.

Conclusions: A few sentences that wrap-up your most important points.

You can send your written submission to the SST by [email, mail, or fax](#). Again, include your name, address, telephone number, and appeal number so that the SST knows what file to put the documents in. You should keep a copy of the submission you send in. If possible, try to send your written and new evidence to the SST as one single package.

v. Preparing to Give your Testimony (the evidence you say live at the hearing)

The testimony you give at the hearing can be just as important as the evidence in your file. If you have a representative, you will likely give your testimony at the hearing by answering their questions. If you are representing yourself, you will just give your testimony to the SST Member directly. Either way, the SST Member will likely stop you quite often to ask questions or to clarify what you said.

Make a list of what you want to say at the hearing. Do not just read the list or sound scripted, but writing things out ahead of time can help organize your thoughts and make sure that you say everything you want to say. You also want to think about the problems with your case and prepare to answer the questions the SST Member will likely ask. Do

not just ignore the problems with your case and pretend they do not exist. It is far better to prepare in advance to answer tough questions.

vi. Preparing your Witnesses (if any)

You do not want any surprises. If you plan to call witnesses, you should know what they plan to say ahead of time. Make a list of the questions you plan to ask your witnesses at the hearing and review the questions with each witness. You do not want your witnesses to sound scripted, but your witnesses should not be surprised by your questions, and you should not be surprised by their answers. Your questions should be open-ended, meaning you should not suggest the answer to the witness. For example, if you have a witness who saw your employer harassing you, it is best to ask “what did you hear Ms. Meanboss say to me that day?” rather than “You heard Ms. Meanboss call me stupid and useless, didn’t you?”

You should also let your witnesses know that other people may have questions for them, most notably the SST Member. If your hearing is in person or by videoconference and your witnesses cannot be with you, you will have to get special permission from the SST in advance to have them connect by telephone.

vii. Preparing for Other Witnesses

If there is somebody else participating in your appeal that plans to call witnesses, like your employer, you should prepare a list of questions you want to ask. If someone else asks the witness to be at the hearing, you are free to ask leading questions that suggest the answer you want to hear. For example, it would be okay to ask the witness to confirm “You heard Ms. Meanboss call me stupid and useless, didn’t you?” However, you do not want your questions to be overly aggressive or disrespectful.

L. At the Hearing

Arrive where you need to be, or call into the teleconference, well before the hearing is set to start. Do not be late. If your hearing is in person or by videoconference, you and your witnesses will likely be asked to show identification before the hearing starts, so have ID with you.

The hearing will likely follow the process set out below; however, keep in mind that the SST Member deciding your appeal will determine exactly how the hearing happens, so you have to be flexible.

- **Introduction:** The SST Member will ask everyone to introduce themselves. The SST Member will review some basic information about the SST and how the hearing will happen. The SST Member will likely tell

you that the hearing is being recorded. Do not be nervous, this is a good thing because there will be no confusion about what was said at the hearing in case you need to appeal again. The SST Member will also make sure that everybody has a copy of all the documents being used in the appeal. You should speak up right away if there is something that you never received.

- **Opening Statement:** If you are the one who filed the appeal, you will present your case first. You should start by giving a very short opening statement about your appeal. You should explain very briefly what you are asking the SST Member to do and give the SST Member a very brief outline of what you expect the evidence at the hearing will show.
- **Your Evidence:** You will then have a chance to present your evidence. You will be asked to affirm (make a legal promise) that you will tell only the truth. If you would rather swear to tell the truth using a religious book, you must bring a copy with you. Your evidence should stay on topic and address what really matters in your appeal. It is easy to get sidetracked, particularly when you are angry, frustrated, or nervous, but it is important to stay calm and collected. The SST Member will have questions for you. If someone is at the hearing on behalf of your employer or the Commission, they might have questions too (the Commission rarely sends someone to attend General Division hearings). You want your answers to be complete and accurate, but also as short and to the point as possible. If you do not understand what the person is asking, ask for clarification.

If you brought witnesses with you, they can also give evidence. Witnesses may be asked to wait outside the room until it is time for them to give their evidence. Witnesses will also be asked to make a legal promise that they will tell only the truth. You can guide your witnesses by asking them questions. Again, your questions should be open ended and should not suggest the answer you want to hear.

- **Other Parties' Evidence:** If the Commission or your employer sends someone to the hearing, they will have a chance to present evidence and witnesses just like you did. You should be given an opportunity to ask questions if you would like to. It is best not to interrupt someone else when they are giving their evidence. You should write down your questions and when the person is finished, you can ask the Member for a chance to ask your questions. Again, when you are questioning someone you did not ask to be at the hearing, you are free to ask questions that suggest the answer you want to hear. However, do not be overly aggressive or disrespectful.
- **Closing Statement:** After all the evidence, each party will be given a chance to sum up their most

important points and evidence.

If something happens at the hearing that you think is unfair, you should politely speak up so that there is a record of the problem. The SST Member deciding your case will usually not make a decision on the spot. The SST Member will likely take some time to review everything before writing up the decision. The decision will be sent to you once it is ready. There is no specific deadline for the SST Member to make a decision about your case, but the General Division tries to send out most EI decisions no more than 90 days after the Notice of Appeal was filed

M. Expenses

You are responsible for all the expenses related to your appeal, such as photocopying, postage, or parking. However, if you are forced to attend a hearing, the Chairperson of the SST can order that you be paid back for some of your costs, including travel expenses, living expenses, or lost wages, if there are special reasons for doing so. There is not much guidance on what it will be considered “special reasons” or how to make a request. It is probably best to make your request in writing and explain why your circumstances are special. You will likely also need to include copies of receipts for the expenses.

5. SOCIAL SECURITY TRIBUNAL APPEAL DIVISION

If you are not happy with the decision made by the SST General Division, you can apply for leave (permission) to appeal to the SST Appeal Division. You do not automatically get to appeal to the Appeal Division unless the General Division [summarily dismissed](#) your case. You will only be given permission to appeal if the Appeal Division thinks that your case has some reasonable chance of winning. The other people involved in the General Division appeal, like your employer or the EI Commission, can also ask for permission to appeal if they disagree with the General Division's decision.

When applying for leave (permission) to appeal, it is important to understand that the Appeal Division cannot just make a brand new decision from scratch about your case. The Appeal Division's role is to check and see if the General Division made certain [types of serious mistakes](#).

A. The Deadline to Request Leave to Appeal

The deadline to apply for permission to appeal is [30 days from the date you first found out about the General Division's decision](#). Remember that there are [rules that deem you to have gotten the General Division's decision a certain number of days after it's sent out](#) even if you actually received it later. If you are expecting a decision, it is very important that you check your mail every day.

If you miss the deadline, you can ask for an [extension of time](#). There is a space in [the application form](#) that you can fill in to ask for an extension of time. Like the General Division, the Appeal Division cannot extend the deadline to appeal beyond one year from the date you first found out about the decision.

B. The Application

You ask for leave (permission) to appeal by filling out an "[Application to the Appeal Division – Employment Insurance](#)", which is available on the SST's website. You can also use this form to appeal if your case was summarily dismissed by the General Division. It is important that you fill in all the sections because your application will not be accepted if it is missing any necessary information. *You must also attach a copy of the General Division decision you are trying to appeal.*

C. Reasons for your Appeal

You must state your reasons for appealing in section 5 of the [application](#). When filling out this section, it is important to remember that the Appeal Division works much differently than the General Division. An appeal to the Appeal Division is not a chance to reargue your case all over again. The Appeal Division cannot just allow your appeal because it disagrees with the General Division's decision. The law says that the Appeal Division can only allow your appeal if the General Division made certain types of mistakes. The government used very complicated legal language to describe these mistakes, so we will go over each of them. In all cases, [researching the law](#) can be helpful.

- ***The General Division failed to observe a principle of natural justice***

This is pretty much a fancy way of saying that the General Division did not use a fair process to decide your appeal. The General Division must let you know the case against you, including what evidence it will be considering, and then give you a fair chance to present your side of the story. The SST Member deciding your appeal must also appear to be unbiased. For example, if the General Division based its decision on documents sent by your employer that you never had a chance to see or respond to, that might be contrary to natural justice because you did not know the evidence against you. As another example, if the General Division Member who made the decision you are appealing said that you were lying without giving you a chance to explain yourself at a hearing, that might be contrary to natural justice because you did not get a fair chance to present your side of the story.

Bias might include situations where the SST Member makes nasty personal remarks about you or situations where the SST Member had a close personal or business relationship with your employer. Just because the SST Member disagrees with you or asks tough questions at the hearing does not mean that the SST Member was biased against you.

It is impossible to cover all the different ways that the appeal process can be unfair, so you will need to think about your own case and what made the process unfair. Keep in mind that we are talking about unfairness in the process that the General Division used, not unfairness in the decision that the General Division made. You may think that the General Division's decision is totally unfair and full of mistakes, but that does not mean that the process the General Division used was unfair and contrary to natural justice. There are other grounds for appeal that allow you to challenge the General Division's actual decision.

- ***The General Division acted beyond its jurisdiction or refused to exercise its jurisdiction***

This is just a fancy way of saying that the General Division did something that it did not have the legal power to do, or

refused to do something it had a legal duty to do. One example that comes up quite often involves disputes about how many hours you worked for a given employer, or how much you earned. The law says that the SST does not have the legal power, or jurisdiction, to resolve a dispute about your hours or earnings. Only the Canada Revenue Agency has the power to do that. So, if the General Division decided to decrease the number of insurable hours reported on your record of employment, you could appeal to the Appeal Division because the General Division has no legal power to do that.

Just disagreeing with you or saying you don't get EI benefits is not beyond the General Division's legal powers. The General Division's job is to make decisions about appeals. There are other grounds for appeal that cover mistakes about the facts or the law.

- ***The General Division erred in law***

This means that the General Division didn't get the law right. Often this happens when the General Division applies the wrong legal test in an appeal. For example, people can be disqualified from getting regular EI benefits if they are fired due to their own misconduct. The law says that misconduct must be something that is done wilfully (on purpose). So, if the General Division said that misconduct can include accidents, such as accidentally breaking something at work, that would be an error of law.

- ***The General Division based its decision on an important error regarding the facts of your case***

"Facts" are the General Division's findings about what happened (i.e. who did what, when, where, and how). The Appeal Division will only interfere with the General Division's findings of fact if the evidence in your file cannot reasonably support the General Division's version of what happened. If there is at least some evidence in your file that can reasonably support the General Division's findings of fact, the Appeal Division is not going to second guess the General Division's decision or second guess who to believe and not believe.

For example, suppose the General Division said you couldn't get EI because you were fired for skipping work. If all the evidence, even the evidence from your employer, shows that you were at work that day, the Appeal Division might allow your appeal. However, if there is some evidence from you to show you were at work and some evidence from your employer to show you were not at work, the Appeal Division likely won't second guess what the General Division decided or second guess the decision to believe your employer instead of you. Even if the Appeal Division Member might have made a different decision if it were up to them, they will not interfere with the General Division's findings of fact if there is some evidence that can reasonably support the decision.

D. New evidence

Generally, you are not allowed to send in new evidence to the Appeal Division that the General Division never had a chance to consider. However, there are exceptions. If you are saying that the General Division breached the rules of natural justice, you will generally be allowed to submit new evidence to show what the General Division did wrong. For example, if you missed your hearing because you were in a serious car crash and the General Division went ahead without you, you would likely be allowed to give evidence about the car crash and what happened after. If you are late appealing, you will likely be able to send in new evidence to help explain why you were late.

The Appeal Division also has the ability to let you submit new evidence if it would be in the interests of justice to do so. But keep in mind that there is [a separate process through which the General Division can reconsider its decision if you have new evidence](#). Generally, this is the right way to deal with new evidence. However, if you have started an appeal and you discover new evidence that is really important to your case, you can always send it in with an explanation of why you did not send it to the General Division.

E. The Decision About Leave to Appeal

The Appeal Division will review your Application and decide whether your appeal has a reasonable chance of winning. Generally, the Appeal Division does not hold any kind of hearing before deciding whether or not to give you permission to appeal, although it may ask for further information in writing from you or give the other parties (the Commission or your employer if they are participating), a chance to respond. If the Appeal Division finds that your appeal has no reasonable chance of winning, you will not get leave to appeal and that will end your case (subject to a process called judicial review, which is not covered in this guide). If the Appeal Division finds that your appeal has a reasonable chance of winning, you will be given permission to appeal. In either case, the Appeal Division will send you written reasons for its decision. If you are appealing a summary dismissal, there will be no decision about leave to appeal because you can appeal automatically and do not need permission.

F. The Appeal Process

If you are given leave to appeal, the Appeal Division will automatically move on and start the rest of the appeal process. Remember that getting leave to appeal does not mean that you win. It just means that your case has a reasonable chance of winning, so the Appeal Division will give you a chance to fully present your case.

You will have 45 days from the date of the decision giving you permission to appeal to file [written submissions \(an argument you write down\)](#) arguing why your appeal should win. Note that this deadline starts running from the date

the Appeal Division makes its leave decision, not the date you first found out about it. If you are appealing a [summary dismissal](#), your written submissions are due 45 days after you file your Application.

Your submissions to the Appeal Division will likely look a little different than your submissions to the General Division. You need to focus on the [mistakes in the General Division's decision and/or why the process the General Division used was unfair](#). Avoid long or rambling submissions, but make sure you say all that you have to say. Unlike the General Division, the Appeal Division is not required to hold a hearing, so your written submissions may be your last chance to state your case. [Researching the law](#) can be helpful.

If the SST does decide to hold a hearing, a [Notice of Hearing](#) will be sent to everyone involved. The Notice of Hearing will set out what [type of hearing](#) will be held. Keep in mind that the same rules about [rescheduling or adjourning a hearing](#) also apply in the Appeal Division.

Your hearing at the Appeal Division will be much different than your hearing at the General Division. You will likely not be presenting your evidence all over again or calling witnesses because new evidence is generally not allowed at the Appeal Division. Rather, you need to focus on explaining [the mistakes in the General Division's decision or why the process the General Division used was unfair](#).

G. The Appeal Decision

After considering all the evidence and submissions, the Appeal Division will make its decision. If the Appeal Division decides that your appeal should win, there are several things that could happen. The Appeal Division may decide to take charge and make the final decision about your case. However, the Appeal Division may decide to send your case back to the General Division so they can make a new decision without repeating the same mistakes. This can be frustrating because it means that your case is not necessarily over even though you won at the Appeal Division. If the Appeal Division denies your appeal, that will end your case (subject to a court process called judicial review, which is not covered in this guide). If you are considering judicial review, you should talk to a lawyer.

6. APPLYING TO RESCIND OR AMEND (RECONSIDER) AN SST DECISION

Sometimes you discover new evidence that helps your case after the SST (either the General Division or the Appeal Division) has already made a decision. If this happens, you can apply to rescind or amend the decision. Often this is called “reopening” the decision. If the General Division made the decision you want to reopen, you direct your application to the General Division. If the Appeal Division made the decision you want to reopen, you direct your application to the Appeal Division.

A. The Deadline to Apply

You must apply to reopen a decision within one year of the day you found out about the decision. You may only apply to reopen a particular decision once. Also keep in mind that applying to reopen a decision does not stop the deadline for filing an appeal. For example, if you apply to reopen a General Division decision based on new facts and your application is denied, you may be out of time to appeal. In some cases, it may be possible to file an appeal with the Appeal Division and an application to reopen with the General Division at the same time. These cases get very complicated, so if you are unsure what to do, you should try to get legal advice.

B. The Application to Reopen

You can apply to reopen a decision by filling out the [Application to Rescind or Amend \(Reopen on New Facts\)](#) form. As with all forms, you must make sure that all the required information is filled out or it will not be accepted. You must attach a copy of the decision you are trying to reopen. Once you have completed the form, you can [mail, email, or fax](#) it to the SST. It is a good idea to keep a copy of your application.

C. When Will the SST Agree to Reopen an EI Decision?

The SST can reopen an EI decision in two different situations:

- a. If you present new facts to the SST; or
- b. If the SST is satisfied that the decision you want to reopen was made without knowledge of, or was based on a mistake as to, some material fact.

A fact will only be considered “new” if you could not have discovered it with reasonable diligence at the time of your hearing. “Reasonable diligence” means that you must have taken all reasonable steps to gather up and send in your

evidence before your hearing. The SST will not reopen a decision just because you missed something.

If you are saying that the SST made a mistake or did not know about a “material fact”, you must generally explain why that fact is important and might impact the outcome of the case.

D. The Process

The SST will send your application to the other people involved in your appeal (the Commission and your employer if they are participating) to give them a chance to make submissions by a certain deadline. After the SST gets everyone’s submissions or the deadline passes, the SST will decide whether or not to hold a hearing. There is no obligation for the SST to hold a hearing for an application to reopen. If the SST decides not to hold a hearing, an SST Member will simply make a decision about your application and mail the decision to you. If the SST does decide to hold a hearing, a [Notice of Hearing](#) will be sent to everyone involved. The Notice of Hearing will set out what [type of hearing](#) will be held. Keep in mind that the same rules about [rescheduling or adjourning a hearing](#) also apply in the Appeal Division. An SST Member will then make a decision and send it to you.