

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

**RECONSIDERATION AND THE SOCIAL SECURITY
TRIBUNAL**

© January 2016 Community Legal Assistance Society

1st edition: April, 2015

2nd edition: November, 2015

Author: Kevin Love

This publication may not be reproduced commercially, but copying for other purposes, with credit, is encouraged. Putting this material on the web for commercial or non-commercial purposes is prohibited without the consent of Community Legal Assistance Society.

A PDF edition of this guide is available at www.clasbc.net

The publication of this guide is made possible by funding from the Law Foundation of British Columbia.

WARNING AND WAIVER

What this guide covers

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.

Getting legal advice

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.
- The law, including statutes, regulations, and the rules about practices and procedure can change without warning and those changes may not be reflected in this guide.

Liability Warning

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:

- Ensuring this guide is up-to-date.
- Ensuring the completeness or accuracy of the information contained in this guide.
- Any form of damages or monetary loss caused by or attributed to the use of this guide, including but not limited to claims based on negligence or breach of contract.

CONTENTS

1. WHO SHOULD USE THIS GUIDE?	3
2. THE FIRST DECISION ABOUT YOUR EMPLOYMENT INSURANCE CLAIM	4
A. Who Makes Decisions About Your EI Claim?	4
B. Decisions that <u>Cannot</u> be Challenged Using this Guide	4
3. APPLYING FOR RECONSIDERATION	6
A. How to Request a Reconsideration	6
B. The Deadline to Request a Reconsideration	6
C. Requesting a Copy of Your EI File	8
D. How the Commission Makes the Reconsideration Decision	8
4. THE SOCIAL SECURITY TRIBUNAL GENERAL DIVISION	10
A. The Deadline to Appeal	10
B. The Notice of Appeal	11
C. Representatives	12
D. Your EI File	12
E. Communicating with the SST	13
F. Summary Dismissal	14
G. The Different Types of Hearings	14
H. The Notice of Hearing	18
I. Rescheduling or Adjourning (Postponing) a Hearing	19
J. Preparing for Your Hearing	19
K. At the Hearing	25
L. Expenses	27

5. SOCIAL SECURITY TRIBUNAL APPEAL DIVISION	28
A. The Deadline to Request Leave to Appeal	28
B. The Application	29
C. The Decision About Leave to Appeal	33
D. The Appeal Process	34
E. The Appeal Decision	35
6. RESCINDING OR AMENDING (REOPENING) A DECISION	36
A. The Deadline to Apply	36
B. The Application to Reopen	36
C. When Will the SST Agree to Reopen an EI Decision?	37
D. The Process	37

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:

<http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

After you send in your 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 probably take about a month 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 “Commission”), which is the government agency responsible for running the EI program. The Commission is part of a larger government department called Employment and Social Development Canada.

However, the Commission does not usually communicate directly with people about their EI claim. Most of the time, decisions, letters, and phone calls will come from Service Canada, which is a centralized agency that administers a number of different federal government programs, including EI. So although we will talk about the 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 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 legitimately 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 some information in the letter from the Canada Revenue Agency about how to challenge the decision.

If you find yourself on the tail-end of decisions by both the Commission and the Canada Revenue Agency, make sure you challenge all of them to preserve all your appeal rights. 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 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 get this form on the Service Canada website (www.servicecanada.gc.ca) under the “Forms” Tab. You can also get this form from any Service Canada office. There is no fee for requesting a reconsideration.

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 appeal 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 of the decision, even if you choose not to request a reconsideration. For example, if the Commission gives you regular EI benefits, but your employer feels 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.

i. Counting 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 the last day you can appeal.

If your deadline ends on a weekend or a holiday when Service Canada offices are closed, you can file your appeal on the next day that Service Canada offices are open. For example, if your deadline ends on Labour Day Monday, which is a statutory holiday, you can file your appeal on 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 get your request for reconsideration to the Service Canada office well ahead of your deadline.

ii. Extensions of time

If you miss the deadline, you can ask for an extension of time. There is a section on the Request for Reconsideration form that you can fill out to ask for an extension. 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 there is some reason to believe your case could win 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.

The Commission will consider all these factors before making a decision. Even if some of the factors are not in your favour, the Commission can still give you an extension of time based on the other factors that are in your favour, so do not get discouraged. If the Commission refuses to give you an extension of time, you can appeal that decision to the Social Security Tribunal just like any other decision. Appeals to the Social Security Tribunal are discussed later in chapter 4 of this guide.

C. Requesting a Copy of Your EI File

The Commission will not send you a full copy of your EI file unless you formally request it under the *Privacy Act*. 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.

You can request your EI file here: <<http://www.tbs-sct.gc.ca/tbsf-fsct/350-58-eng.asp>>

- 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
(Keep in mind that contact information can change, so you should double check).

List Employment and Social Development Canada as the federal institution you are directing your request to.

D. 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 appeal should win. You should keep a copy of any documents or submissions you send in. Keep in mind that it is always best to be short and to the point. Avoid long, rambling submissions. 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 several different social benefits, namely 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, most commonly 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 participate 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. For help counting your time limit, read the section called “Counting your Deadline” on page 7 of this guide.

If you miss the deadline to appeal, you can ask for an extension of time. The factors that the SST will consider when deciding whether or not to give you an extension of time are discussed on page 7 of this guide. 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. Appeals to the Appeal Division are discussed later on in

chapter 5 of this guide. Keep in mind that the SST cannot extend the deadline to appeal beyond 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 to the SST General Division (EI)”, which is available on the SST’s website:

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-NOA-GD-EI.pdf>

Make sure you get the form for individuals seeking to appeal EI reconsideration decisions. There are separate forms for employers appealing EI decisions and individuals 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 required information, the SST will send you a letter with a deadline to send in the missing information (generally you will get 30 days). If you do not send in the missing information before this deadline, your appeal will be considered late.

It is very important that you list the day you first found out about the decision in section 2A of your Notice of Appeal. If you fail to 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 2B called “Reasons for 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 2C. 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 succeeding.

You can list any new documents that you want to submit in section 2D and attach copies to 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 attach a copy of the reconsideration decision you are appealing. You can send your completed Notice of Appeal and any documents that you have attached to the SST by mail or fax. The address and fax number for the SST are listed on the Notice of Appeal. 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. This could be a lawyer, a union representative, a legal advocate, or even a friend or family member. You will also need to send in an “Authorization to Disclose” form giving the SST permission to share information with your representative. The Authorization to Disclose form is available on the SST’s website:

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATD.pdf>

The SST will sometimes check to make sure that your representative is actually allowed to represent people in legal cases. Each province has rules to make sure that only qualified lawyers, paralegals, or advocates are providing legal services. There are links to each province’s rules on the SST’s website:

<http://www1.canada.ca/en/sst/hta/cppgndiv.html>

If you have made an agreement with someone to represent you, make sure that person is authorized to be your representative.

Also keep in mind that if you are represented by someone, the SST will generally direct all communications (letters, phone calls, emails etc.) to that person, and not to you. The only documents that will be sent to both you and your representative are the letter confirming your appeal was received, the notice of your hearing, and the reasons for the SST’s decision.

D. Your EI File

The SST will automatically obtain a copy of your EI file from the Commission (Employment and Social Development Canada) and send it to you before the hearing. However, if the SST sends you your file too

close to your hearing date, you may not have enough time to review it thoroughly and respond. It is therefore a good idea to request your own file directly from Employment and Social Development Canada early in the process, particularly if you did not request your file when you made your Request for Reconsideration. Follow the instructions under the heading “Requesting a Copy of Your EI File” on page 8 of this guide.

E. Communicating with the SST

The SST is working hard to improve their phone information system. If you phone the SST, your call will now be answered by someone who has access to your file. This will hopefully mean that the person you speak with can answer your questions and provide information right away. However, if you are told that someone will have to call you back, ask for the call back to be at a time of day that you know you will be available to answer the phone. If you have a cell phone, leave that number and make sure that you have the cell phone charged and on you at all times. Make your questions as specific as possible so that the person calling you back can find the information you need. It is a good idea to write down the name of the person you spoke to and the date and time of the call.

If you have a general question that does not involve sensitive personal information, you can email the SST at infor.sst-tss@canada.gc.ca. The SST asks that you not discuss sensitive personal information by email.

If the SST communicates with you in writing, be aware that there are rules that deem you to have received documents, 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 junkmail 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 Member determines that your appeal has no reasonable chance of success, he or she must deny your appeal without any kind of hearing. This is called summary dismissal. Before dismissing your appeal, the 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 that appear in the letter.

G. The Different Types of Hearings

If your appeal is not summarily dismissed, the SST will arrange some type of hearing. Your hearing could happen in a number of 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 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 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.

i. Requesting a particular type of hearing

The SST Member deciding your appeal has the final say about how your hearing will happen. However, if you think there are reasons why your hearing should happen (or not happen) a certain way, you should let the SST know, preferably in writing. You should explain your reasons for making the request. There is no particular time limit or form you must use; you can just send a letter. However, do not wait too long because you want to make sure there is something in your file before the Member decides how the hearing will happen.

Many people (though not everyone) prefer to have an in person hearing where they can meet the 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 unusually complicated or complex.

- You have a disability that will make it difficult 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 these circumstances).

Other people would rather not attend an in person hearing, or even a videoconference. Some people find the idea of a face-to-face hearing too intimidating. 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.

ii. Other hearing arrangements

You should let the SST know in advance about any special arrangements they need to make for the hearing. Again, there is no specific time limit or form for doing this, but you want to make your request as far in advance as possible, preferably in writing. Below is a list of issues you should consider addressing if they apply to your case:

- **Interpreters:** If you do not speak English or French, you should ask the SST to provide an interpreter. 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 interpretation at the hearing, keep in mind that the SST will not pay to translate written documents. You are responsible for having the document translated and the person who translates it must identify them self 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.

- **Witnesses:** It is a good idea to let the SST know how many witnesses you intend to call at the hearing. If your hearing is in person or by video conference and your witnesses cannot

travel to the hearing location with you, then you will need to make arrangements with the SST in advance for these witnesses to connect by telephone.

- **Length of hearing:** Hearings are usually scheduled to last one and a half hours. 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.
- **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.
- **Private hearings:** Hearings are not necessarily closed to the public. If your appeal involves very sensitive personal information, you can specifically ask the General Division to order that the hearing be held in private. The Member deciding your appeal will review your request and make a decision. Even if your hearing is closed to the public, keep in mind that there may be other people involved in your appeal, such as a representative from ESDC, who have a right to be there.
- **Expedited (urgent) hearings:** If there are compelling reasons why your hearing needs to happen right away, you can request an expedited hearing. Keep in mind that almost everybody is going to face some hardship while they wait for their hearing, so you should only ask to jump the line if there are truly compelling circumstances. For example, if you learn that you have an illness that could lead to death before a hearing is scheduled, you can request that your hearing be held on an urgent or expedited basis.

H. 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 state 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 state when the hearing will take place and where you need to go for the videoconference. You and any witnesses must go to the location on the Notice of Hearing. You cannot try to connect from your own computer.
- **Teleconference hearings:** The Notice of Hearing will state when the hearing will take place and how you call into the teleconference. You must ensure 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. If you plan to have witnesses call into the teleconference, each witness must use a separate phone line.
- **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 Member can figure out which question you are answering. If the 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 Member plans to hold, you should write to the SST right away and explain why you disagree. Even if you already sent in submissions addressing what type of hearing you would like, you should still send a letter letting the Member know that you disagree with the decision about what type of hearing to hold.

I. 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 try to have it moved to another day. The Notice of Hearing will set a deadline (usually two business days) for you to ask to have the hearing date rescheduled without having to make a formal request for an adjournment. You can call or fax the SST and ask them to move the hearing to a new date. If you call, make a note of who you spoke to and the date and time of the call.

If you try to have the hearing date moved after the deadline on the Notice of Hearing, you will need to ask for a formal adjournment. There is no specific form you need to use, but your request must be in writing. You must also explain your reasons for making the request. The Member deciding your appeal will then decide whether to adjourn the hearing to a new date. Never assume that the date of your hearing has changed until you get confirmation from the SST. Until you get confirmation that the date has been changed, you should prepare as though the hearing is going ahead as scheduled.

If the Member does adjourn the hearing and you do not show up on the new date even though you were notified, the hearing will go ahead without you. Once the Member has granted you an adjournment, you will only get a second adjournment if there are exceptional circumstances.

To avoid problems, it is a good idea to let the SST know in advance about any dates that you are not available.

J. 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 Commission's decision. The reconsideration decision may not have a lot of detail, but the file will also have

representations or submissions on behalf of the Commission that will hopefully explain more clearly why the Commission 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. Researching 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 the issues in your case. It is also helpful to read decisions about previous 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 are relevant to your case. There are links to both on the SST’s website:

<http://www.canada.ca/en/sst/rdl/index.html>

If you cannot get legal advice and are having trouble figuring out what sections of the *Employment Insurance Act* and the *Employment Insurance Regulations* apply to your case, the SST’s website has a list of some important sections that apply to different issues. Keep in mind that this is not intended to be a complete or comprehensive list, but it may serve as a useful starting point.

<http://www.canada.ca/en/sst/ad/index.html>

Some libraries (particularly 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:

http://www.servicecanada.gc.ca/eng/ei/digest/table_of_contents.shtml

Service Canada's EI website also has information on variety of EI topics:

<http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

- **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, and you can search for those decisions using a free service called Canlii <www.canlii.org> or on the Federal Court of Appeal's website under the "Decisions" tab.

http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fca-caf_eng

- **SST Cases**

The SST is working hard to make more decisions available to the public. The decisions that are available to the public can be accessed on Canlii<www.canlii.org> or through the SST's website.

<http://www.canada.ca/en/sst/ad/index.html>. Canlii allows you to search by keyword.

- **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 the decisions can still be found on Service Canada's website. These decisions can still 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.

<http://srv130.services.gc.ca/indexjurisprudence/eng/about.aspx>

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.

http://www.ae-ei.gc.ca/eng/board/favourable_jurisprudence/favourable_decisions_toc.shtml

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.

<http://www.ei.gc.ca/eng/library/searchxt.shtml>

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. 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.

You should also think about what evidence in the file works against you and try to find new evidence to counter it. Once you have gathered up your new evidence, mail or fax it to the SST. Contact information for the SST is listed on their website. 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. It is a good idea to keep a copy of everything you send to 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 are not required to send in a written submission, but it can be very helpful. A written submission will serve as a guide for you and the 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. A written submission will let the Member deciding your appeal know what your appeal is all about before she or he arrives at the hearing.

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 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 mail or by 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 submissions you send in. If possible, try to send your written submissions and new evidence to the SST as one single package.

v. Preparing to give your testimony (the evidence you say 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 Member directly. Either way, the 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 Member will likely ask. Do not just ignore the difficulties 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 called 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 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, 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 called me stupid and useless, didn’t you?” However, you do not want your questions to be overly aggressive or disrespectful.

K. At the Hearing

Arrive where you need to be, or call into the teleconference, well before the hearing is scheduled 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 Member deciding your appeal will determine exactly how the hearing happens, so you have to be flexible.

- **Introduction:** The Member will introduce herself or himself and then ask everyone else at the hearing to introduce them self. The Member will review some basic information about the SST and how the hearing will happen. The 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 Member will also make sure that everybody has a copy of all the documents being used in the appeal. You should speak up immediately 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 Member to do and give the 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 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 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 affirm or swear that they will tell only the truth. You can guide your witnesses by asking them questions. Again, your questions should be open ended and 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 Member deciding your case will usually not make a decision on the spot. The Member will likely take some time to review everything before writing up the decision. The decision will be mailed to you once it is ready. There is no specific deadline for the 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

L. Expenses

Ordinarily, you are responsible for all the expenses related to your appeal, such as photocopying, postage, or parking. However, if you are required 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. At this point, the SST has not provided any guidance on what it will consider to be “special reasons” or how to make a request. Until the SST provides more detail, 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 unhappy 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. You will only be given permission to appeal if you convince the Appeal Division that your appeal has some reasonable chance of succeeding. ESDC, or anyone else who was a party to the appeal at the General Division, can also ask for leave to appeal if they disagree with the General Division's decision.

When applying for leave to appeal, it is important to understand that the Appeal Division cannot just make a brand new decision from scratch about your case. Rather, the Appeal Division's role is to check and see if the General Division made certain specific types of mistakes that are discussed later on in this chapter.

If your case was summarily dismissed by the General Division, there is an exception that allows you to appeal automatically, without getting permission from the Appeal Division.

A. The Deadline to Request Leave to Appeal

The deadline is 30 days from the date you first found out about the General Division's decision, regardless of whether you are applying for leave to appeal or appealing a summary dismissal. Please see the "Counting your Deadline" section on page 7 of this guide for help counting the days, but the best solution is to file your application well ahead of your deadline.

Remember that there are rules that deem you to have received the General Division's decision 10 days after it is mailed 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. The factors the SST will consider when deciding whether or not to grant you an extension of time are discussed on page 7 of this guide. 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 to appeal by filling out an Application Requesting Leave to Appeal to the Appeal Division, which is available on the SST's website: <http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ARLTATTAD.pdf>

If your case was summarily dismissed by the General Division, you can appeal automatically by filling out an Application to Appeal to the Appeal Division, which is also available on the SST's website.

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATATTAD.pdf>

The forms are very similar, so make sure that you have the right one. It is important that you fill in all mandatory 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.*

It is very important that you write the date you first found out about the General Division's decision in section 3A of your application. If you fail to do this, the Appeal Division may treat your application as late even though it is not. If your appeal is late, you can fill out section 3B titled "Reasons for Late Appeal". If your appeal is not late, you can leave this section blank.

i. Reasons for appeal

You must state your reasons for appealing in your application (section 3D on the Application for Leave to Appeal; section 3C on the Application to Appeal a summary dismissal). When filling out this section, it is important to remember that the Appeal Division works much differently than the General Division. 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, which are listed in section 58(2) of the *Department of Employment and Social Development Act*. Unfortunately, the government used very complicated legal language to describe these mistakes, so we will go over each of them.

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

The “principles of natural justice” simply mean that the General Division must use a fair process to decide your appeal and must ensure that your appeal is decided by a person who appears to be unbiased. To ensure the process is fair, 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. 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 decided that you were not telling the truth without hearing directly from you at some type of hearing where you could properly explain yourself, that might be contrary to natural justice because you did not get a proper chance to present your side of the story.

Allegations that the Member who made the decision against you was biased should not be made lightly. Just because the Member disagrees with you or asks tough questions at the hearing does not mean that she or he was biased against you. Bias might include situations where the Member makes nasty personal remarks about you or situations where the Member had a close personal or business relationship with your employer.

These are just examples. 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 ultimate 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 necessarily 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 substance of General Division’s decision, which we will discuss next.

- ***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 obligation 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.

- ***The General Division erred in law in making its decision, whether or not the error appears on the face of the record.***

This simply means that General Division misinterpreted the law relating to your case. Often this will mean that the General Division applied the wrong legal test when deciding your 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.

Do not worry too much about the words “whether or not the error appears on the face of the record”. This simply means the Appeal Division can look beyond your file when deciding whether there has been an error of law.

- ***The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.***

Findings of fact are the General Division’s conclusions 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 there is no evidence in your file that can reasonably support the General Division’s account of what happened.

For example, if the General Division found that you were late for work on a particular day, but even your employer agrees that you were at work on time and there is no other evidence that suggests you were late, that would be a perverse or capricious finding of fact made without regard for the material in your file. However, if there is some evidence from your employer that shows you were late, and some evidence from you that shows you were not late, the Appeal Division will likely not second guess how the General Division dealt with all the competing evidence or second guess the General Division's decision to believe your employer over you. Even if the Appeal Division might have come to a different conclusion if it were up to them, they will not interfere with the General Division's findings of fact so long as there is some evidence that can reasonably support the decision.

ii. Reasons for Leave to Appeal

If you are filling out an Application for Leave to Appeal, you must also explain in section 3C why your appeal has a reasonable chance of success. This is the test the Appeal Division will use to decide whether or not to give you leave to appeal (the Application to Appeal a Summary Dismissal does not have this section because you get to appeal automatically).

This section can be a little confusing and repetitive because whether or not your appeal has a reasonable chance of success will likely come down to whether or not your reasons for appeal have some merit. However, it may be worth reminding the SST that the question at this point is not whether you should win or lose, but only whether there is a reasonable chance you might win. In other words, you want to highlight or explain how your reasons for appeal will have some chance of succeeding if you are allowed to fully present your appeal. The Appeal Division does not have to agree that all your reasons for appeal have some merit. As long as at least one of your reasons could ultimately succeed, you should get leave. However, the Appeal Division may only let you pursue the reasons for appeal that have a reasonable chance of succeeding.

iii. 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 alleging 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.

For matters not relating to natural justice, the Appeal Division still 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 (see chapter 6 of this guide). Generally, this is the proper 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.

C. The Decision About Leave to Appeal

The Appeal Division will review your Application Requesting Leave to Appeal and make a decision. Generally, the Appeal Division does not hold any kind of hearing before deciding whether or not to give you leave 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 success, 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 success, you will be given leave 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.

D. The Appeal Process

If you are given leave to appeal, there is no need to fill out a separate Notice of Appeal to confirm that you want to appeal. The Appeal Division will automatically move on and start the process for deciding your appeal. 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 an opportunity to fully present your case.

Once the Appeal Division makes its decision to let you appeal, you will have 45 days to file written submissions 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 to Appeal a Summary Dismissal.

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.

If the Appeal Division does decide to schedule a hearing, you will get a Notice of Hearing setting out the time and place, or instructions on how to connect by telephone. Keep in mind that the same rules about rescheduling or adjourning a hearing also apply in the Appeal Division. The different types of hearings and the process for rescheduling or adjourning a hearing are discussed in more detail beginning at page 14 of this guide.

If the Appeal Division does schedule a hearing, it 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.

E. 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, often the Appeal Division will 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 judicial review, which is not covered in this guide). If you are considering judicial review, you should talk to a lawyer.

6 RESCINDING OR AMENDING (REOPENING) A 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. In these cases, 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 the decision was communicated to you. 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 will be out of time to appeal that same decision if more than 30 days have passed since it was communicated to you. 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, which is available on the SST’s website:

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATROA.pdf>

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 or fax it to the SST. Contact information for the SST is listed on the form. 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 are seeking to reopen was made without knowledge of, or was based on a mistake as to, some material fact.

The first situation refers to “new facts”. Courts have generally held that a fact will only be considered “new” if you could not have discovered it with reasonable diligence at the time of your hearing (the “reasonable diligence” test does not actually appear in the rules relating to EI decisions, but for now the Courts have interpreted the rules to include this requirement). “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.

The second situation refers to “material facts”. It makes no reference to the facts having to be new. A “material fact” generally means a fact that could reasonably be expected to affect the outcome of the case.

In practice, it seems that decision makers unfortunately blur these two situations together and want to know in all cases why the fact is material and why you could not have discovered it with reasonable diligence prior to your hearing. It is probably best to explain both in your application.

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, a 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. The different types of

hearings and the process for rescheduling or adjourning a hearing are discussed in more detail beginning at pages 14 of this guide. A Member will then make a decision and send it to you.