

A Member's Guide to the Workplace Safety and Insurance Board (WSIB)

May 2018



Workplace Safety and Insurance Board (WSIB)

Applying for WSIB benefits can be confusing and frustrating as you navigate your way through the complicated WSIB process. We hope this general summary will assist in making the WSIB process less stressful. Your local ETFO office can also provide you with information regarding the WSIB and your employer.

Benefits

WSIB entitlement provides for two forms of compensation in the event of a workplace injury:

1. LOE – Loss of Earnings (wage replacement)

If you lose time from work due to a workplace accident you may be entitled to LOE benefits. LOE is paid at 85 per cent (85%) of your net average salary. There is a yearly maximum salary cap. If permitted under your collective agreement, your WSIB benefit may be topped up. WSIB benefits are non-taxable.

2. HCB – Health Care Benefits (treatment expenses)

The WSIB pays for most medical treatments related to the workplace accident (medications, physiotherapy, chiropractic care, etc.). The WSIB has established caps for most health care benefits.

Another form of compensation that may occur is a **Non-Economic Loss (NEL) Award** which is a lump sum of money that may be granted where there is a permanent impairment as a result of a workplace accident. This impairment does not necessarily prevent an injured member from earning full wages. It is for general pain and suffering.

Filing a WSIB Claim

All accidents/injuries that occur on the worksite or that arise out of and in the course of employment, no matter how trivial, should be reported to your employer. This does not mean, however, that every injury is reported to the Workplace Safety and Insurance Board (WSIB). Your employer only needs to report your accident to the WSIB if you lose time from work due to the injury or if the injury necessitates medical attention or some form of health care, i.e., physiotherapy.

When you are injured at work, it is recommended that you fill out the school board generated *Violent Incident Reporting Form* to record the details of your injury. If you are unable to do this, a principal or witness can fill it out on your behalf. This form is then submitted to the school board where the information is transferred to an official WSIB Form 7, which is the Employer's Report of Injury/Disease.

Chronic Mental Stress Claims-CMS (see Appendix D)

New WSIB Entitlement

Effective January 2018, Ontario workers have entitlement to WSIB benefits for workplace chronic mental stress. **There is a transitional provision allowing workers with a chronic mental stress injury date between April 29, 2014 and January 1, 2018 to make a CMS claim with a filing time limit of July 1, 2018.** To be eligible for WSIB benefits the CMS must be predominantly caused by a substantial work-related stressor. Stress caused by an employer's management decisions is generally not compensable. More information about the CMS policy is available on the WSIB website <http://www.wsibresources.ca/CMSPolicyPDFS/150314advanceversion.pdf>

Official Reporting Forms

Form 7– Employer's Report (see Appendix B)

Form 7 is the employer's reporting of the accident. Form 7 comes in triplicate and you have the right to a copy from the employer. Injured workers have no ability to revise the employer's Form 7. A Form 7 will trigger the start of the claim process with the WSIB.

Form 8 – Health Professional's Report (see Appendix C)

When you seek medical attention for a work-related accident, the treating health care professional is obligated to complete and submit a Form 8. A Form 8 is the physician's report of the accident based upon the physical examination done at the time. A Form 8 will also trigger the start of the claim process with WSIB. There is a separate form, CMSF8, for CMS.

Form 6 – Worker's Report (see Appendix A)

You must also report the accident to the WSIB through a Form 6. This form is your opportunity to describe the workplace accident and/or injury suffered. A Form 6 will also trigger the start of a WSIB claim. This form is available online at www.wsib.on.ca. Any information you provide on this form should be accurate and the WSIB will expect that it is consistent with your doctor's Form 8/Form CMS8. You are required to provide a copy of the Form 6 to your employer. There is not a separate CMS Form 6. When claiming CMS, ETFO members are advised to provide additional documentation with the Form 6. This documentation should provide the narrative of the workplace events, names of witnesses and any related reports of incidents giving rise to the CMS injury.

Functional Abilities Form (see Appendix E)

As an injured worker, you are obligated to consent to the release of functional abilities information. This information outlines your restrictions and limitations due to the workplace injury. The form is provided to the employer and used to assess whether you can return to your job and/or whether accommodations would enable you to return.

The FAF is given to you by the employer for completion by your physician. The information is then released to the employer. Some employers will request your permission to write to your doctor for additional information or to speak directly with your doctor regarding your absence. While your employer is entitled to functional abilities information under WSIB rules, there are limits to what other medical information an employer may obtain. Although every circumstance needs to be carefully considered, in general, you should never sign away your right to privacy by giving your employer full and open-ended access to your medical history. If in doubt about what is being requested of you, please consult your local ETFO office before signing.

Functional abilities information may be indicated on a WSIB Functional Abilities Form or separately as part of your physician's Form 8.

The Importance of Medical Evidence

Medical evidence is the key to a successful claim. Lack of medical evidence is often the reason for negative decisions. There are a variety of reasons that a claim may be denied or benefits terminated, such as:

- lack of medical documentation to support the claim
- medical documentation in the file is not current
- delay in reporting an accident to the employer and/or filing a WSIB claim
- all injured parts of the body are not listed on Form 7, Form 8 or Form 6
- delay in seeking medical attention for the injury
- no proof of accident/illness
- non-co-operation in a return to work plan
- factual disputes about the reported accident

A claim that is filed with the proper information is often paid without unreasonable delay. If not reported properly, however, numerous problems can arise. You must keep in regular contact with your treating health care practitioner in order to help establish continuity of medical treatment and to demonstrate the seriousness of the injury/accident. You should obtain appropriate medical care for each injury or body part affected.

Medical evidence is often needed to address the following issues:

- whether the condition is disabling
- what medical restrictions or limitations remain
- whether the disabling condition arose out of the workplace accident

- what additional treatment or health care is needed

While a family physician's report will always be important in a WSIB claim, the WSIB relies heavily on the opinion of a specialist who has expertise in the area of your illness/injury. It is crucial that such an opinion be obtained as soon as possible, particularly if the injury/disease is complex. A specialist can only comment on their area of expertise.

The WSIB looks for objective medical evidence in assessing the merits of a claim. Objective evidence includes test results, medications, x-rays, CT scans, MRIs and other medical tests. These are needed to help confirm the connection between the injury/disease and the workplace accident, along with the severity/disabling nature of the injury. The onus is on the injured worker to provide the WSIB with the appropriate medical documentation.

Return to Work/Medical Accommodation

Under WSIB legislation, you are obligated to co-operate in any return to work plan or discussion. The WSIB pursues early and safe return to work options at their earliest opportunity. You are expected to co-operate with this process. You may be expected to return to work even though you are experiencing residual effects of your injury. Failure to co-operate in return to work plans may result in denial or suspension of your WSIB benefits.

The school board has obligations to accommodate an employee's return to work. These obligations are defined in the *Workplace Safety and Insurance Act*, the *Ontario Human Rights Code* and often the collective agreement. The limit of this obligation is accommodation which would cause the employer undue hardship.

To return to work, you are required to provide your school board with a medical certificate stating you are cleared to return to work. You must give the employer prior notice of the date of your return.

If you require a medical accommodation you will need to produce a list of medical restrictions and limitations as outlined by your treating physician. If these have not already been provided through the WSIB process, you should discuss a return to work plan with your doctor(s) prior to accepting a school board's offer.

Under the *Labour Relations Act*, ETFO has a duty of fair representation to its members with respect to return to work issues including requests for medical accommodation. ETFO must participate in return to work plans and/or medical accommodations. Members have a right to union representation throughout the entire process. The local representatives regularly advocate on behalf of members returning from medical leaves including WSIB-related leaves. Contact your local office for support.

A medical accommodation is a need based on medical documentation and **not** a job preference.

Possible Return to Work Outcomes

Every return to work plan is different and each case is based on a member's medical documentation. In general, you might return to:

1. Your own assignment;
2. Your own assignment with modifications in duties or hours;
3. Your same school - with a different but comparable temporary assignment;
4. Your same school - with a suitable temporary assignment; and
5. A different school - with a different job assignment.

Your physician or specialist does not decide what type of assignment you should have. The workplace parties, which include the school board, the local and the member are responsible for the process and all parties must have input. School boards will commonly search for positions which are open or positions may be created to meet your medical needs.

Work Reintegration Program

Return to work issues and return to work plans are dealt with under the WSIB's Work Reintegration Program. As an injured worker, you and your employer are obligated to co-operate in any return to work plan or meeting. There is a mandatory WSIB return to work meeting that must take place no later than 12 weeks following the date of your workplace accident. You are expected to attend this meeting even if you are not fully recovered or ready to return to work. Failure to attend such a meeting may result in the suspension or termination of your WSIB benefits.

A WSIB Return to Work (RTW) Specialist will often facilitate the meeting although an employer representative may also serve this role. The RTW Specialist (or the employer) reports the outcome of the meeting to the Case Manager. The ultimate decision to accept/approve the RTW plan rests with the Case Manager.

A return to work plan is based on your restrictions and limitations as outlined by your treating health care professional. The start of any RTW discussions must be with the pre-injury job in mind. As well, you should always have your local ETFO representative in attendance at any WSIB return to work meeting.

At the end of the meeting, the meeting facilitator will make a report to your WSIB Case Manager, outlining the specific elements of the return to work plan agreed upon by the workplace parties. It is up to your Case Manager to decide whether to accept or reject the return to work plan.

Although not specifically addressed under WSIB rules, applying for WSIB benefits brings with it a duty for you to mitigate your circumstances while awaiting benefit entitlement. This means you are expected to try and take whatever measures you can to help

reduce the effects of the workplace accident and which would assist you in getting back to work. Remember, you do not have to be fully recovered in order to return to work.

Time Limits

There are time limits for appealing decisions made at the WSIB level and at the Workplace Safety and Insurance Appeals Tribunal (WSIAT). It is critical that you meet all the applicable timelines associated with your claim.

If your claim has been denied, you will receive written correspondence from the WSIB indicating any applicable time limit. Upon receipt of that correspondence you must complete and submit the WSIB Intent to Object Form immediately if you wish to preserve your right to appeal an unfavourable decision. The form clearly indicates where the form is to be sent.

Appealing a Negative Decision

If your claim has been denied or terminated and you do not agree with the decision, you have the right to appeal.

As indicated above, you will receive a written decision from the WSIB explaining why entitlement has been denied. Once you submit the Intent to Object Form to the WSIB (see Time Limits) two things can happen:

- 1) If you have new information to submit with your Intent to Object Form the WSIB Case Manager will reconsider this information and provide you with the outcome of that review.
- 2) If there is no new information submitted with the Intent to Object Form, you will be sent a copy of your claim file along with an Appeal Readiness Form and an Objection to Employer Access Form.

If your Case Manager does not change the decision after reviewing the Intent to Object Form and new information you provided for reconsideration, the submission of the Appeal Readiness Form starts the formal appeal process. While there is no time limit for returning this form there are very strict rules as to when and under what conditions the form may be submitted. Please carefully review the Worker Instruction Sheet: Appeal Readiness Form for further information before considering proceeding with an appeal. As well, the ETFO provincial office does provide some assistance with respect to WSIB appeals. Please contact the WSIB Counsellor-on-Duty to discuss the type of assistance that may be available to you.

It is important to note that no WSIB benefits will be paid unless/until a WSIB appeal is successful.

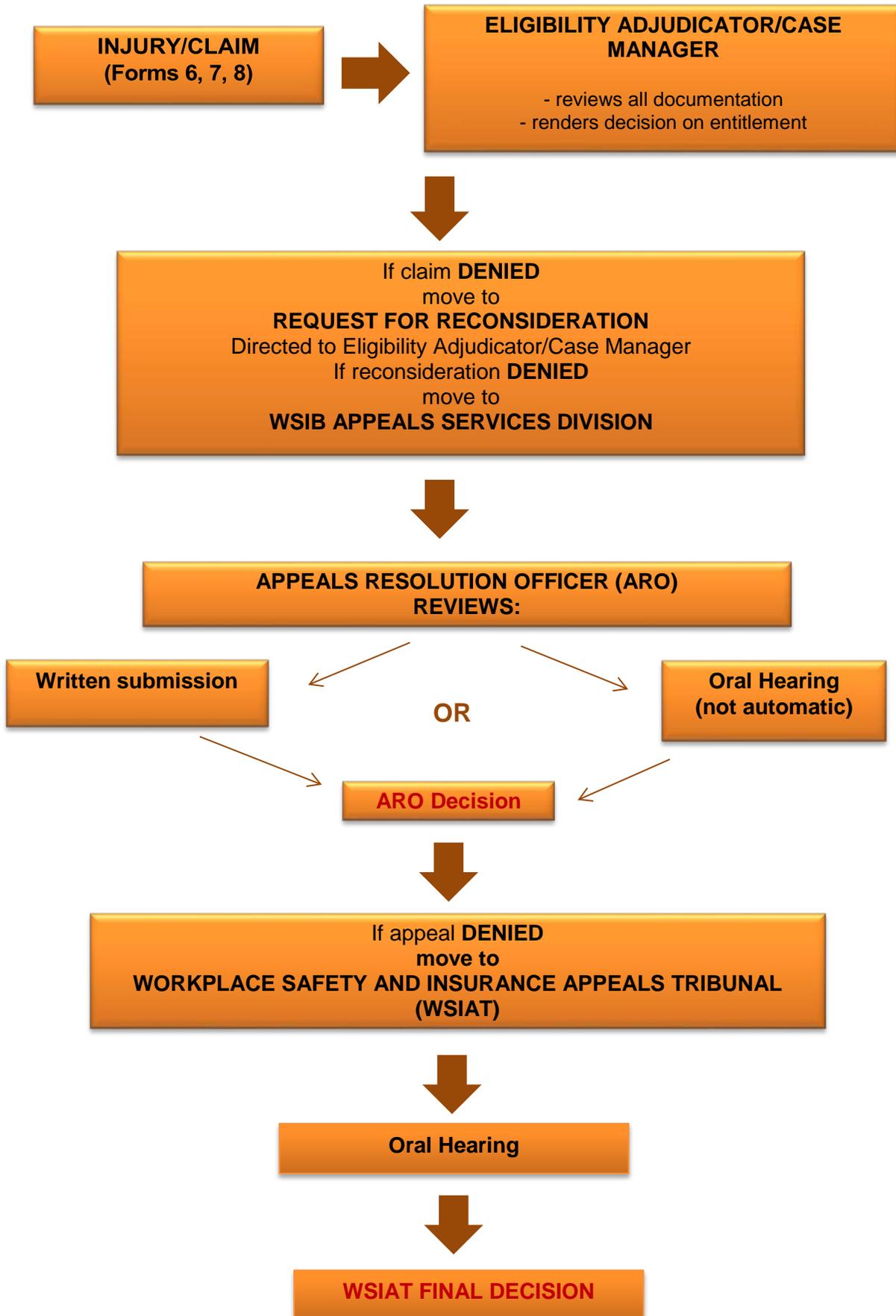
Appeals Resolution Officer

When an appeal is referred to the Appeals Services Division, a decision will be rendered by an Appeals Resolution Officer (ARO). An appeal may be addressed via a written submission or an oral hearing. An oral hearing is not provided in every case. The WSIB will determine if an oral hearing is necessary.

Workplace Safety & Insurance Appeals Tribunal

If the Appeals Resolution Officer upholds the decision to deny or terminate your claim, you may request that your claim proceed to the final level of appeal with the Workplace Safety and Insurance Appeals Tribunal (WSIAT). The appeal format consists of an oral hearing only. The decision of the WSIAT is final.

WSIB System



WSIB and Sick Leave

If you suffer a workplace injury and are medically unable to return to work your salary will be suspended and you will begin to access sick leave credits. Once entitlement is granted by the WSIB your absence will be recorded as “WSIB” related.

The WSIB pays at a rate of 85 per cent (85%) of a worker’s net average earnings. In the past, and provided allowed under a collective agreement, unused sick leave credits could be used to top-up an injured member’s WSIB benefit. Under our current Central Agreement, there are rules regarding sick leave and top-up for WSIB purposes. WSIB top-up is limited to employees who were eligible to use unused sick leave credits as of August 31, 2012. Top-up shall be paid in accordance with the collective agreement or board policy as of August 31, 2012 and is subject to a maximum time period of four years and six months. Please contact your local ETFO office for the applicable top-up protocol for your school board.

WSIB and Pension

Members receiving WSIB benefits continue to be active members of the pension plan. WSIB Loss of Earnings benefits are pensionable. Members with longstanding WSIB claims are advised to contact the pension plan to confirm the process for making the required contributions.

Financial Assistance

It may take some time for you to receive a decision from the WSIB in your claim. No WSIB benefits will be paid until entitlement has been granted by the WSIB. If you have exhausted your sick credits but have not yet qualified for WSIB benefits you may qualify for financial aid through the following government programs:

Employment Insurance (EI)

These benefits may be paid for a maximum of 15 weeks after a two-week waiting period. You must have accumulated 600 insurable hours in the 52 weeks preceding the claim. There is an application process that requires your Record of Employment (ROE) from your school board along with a medical certificate signed by your doctor confirming you are medically unable to work. The ROE is completed by your employer after your last day of paid work and the exhaustion of any sick leave. For more information please see ETFO’s “*A Member’s Guide to Employment Insurance*” at www.etfo.ca.

Ontario Disability Support Program (ODSP)

This form of social assistance may include financial assistance provided to a person with a disability as well as accommodation, basic living expenses, prescription drugs and basic dental care. There are eligibility requirements. For more information please check the website at www.mcass.gov.on.ca.

If your WSIB claim is approved you will be expected to repay any monies you received from EI or ODSP.

Concurrent WSIB and LTD Claims

In the event of a workplace accident you may file a WSIB claim. If it is anticipated that you are going to be away from work for a lengthy period of time due to the work-related injury, it is recommended that you also apply for LTD. WSIB and LTD claims can run concurrently though you will not generally receive benefits from both for the same period of time.

WSIB will be the first payor. If the WSIB claim is denied and the LTD claim has been approved, LTD can be activated so that you are not without some income. If you are also applying for LTD it is imperative that you do not miss the deadline for filing an LTD claim.

Provincial Assistance with WSIB Claims

Procedure

The ETFO Executive has established guidelines for assisting members in WSIB disputes. The provincial office may only become involved with a member's claim when the claim has been denied or terminated. To qualify for support all cases must also meet ETFO's WSIB Case Selection Criteria. Legal assistance will not be provided automatically. You may contact the WSIB Counsellor-on-Duty at the provincial office to discuss the type of assistance that may be available to you.

Return to work and medical accommodation issues associated with a WSIB claim will be dealt with by ETFO locals, and where necessary, in consultation with ETFO's Professional Relations Services (PRS) staff.

ETFO Case Selection Criteria

ETFO **will not** provide representation to members in the following WSIB circumstances:

1. Permanent disability and Non-Economic Loss (NEL) awards (increases and arrears).

2. Health care benefits unless an appeal would have a significant impact on other entitlements such as return to work or loss of earnings benefits.
3. Cases involving Loss of Earnings (LOE) and Health Care Benefits (HCB) for less than 7 working days.
4. Recovery of overpayments.
5. No lost time claims.
6. Employer access to WSIB file. However, ETFO staff will have discretion to provide assistance to a member if an employer's request for access to a member's WSIB file, particularly the medical evidence, is being used to harass the member or may have a negative impact on the member's employment status.
7. Employer requests for medical assessments. ETFO staff will have discretion to provide assistance to a member if they believe the employer's request for medical assessment is being used to harass the member or may have a negative impact on the member's employment status.
8. Earnings basis calculations (these calculations affect the way benefits are calculated. All information comes from the employer).
9. Where time limits have expired or there is insufficient time to review a file prior to the expiration of a time limit or an appeal hearing/or submission date. For instance:
 - The WSIB Intent to Object Form was not submitted to the WSIB within the required six-month or 30-day deadline.
 - The appeal process has been initiated by the member and ETFO was not involved prior to initiation.
10. Non-cooperation with ETFO. For example:
 - Non-compliance with timelines or requests as set out by ETFO.
 - Refusing to report a material change in circumstance as required under the *Workplace Safety and Insurance Act*.
 - Refusing to disclose information to ETFO that is pertinent to the WSIB claim/dispute.
11. A member has engaged their own legal counsel or has an alternative representative.
12. If the member's claim arose when they were a member of another teacher federation or another organization.
13. If a member has retired or resigned from teaching and the provincial office was not involved in the member's claim prior to the retirement/resignation date.

14. If, in ETFO's opinion, the claim is not sufficiently strong to succeed at an appeal to the Appeals Services Division and/or Tribunal. (i.e., case insufficiently supported by medical documentation, situation when significant and necessary events from a witness are not available, no ability to obtain additional supportive medical evidence).

Frequently Used WSIB Acronyms

ACT (WSIAct)	Workplace Safety and Insurance Act
ADJUDICATE	Decide
A/E	Accident Employer
ARO	Appeals Resolution Officer
CA	Claims Adjudicator
CM	Case Manager
COMP	Compensation
CPP	Canada Pension Plan
DOA	Date of Accident
EMP	Employer
ENT	Entitlement
ESRTW	Early and Safe Return to Work
FAE	Functional Assessment Evaluation
FAF	Functional Abilities Form
FU	Follow-Up
HCB	Health Care Benefits
IE	injured employee
INJ	Injury
IW	Injured Worker
LDW	Last Day Worked
LMR	Labour Market Re-entry
LO	Lay Off, Laid Off
LOE	Loss of Earnings
MC	Medical Consultant
MMR	Maximum Medical Recovery
MVA	Motor Vehicle Accident
MW or Mod. Work	Modified Work
NCM	Nurse Case Manager
NEL	Non-Economic Loss
NFA	No Further Action
NLT	No Lost Time
NON COMP	Non-Compensable
ODD	Occupational Disease Department
OHCOW	Occupational Health Clinics for Ontario Workers

Frequently Used WSIB Acronyms continued

O/S	Outstanding
PD	Permanent Disability
PI	Permanent Impairment
PENS	Pension(s)
PPD	Permanent Partial Disability
RC	Rehabilitation Counsellor
REC	Regional Evaluation Centre
REO	Re-Open (claim)
REP	Representative
RMA	Regional Medical Advisor
RTW	Return to Work
RX	Prescription
TRIBUNAL	Workplace Safety and Appeals Tribunal
WSIAT	Workplace Safety and Appeals Tribunal
WSIB	Workplace Safety and Insurance Board

DH:EM:MMC
May 2018

NOTES

Professional Relations Services

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