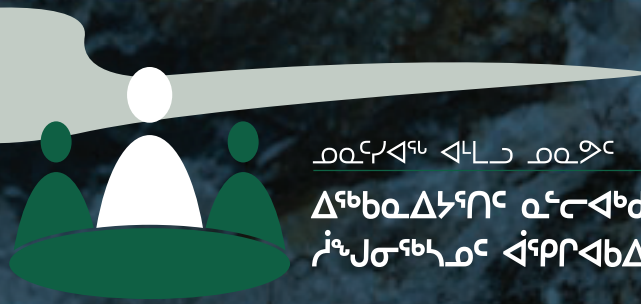


NORTHWEST TERRITORIES AND NUNAVUT
**Workers' Compensation
Appeals Tribunal**



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2022

ANNUAL REPORT
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UKIUQ TAMAAT
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NORTHWEST TERRITORIES AND NUNAVUT

**Workers' Compensation
Appeals Tribunal**



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Honourable Paulie Chinna
NWT Minister Responsible for the WSCC

Honourable Margaret Nakashuk
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 2022 Annual Report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Colin Baile', with a stylized flourish at the end.

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 – 2022

Colin Baile – Chairperson (Yellowknife)

Michael Chandler – (Iqaluit)

Cayley Thomas – (Yellowknife)

Cynthia Levy – (Yellowknife)

Maria Jobse – Registrar/General Manager

OPERATIONS

During this reporting period, six appeals and one Section 63 application were received. This is on par with our annual average number of appeals. Two of the appeals were Nunavut cases while the remaining four were from the Northwest Territories.

In 2022, the Tribunal began the publication of its decisions in a redacted form on CanLII. The decisions can be found at www.canlii.org/en/nt/ntwcat/.

The Appeals Tribunal was a named Respondent in a class act court action together with every other workers' compensation appeals tribunal and board/commission in Canada. The matter remains before the court.

FINANCIAL OPERATIONS

In 2022 the Tribunal's total expenditures were \$346,490 which was 65% of the Tribunal's budget of \$530,185.

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.

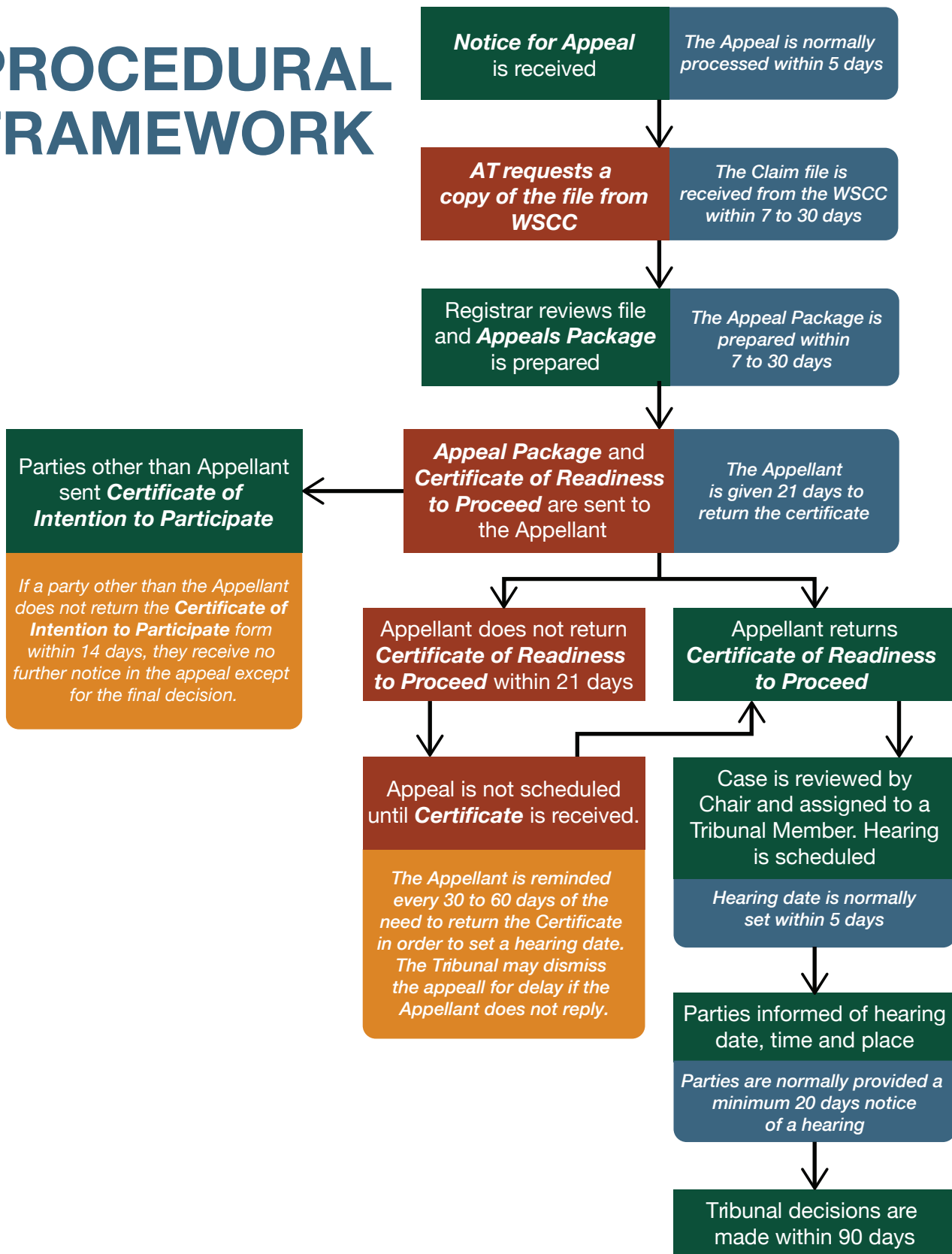
The Tribunal is an independent body, being administratively and legally separate from the WSCC.

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



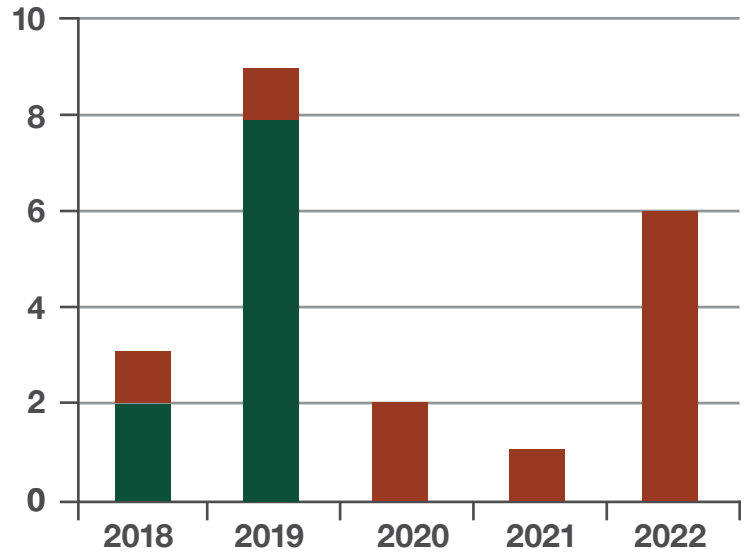
STATISTICS

Please refer to the Appendix for specific data. One Section 63 decision was issued in 2022.

APPEALS AND REQUESTS FOR REVIEWS RECEIVED

In 2022, six appeals were received.

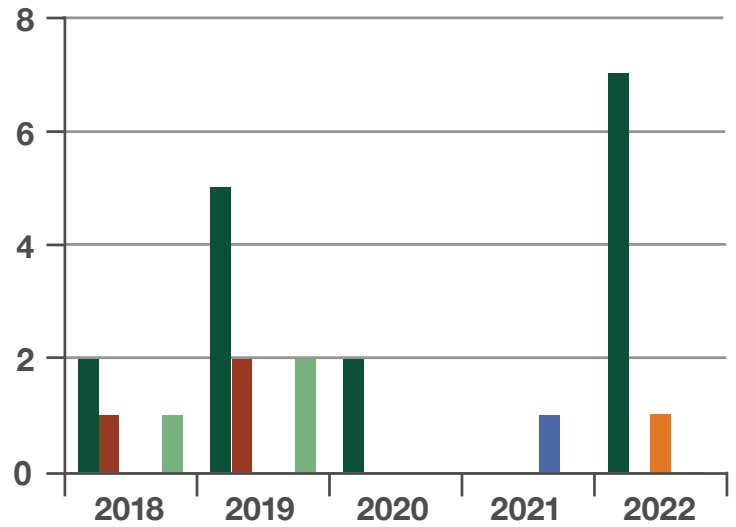
- Requests for Rehearing
- Appeals Received



ISSUES APPEALED

The six appeals received in 2022 addressed eight individual issues including entitlement to wage loss benefits, overpayment of benefits, claim acceptance, and employer cost relief.

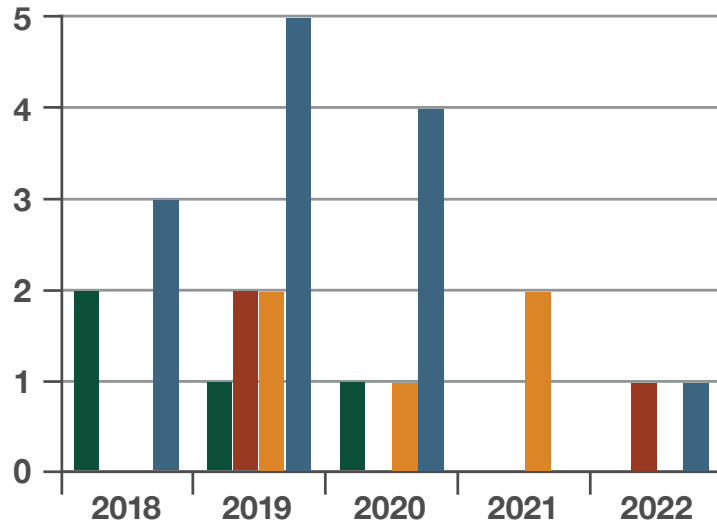
- Claims
- Pensions
- Revenue/Employer
- Rehabilitation
- Time Limit



TYPES OF HEARINGS

Of the hearings conducted in 2022, one was a documentary hearing, and one was a video conference hearing.

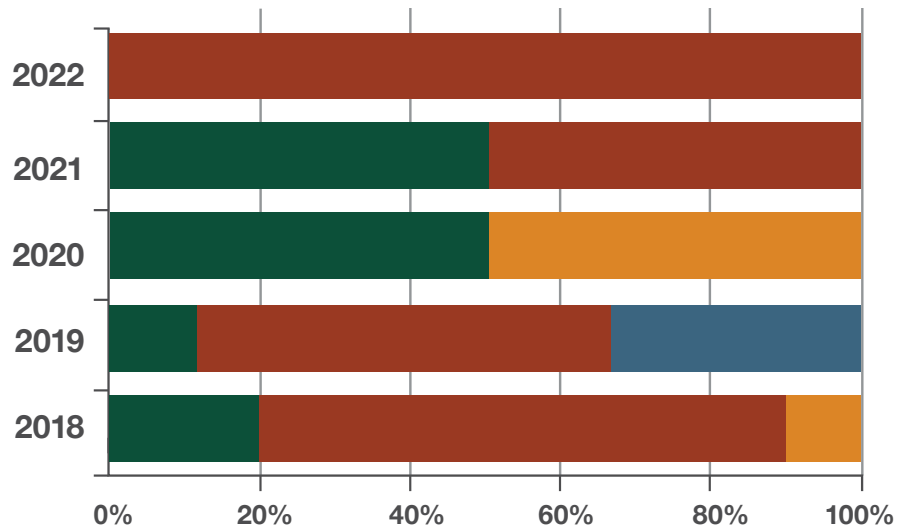
- In-Person
- Video Conference
- Telephone
- Documentary



DECISION OUTCOMES

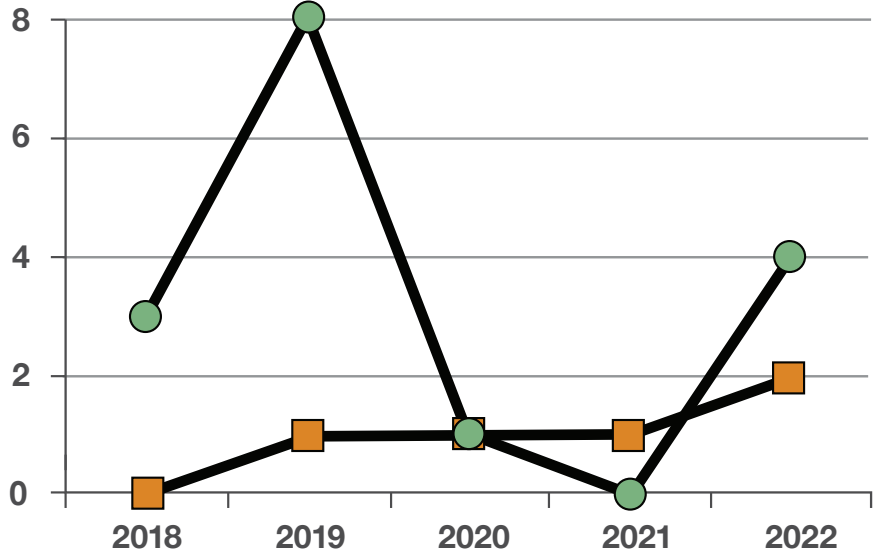
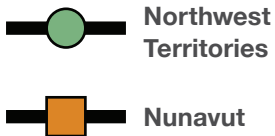
In 2022, the Tribunal issued one decision, which upheld the appealed Review Committee decision.

- Reversed
- Upheld
- Varied
- Cancelled by Appellant



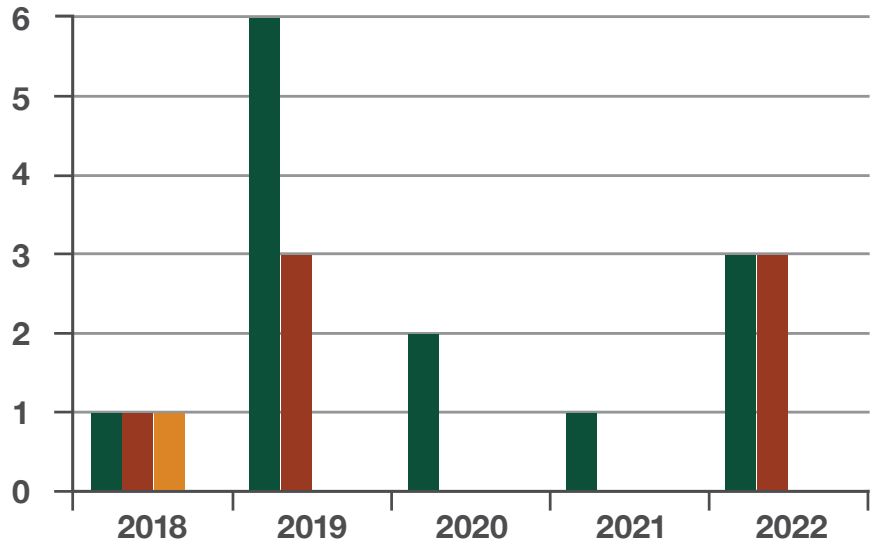
APPEALS BY TERRITORY

Four appeals were received concerning NWT claims and two for NU claims.



TYPE OF APPELLANT

Three worker, and three employer appeals were received in 2022.

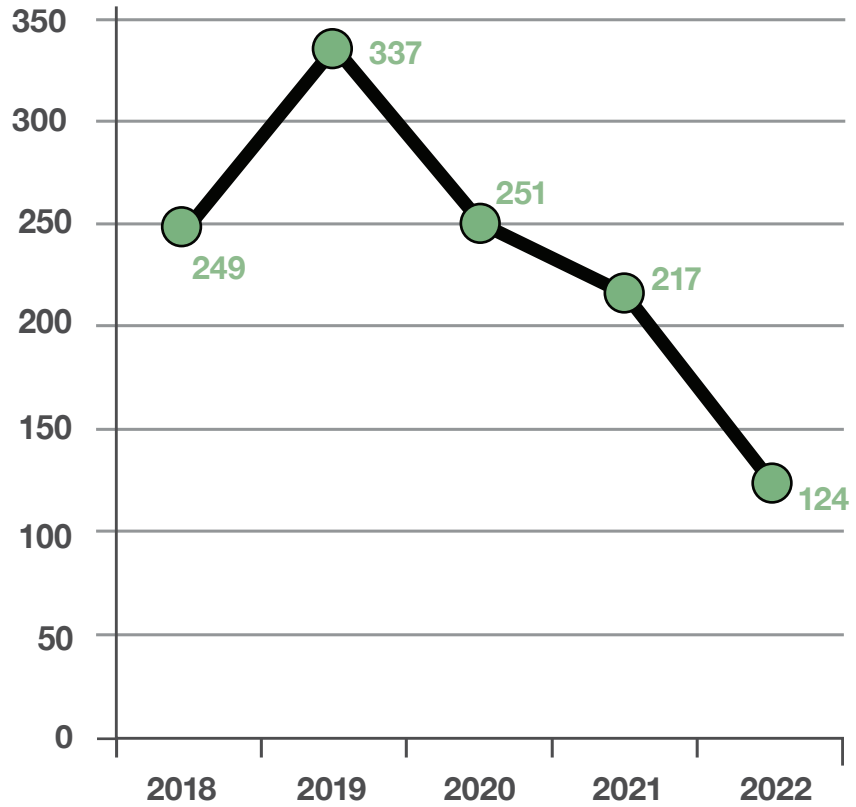


**TIME FROM FILING
TO DECISION**

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 2022

The *Workers' Compensation Acts* requires the Appeals Tribunal to conduct hearings in camera. Because of personal information the Tribunal's decisions can be viewed at www.canlii.org/en/nt/ntwcat/ in a redacted format.

The following are summaries of the Tribunal's decisions made in 2022.

1 Decision 22-001 | Vocational Rehabilitation Benefits | WSCC decision was upheld

- Worker Appeal
- The Employer did not participate
- The WSCC did not participate

The Worker suffered a compensable workplace injury to his arms and legs. After two years of receiving temporary total disability benefits, the worker had reached maximum medical recovery. He was referred to vocational rehabilitation and approved for 12 weeks of a Job Search program. One month later the WSCC informed the worker that due to Covid, the Job Search program was “on hold” but that he would continue to receive a program allowance. The worker continued to seek employment on his own and found employment. WSCC policy allowed for an incentive program by which a worker of Job Search who finds employment during the program is entitled to a portion of the unused allowance. The Worker made such a claim and was denied by the WSCC. The worker appealed that WSCC decision.

At appeal, the Tribunal determined the worker found employment 72 days after starting the Job Search program and the governing WSCC policy disallows the incentive program after 71 days. The WSCC denial decision was upheld.

APPENDIX

APPEALS/REQUESTS FOR REHEARING RECEIVED

	Appeals	Requests for Rehearing	Total Received
2018	2	1	3
2019	8	1	9
2020	2	0	2
2021	1	0	1
2022	6	0	6

ISSUES APPEALED

	2018	2019	2020	2021	2022
Claims	2	5	2	0	7
Pensions	1	2	0	0	0
Revenue/Employer	0	1	0	0	1
Rehabilitation	0	0	0	1	0
Appeal Time Limit	1	1	0	0	0
TOTAL RECEIVED	4	9	2	1	8

TYPE OF HEARING

	2018	2019	2020	2021	2022
In-Person	1	1	0	0	0
Video Conference	2	0	0	1	1
Telephone	2	1	2	0	0
Documentary	5	4	0	1	1

DECISION OUTCOMES

	2018	2019	2020	2021	2022
Reversed	2	1	1	1	0
Upheld	7	5	0	1	1
Varied	1	0	1	0	0
Cancelled by Appellant	0	3	0	0	0

APPEALS BY TERRITORY

	2018	2019	2020	2021	2022
Northwest Territories	3	8	1	0	4
Nunavut	0	1	1	1	2

TYPE OF APPELLANT

	2018	2019	2020	2021	2022
Workers	1	6	2	1	3
Employers	1	3	0	0	3
Dependents	1	0	0	0	0
WSCC	0	0	0	0	0

AVERAGE DAYS FROM FILING TO DECISION

	2018	2019	2020	2021	2022
Average days	249	337	251	217	124

SECTION 63 APPLICATIONS

	2018	2019	2020	2021	2022
Count	1	1	0	0	1

JUDICIAL REVIEW APPLICATIONS

	2018	2019	2020	2021	2022
Count	0	0	0	0	0