

WORKERS' COMPENSATION REPORTER

Volume 6



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TABLE OF CONTENTS

Decision or Item No.	Title	Page No.
385	The Consumer Price Index -----	1
386	Adjustments According to the Consumer Price Index -----	2
387	Chiropractic Treatment -----	3
388	Assignments, Charges or Attachments of Compensation ---	6
389	Refusals of Certificates of Fitness Under the Mines Act ---	10
390	The Maximum Wage Rate -----	11
391	The Reimbursement of Expenses -----	12
392	The Consumer Price Index -----	13
393	Appeals -----	14
394	The Dual System of Measuring Disability -----	23
395	Payments Pending Appeals -----	34
396	The Consumer Price Index -----	36
397	The Maximum Wage Rate -----	37
398	The Consumer Price Index -----	38
399	Appeals to Workers' Compensation Review Board -----	40
400	The Consumer Price Index -----	44
401	Experience Rating -----	46
402	Adjustments According to the Consumer Price Index -----	48
403	Appeals to Workers' Compensation Review Board -----	50
404	The Maximum Wage Rate -----	54
405	The Consumer Price Index -----	55
406	Recurrence of Disabilities -----	57
407	Assessment of Permanent Disabilities -----	61
408	The Consumer Price Index -----	62
409	The Maximum Wage Rate -----	64
410	Disclosure of Board Files -----	65
411	The Consumer Price Index -----	68
412	The Consumer Price Index -----	69
413	The Maximum Wage Rate -----	71
414	The Consumer Price Index -----	72
415	The Consumer Price Index -----	74
416	The Maximum Wage Rate -----	75
417	Adjustments According to the Consumer Price Index -----	76
418	The Consumer Price Index -----	78
419	Schedule B -----	80
420	The Consumer Price Index -----	81
421	The Maximum Wage Rate -----	83
422	The Consumer Price Index -----	84
423	Adjustments According to the Consumer Price Index -----	86

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

W.R. Flesher, Chairman
R.B. Bucher, Commissioner
G.W. Hall, Commissioner
M.L. Parr, Commissioner
H.E. Scollan, Commissioner

11th June, 1984

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of July 1st, 1984, a ratio by comparing the Consumer Price Index for April 1984 with the Consumer Price Index for October 1983, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for April 1984 was 121.5 and for October 1983 was 119.2, giving a ratio of 1.01929530;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.01929530;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of July, 1984;

AND THAT the British Columbia Regulation numbered 535/82 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	January 1, 1984 Dollar Amount	Changed To	July 1, 1984 New Dollar Amount
3(5)	61.03		62.21
13(2)	12,208.95		12,444.53
	2,441.81		2,488.93
17(2)	1,465.04		1,493.31
	488.36		497.78
	488.36		497.78
17(3)(a)(ii)	158.68		161.74
17(3)(c)	512.72		522.61

17(3)(d)	24,417.80	24,888.95
	2,441.81	2,488.93
	21,975.99	22,400.02
17(3)(e)	512.72	522.61
17(3)(f)(iii)(B)	158.68	161.74
17(3)(g)	17,092.49	17,422.29
17(3)(h)(i)	280.79	286.21
17(3)(h)(ii)	280.79	286.21
17(3)(i)(ii)	280.79	286.21
17(13)	1,220.94	1,244.50
18(1)	212.46	216.56
18(1)	65.94	67.21
22(2)	793.62	808.93
29(2)	183.12	186.65
33(5)	793.62	808.93
35(5)	109.42	111.53
71(8)	12,208.95	12,444.53
73(2)	24,417.80	24,888.95
74(3)	122,089.10	124,444.85
75(2)	24,417.80	24,888.95
75(3)	2,441.81	2,488.93
77(2)	2,441.81	2,488.93
Schedule C	512.72	522.61

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

Item No. 386

RE ADJUSTMENTS ACCORDING TO THE CONSUMER PRICE INDEX

NOTICE

11th June, 1984

Section 25 of the *Workers' Compensation Act* provides for most of the cash figures in the Act to be adjusted by the Board every six months according to changes in the Consumer Price Index. The adjustments applicable as of July 1st, 1984, are reported in *Decision No. 385* above. Apart from those figures, however, there are various other cash figures that the Board determines and which it has in the past adjusted according to the Consumer Price Index. These are:

1. Personal care allowances.

2. Independence and home maintenance allowances.
3. Subsistence allowances.
4. Clothing allowances.
5. Training allowances for surviving spouses.
6. Medical Review Panel fees.
7. The Board's interpretation of the word "substantial" in Section 10(8).

The Board has reviewed the figures presently allowed for the above items and has concluded that they are adequate for the time being. There will, therefore, be no adjustment of those figures on July 1, 1984, in accordance with the Consumer Price Index. The existing figures set out in *Item No. 381*¹ and, in respect of clothing allowances, *Item No. 373*², will continue in effect. The Board will review these figures prior to the next Consumer Price Index adjustment occurring on January 1, 1985.

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1. (1983) 5 W.C.R. 265.
 2. (1983) 5 W.C.R. 238.

Decision No. 387

RE CHIROPRACTIC TREATMENT

Board Resolution considered by:

W.R. Flesher, Chairman
R.B. Bucher, Commissioner
G.W. Hall, Commissioner
M.L. Parr, Commissioner
H.E. Scollan, Commissioner

21st June, 1984

Section 21(7) of the *Workers' Compensation Act* provides as follows:

"Without limiting the power of the board under this section to supervise and provide for the furnishing of medical aid in every case where it considers the exercise of that power is expedient, the board shall permit medical aid to be administered, so far as the selection of a physician or qualified practitioner is concerned, by the physician or qualified practitioner who may be selected or employed by the injured worker."

Chiropractors are included in the definition of “qualified practitioner” set out under Section 2. The result is that, generally speaking, a worker may, following a work injury, exercise a free choice as to whether he seeks treatment from a physician, chiropractor or some other practitioner. On the other hand, by virtue of Section 56(4), a physician or qualified practitioner is required to “confine his treatment to injuries to the parts of the body he is authorized to treat under the statute under which he is permitted to practise”. Furthermore, as stated in Section 21(7) set out above, the right of the worker to select a practitioner is subject to the Board’s power to supervise the provision of treatment. The purpose of the decision is to set out the Board’s policy regarding the scope of treatment allowed to chiropractors under the *Workers’ Compensation Act*.

Prior to amendments to the *Chiropractic Act* effective on December 19, 1983, chiropractors could treat any disease of the body but only through the method of treatment termed “chiropractic” which was defined in Section 1 of that Act as follows:

“the science of palpating and adjusting the articulations of the human spinal column by hand only, and includes the manipulation and adjustment by hand of the ribs and their articulations for the purpose of adjusting the articulations of the human spinal column.”

While most, if not all, chiropractors are trained to adjust all body articulations, they were not by virtue of the *Chiropractic Act* authorized to palpate or manipulate any joints other than the spinal column. They could not palpate or manipulate joints or articulations of the extremities.

Chiropractors could, under the *Chiropractic Act*, treat symptoms occurring in the extremities where there was reasonable grounds to believe that the symptoms arose from a condition in the spinal column and that the condition could be improved or cured by palpation and manipulation of the spinal column. However, where it was sought to have the chiropractic treatment paid for by the Board under a claim, the evidence would have to show that the spinal condition for which the treatment was rendered was the result of the work injury for which the claim was accepted. The Board would deny responsibility for the treatment where, for example, the evidence indicated that the work injury involved the arms or legs only and did not affect the spine. Furthermore, the evidence would also have to show that the spinal condition caused the complaints in the extremities. For example, symptoms in the upper arm might be related to an injury to the cervical or upper thoracic spine, but there could be no reasonable relationship if the injury to the claimant was in the lower lumbar area.

Amendments to the *Chiropractic Act* which took effect on December 19, 1983, have altered this position. The scope of treatment allowed by Section 1 of the Act has been expanded by altering the definition of “chiropractic” to read as follows:

“the branch of healing arts that is concerned with the restoration and maintenance of health by adjustment by hand only of the articulations of the human body and that is involved primarily with the relationship of the spinal column to the nervous system.”

At first reading, this new definition might appear to limit the scope of chiropractic treatment in respect of articulations of the body to those situations where the medical problem is primarily a spinal one. However, such an interpretation would mean that the amendment to the Act would result in little or no change from the position prior to the amendments. On examining the definition closely, it does not appear to the Commissioners that that interpretation would be correct. The latter part of the definition referring to the spinal column would not appear to be intended to limit in particular cases the carrying out of chiropractic treatment in respect of the articulations of the body. It seems to be intended only as a general statement of the main object of chiropractic treatment. The definition seems to be saying that chiropractic is in general primarily directed at treating the spinal column but that chiropractors in individual cases are authorized to treat articulations of the body outside the spine, even where the condition being treated is not related to the spine.

This does not, however, mean that the right of chiropractors to treat articulations of the body outside the spine is unlimited any more than their existing right to treat the spinal column is unlimited. The chiropractor before commencing treatment must have regard to the nature of the medical problem confronting him. The treatment which he will carry out must be reasonable and acceptable treatment for that particular problem. For example, while it might be within the terms of the statutory definition of “chiropractic” to treat a fractured wrist by either manipulation of the cervical spine or by manipulation and palpation of the wrist joint, this would not be a reasonable treatment for that condition and would not, therefore, be acceptable in accordance with general chiropractic practice. The Board would not accept treatment of that nature.

The Board has established the guidelines set out below regarding the acceptability of chiropractic treatment.

1. Where chiropractic treatment is directed at the spinal column in respect of complaints in the extremities for which a claim has been accepted, the Board may refuse responsibility for the treatment if it concludes that the injury at work did not affect the spine, but was to the extremities only.
2. Where chiropractic treatment is directed at the spinal column for problems in an extremity and it is accepted that the work injury caused the condition of the spinal column, the treatment may be acceptable if it is concluded that the problem in the extremity arose from that condition.
3. Treatment by a chiropractor to the spine or any other articulations of the body must be reasonable and acceptable treatment for the medical problem experienced by the claimant.
4. Chiropractic treatment to the spinal column is not acceptable where
 - (a) there is clinical evidence to suggest nerve root pressure with definite and progressive neurological findings or

- (b) there are fractures, dislocations, underlying bony pathology, or other conditions requiring immediate surgical or medical treatment.
5. Chiropractic treatment to the articulations of the extremities is not acceptable in respect of
 - (a) fractures, dislocations, underlying bony pathology or other conditions requiring immediate surgical or other medical treatment;
 - (b) soft tissue injuries, including muscle contusions, hematomas, infectious conditions, tenosynovitis, tendinitis, bursitis, epicondylitis, carpal tunnel syndrome and Dupuytren's contracture, but excluding minor sprains and strains arising from an articular injury.
 6. Prior to refusing or terminating authorization for chiropractic treatment, the Board Medical Advisor will be consulted and, in appropriate cases, the Board's Chiropractic Consultant.
 7. A chiropractor who has been treating a worker will be notified of any decision by the Board to terminate its authorization for that treatment under the terms of this decision.
 8. There is no change in the practice of the Board regarding the duration of time for which chiropractic treatment is permitted on any claim.

Decision No. 388

**RE ASSIGNMENTS, CHARGES OR
ATTACHMENTS OF COMPENSATION**

Board Resolution considered by:

W.R. Flesher, Chairman
R.B. Bucher, Commissioner
M.L. Parr, Commissioner
H.E. Scollan, Commissioner

22nd June, 1984

Section 15 of the *Workers' Compensation Act* provides as follows:

"A sum payable as compensation or by way of commutation of a periodic payment in respect of it shall not be capable of being assigned, charged or attached, nor shall it pass by operation

of law except to a personal representative, nor shall any claim be set off against it, except for money advanced by way of financial or other social welfare assistance owing to the Province or to a municipality, or for money owing to the accident fund.”

Certain questions have been raised as to the exact scope of this provision.

In order to properly understand the effect of Section 15, it is necessary to consider the process by which creditors are able to obtain payment of debts owed to them where the debtor does not voluntarily make payment to the creditor’s satisfaction. The creditor may take court proceedings to prove the existence of the debt and obtain an order from the court that the debtor pay it. He may also obtain from the court additional orders which will assist him to receive payment, for example, that the property of the debtor be seized and sold. However, of particular relevance to Section 15 is the situation where the debtor himself is owed money by a third party. The creditor may then obtain an additional order from the court requiring the third party to pay to the creditor all or part of the sum he owed to the debtor.

Where a person who has claimed compensation under the *Workers’ Compensation Act* owes money to a creditor, the Act does not in general change the principles set out above. The claimant is still liable to be sued in court respecting his debts and to have additional orders made against him, his property, or persons who owe him money to enforce payment of the debt. The effect of Section 15 is to provide one limited exception to these rules. It means that no order can be obtained against the Board as a person owing money to the claimant that the Board pay the money to the claimant’s creditor rather than to the claimant. The compensation owed to the claimant must be paid direct to the claimant. This does not mean, though, that the money paid by the Board is totally exempt as a source of payment for creditors. Once the Board’s cheque is received by the claimant and cashed, the money becomes part of his assets and is available to creditors in the normal way.

While, as explained above, no order can ordinarily be obtained against the Board to pay compensation direct to a claimant’s creditor, Section 15 lays down two exceptions to this rule. The present decision is concerned solely with the first of these exceptions which operates in respect of “money advanced by way of financial or other social assistance owing to the Province or to a municipality”. The second exception relating to money owed by the claimant to the Board is not presently at issue.

At one time, welfare assistance was provided by individual municipalities, but it is now provided exclusively by the Provincial Ministry of Human Resources. The practice is that when a person who may be entitled to compensation is awarded welfare assistance, the Ministry may require him to execute an assignment to the Ministry of any benefits he may receive from the Board. The assignment is then passed on to the Board to notify it to deduct from the compensation benefits it owes to the claimant the amount the claimant owes to the Ministry. It has always been the Board’s practice to honour those assignments, but with the following limitations.

1. Deduction is made only from wage loss benefits.

2. Deduction is not made to an extent that would reduce the wage loss benefits to below the minimum amount set out in Section 29(2).
3. Deduction is limited to welfare benefits paid in respect of the same period for which the wage loss benefits were paid.

It has been proposed to the Commissioners that these limitations should be removed since there is no basis for these limitations to be found in the wording of Section 15. The Commissioners agree with this proposal. The section applies to any “sum payable as compensation” and, therefore, applies to permanent disability pension payments as well as wage loss payments. Since it is clear that pension payments are covered by the general ban on assignments, charges or attachments of compensation, they must equally be subject to the exception in favour of the Ministry of Human Resources. The presence in Section 15 of the words “or by way of commutation of a periodic payment” makes it clear that the section applies whether the permanent disability award or wage loss benefits are paid as a lumpsum or periodic payments. Furthermore, the exception in favour of the Ministry of Human Resources is not limited in the amount that can be set off against compensation or the period to which the amount set off should relate. The exception relates to the whole of the amount owed by the claimant to the Ministry and this whole amount must be deducted if the amount of compensation payable is sufficient to cover it.

It does not seem to the Commissioners that the Board should limit the exception in favour of the Ministry of Human Resources when the wording of Section 15 does not specifically authorize it. The existence of the exception means that in regard to amounts owed by a claimant to the Ministry for welfare assistance, the general ban on court orders directing the Board to pay compensation benefits to a claimant’s creditor does not apply. Therefore, any attempt by the Board to place limitations on that exception which are not justified by the wording of Section 15 might simply be overcome by the Ministry seeking a court order against the Board.

There is one limitation which the Board validly imposes notwithstanding that it is not authorized by Section 15 since it is authorized by other legal provisions. Under the general law and Section 32 of the *Law and Equity Act*, an assignment of a right to receive money by the person entitled is not effective and binding on the person liable to pay the money until he receives notice of the assignment. Therefore, the Board incurs no liability to the Ministry of Human Resources in respect of compensation benefits it has already paid prior to receiving notice of an assignment to the Ministry by a claimant, even if the assignment covers the period in respect of which the benefits were paid out. The Board’s liability only extends to compensation benefits paid after receiving the notice. The Board will not attempt to recover from claimants compensation money paid to them prior to the receipt of the notice of assignment in order to reimburse the Ministry.

After receiving the assignment, the Board will continue to apply future payments made on the same claim to the amount owed to the Ministry until either the amount is paid off or the benefits are terminated. If no further payments are due after the assignment is received or the payments are terminated on the claim before the full amount is paid off, the Ministry will be advised of this and will have to collect any money still owed to it by the claimant through other means.

In conclusion, the Commissioners have decided that the rules set out below will be followed in respect of assignments of compensation made by claimants to the Ministry of Human Resources.

1. No overpayment of compensation will be declared and sought to be recovered in respect of payments of compensation made prior to the receipt of an assignment of benefits made by a claimant to the Ministry.
2. In respect of payments of compensation made after receipt of the assignment,
 - (a) the full amount of the payments owed to the claimant will be applied to reduce the amount owed by him to the Ministry and no payment will be made to the claimant until this liability is satisfied;
 - (b) wage loss benefits and permanent disability pensions will be applied to meet the claimant's liability to the Ministry, whether paid as a lumpsum or periodical payment;
 - (c) no regard will be had to whether the compensation payments relate to the same period as the assistance provided by the Ministry.
3. Where no payments of compensation on the claim are due after receipt of the assignment or the payments cease before the full amount owed to the Ministry is paid off, the Ministry will be advised that it will have to collect the amount outstanding through other means.

**RE REFUSALS OF CERTIFICATES OF
FITNESS UNDER THE MINES ACT**

Board Directive considered by:

W.R. Flesher, Chairman
R.B. Bucher, Commissioner
G.W. Hall, Commissioner
M.L. Parr, Commissioner

21st August, 1984

The *Mines Act* requires that a worker be certified as medically fit for employment in a “dust exposure occupation” prior to entering into employment in such an occupation. It also requires that, subsequent to entering into that employment, the worker be periodically re-certified as being medically fit to continue in the employment.

The *Mines Act* assigns responsibility for the certification process to the Workers’ Compensation Board. The worker is initially examined by a non-Board medical practitioner who, if satisfied that the worker is medically fit, is authorized to issue him a temporary Certificate of Fitness. All lung x-rays are then forwarded to the Board’s Pneumoconiosis Referee for review. The Pneumoconiosis Referee will either issue a Certificate of Fitness for a longer period of time or refuse to issue a further Certificate on the basis that the worker is, in his opinion, not medically fit for employment in a “dust exposure occupation”.

The Commissioners have recently examined the question of the worker’s appeal rights against the refusal of the Pneumoconiosis Referee to issue him a Certificate of Fitness under the *Mines Act*. As can be appreciated, such a decision will have important economic consequences for the worker. It will restrict and may even eliminate the worker’s capacity to earn his living. It is therefore important that there be an opportunity for a further review of a refusal to grant a Certificate of Fitness.

After carefully considering this question, the Commissioners have concluded that it would not be appropriate to direct that disputes concerning refusals of Certificates of Fitness be resolved under the existing workers’ compensation appeal system. In their opinion, there is a lack of statutory authority under the *Mines Act* empowering them to involve that appeal system in the certification process. The Commissioners consider, however, that, as the members of the Workers’ Compensation Board, ultimate responsibility for decisions made by officers of the Board must rest with them. They are therefore prepared to review, *at the request of* the worker, his representative or his physician, the refusal by the Pneumoconiosis Referee to grant a Certificate of Fitness. Prior to their review, the Commissioners will request that the x-rays and/or other relevant documents concerning the worker’s fitness be referred to a qualified independent specialist for his opinion. The referral will be made by the Director of the Occupational

Health Department or his designate, but not in any case by the Pneumoconiosis Referee or any other Board Medical Advisor who has already refused to grant the Certificate. When the opinion of the independent specialist has been received, all relevant documentation will be forwarded to the Commissioners who will decide whether the Certificate should be issued. Prior to the Commissioners' decision, however, the worker will be provided with copies of the opinion of the independent specialist and of any material relating to it and given an opportunity to comment.

Workers will be advised by the Pneumoconiosis Referee of the right to have a refusal of a Certificate of Fitness reviewed by the Commissioners. In any letter communicating such a refusal, the Pneumoconiosis Referee will include the following paragraph:

“At your request or at the request of your representative or physician, this refusal will be reviewed by the Commissioners of the Board. Any such request, however, should be made within 60 days of the date of this letter.”

This review procedure will apply as of the date of this Decision.

Decision No. 390

RE THE MAXIMUM WAGE RATE

Board Directive considered by:

W.R. Flesher, Chairman
R.B. Bucher, Commissioner
G.W. Hall, Commissioner
M.L. Parr, Commissioner

4th September, 1984

WHEREAS Section 33 of the *Workers' Compensation Act* requires the Board to determine the maximum wage rate to be applicable for the following calendar year in the manner therein prescribed;

AND WHEREAS the Board is of the opinion that the sum of thirty-two thousand three hundred fifty-four dollars and thirty-five cents (\$32,354.35) represents the same relationship to the sum of eleven thousand two hundred dollars (\$11,200.00) as the annual average of wages and salaries in the Province of British Columbia for the year 1983 bears to the annual average of wages and salaries in the said Province for the year 1972;

AND WHEREAS the said Act provides that the resulting figure may be rounded to the nearest one hundred dollars (\$100.00);

THE BOARD HEREBY DETERMINES that the maximum wage rate to be applicable for the year 1985 under Section 33 of the *Workers' Compensation Act* is thirty-two thousand four hundred dollars (\$32,400.00);

AND THAT in subsection (6) of the said section, the sum of thirty thousand two hundred (\$30,200.00) appearing therein will be changed as at the first day of January, 1985, to read thirty-two thousand four hundred dollars (\$32,400.00).

Decision No. 391

RE THE REIMBURSEMENT OF EXPENSES

Board Directive considered by:

W.R. Flesher, Chairman
R.B. Bucher, Commissioner
G.W. Hall, Commissioner
M.L. Parr, Commissioner

4th September, 1984

*Decision No. 175*¹ determined that the witnesses' lost earnings allowances set out in paragraph 9(ii) of *Decision No. 54*² will be adjusted on the 1st day of January in each year by applying the ratio by which maximum earnings are adjusted under Section 33.

The Board has reviewed the present amount paid as the witnesses' lost earnings allowance and has concluded that it is adequate for the time being. There will, therefore, be no adjustment of that figure on January 1, 1985, in accordance with the change in the maximum earnings. The existing allowance of \$40.44 set out in *Decision No. 376*³ will continue in effect. The Board will review this figure immediately prior to the time when the maximum earnings are next adjusted on January 1, 1986.

1. (1976) 2 W.C.R. 275.
2. (1974) 1 W.C.R. 229.
3. (1983) 5 W.C.R. 249.

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

W.R. Flesher, Chairman
R.B. Bucher, Commissioner
G.W. Hall, Commissioner
M.L. Parr, Commissioner

4th December, 1984

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of January 1st, 1985, a ratio by comparing the Consumer Price Index for October 1984 with the Consumer Price Index for April 1984, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for October 1984 was 123.2 and for April 1984 was 121.5, giving a ratio of 1.01399177;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.01399177;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of January, 1985;

AND THAT the British Columbia Regulation numbered 207/83 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	July 1, 1984 Dollar Amount	Changed To	January 1, 1985 New Dollar Amount
3(5)	62.21		63.08
13(2)	12,444.53		12,618.65
	2,488.93		2,523.75
17(2)	1,493.31		1,514.20
	497.78		504.74
	497.78		504.74
17(3)(a)(ii)	161.74		164.00
17(3)(c)	522.61		529.92

17(3)(d)	24,888.95	25,237.19
	2,488.93	2,523.75
	22,400.02	22,713.44
17(3)(e)	522.61	529.92
17(3)(f)(iii)(B)	161.74	164.00
17(3)(g)	17,422.29	17,666.06
17(3)(h)(i)	286.21	290.21
17(3)(h)(ii)	286.21	290.21
17(3)(i)(ii)	286.21	290.21
17(13)	1,244.50	1,261.91
18(1)	216.56	219.59
18(1)	67.21	68.15
22(2)	808.93	820.25
29(2)	186.65	189.26
33(5)	808.93	820.25
35(5)	111.53	113.09
71(8)	12,444.53	12,618.65
73(2)	24,888.95	25,237.19
74(3)	124,444.85	126,186.05
75(2)	24,888.95	25,237.19
75(3)	2,488.93	2,523.75
77(2)	2,488.93	2,523.75
Schedule C	522.61	529.92

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

Item No. 393

RE APPEALS

3rd January, 1985

Effective January 1, 1985, the Lieutenant Governor in Council has passed regulations amending the previous regulations relating to the board of review set out in *Item No. 334*¹. Set out below in Part 1 of this Item is a consolidation of the regulations and recent amendments.

In conjunction with the new regulations affecting the board of review, the Board has issued a directive respecting the payment of fees for the disclosure of claim files. This directive, which also applies to disclosure requests arising from proceedings other than appeals to the board of review, is set out in Part 2 of this Item.

**Part 1 – Consolidation of Board of Review Regulations
Issued by Lieutenant Governor in Council**

1. (1) A chairman of one of the boards of review shall be designated in his appointment as the Administrative Chairman, and he shall have responsibility for administration of the boards of review and, without limiting the generality of the foregoing, he shall be responsible for
 - (a) determining which persons shall sit on each board of review,
 - (b) assigning appeals to the boards of review,
 - (c) appointing staff including a registrar, with power to fix the duties of the registrar and general powers of supervision over all staff, and
 - (d) determining the type of records to be kept of its proceedings by a board of review.
- (2) The administrative chairman may appoint an administrative vice-chairman having the powers and authority of the administrative chairman during his absence.
2. The boards of review may employ such staff as they consider necessary for efficient operation and may determine the duties and terms of employment, including remuneration, of the staff.
3. Subject to Section 5, a quorum of a board of review shall consist of a chairman and two members, one of which shall be selected from each of the groups of persons described in Section 89(1) of the Act.
4. Where a person ceases to be a member or chairman, he may carry out and complete any duties or responsibilities and continue to exercise any powers that he may have had if he had not ceased to be a member or chairman in relation to a proceeding in which he participated.
5. Where a person is unable to complete his duties or responsibilities, the administrative chairman may
 - (a) appoint another member or chairman, as the case may be, to replace him,
 - (b) direct that the remaining members or chairman constitute a quorum for the determination of an appeal, and the decision of the quorum shall be the decision of the board of review, or
 - (c) appoint a new board of review, with or without some of the same persons as the previous board of review, to hear the appeal.

6. (1) An appeal to a board of review may be in writing and filed at its head office.
- (2) An appeal must
 - (a) be signed by the appellant or his representative,
 - (b) specify the decision being appealed, the grounds for it, and stating why, in the opinion of the appellant, the decision is incorrect, and
 - (c) set out the remedy sought.
- (3) Where an appeal is filed on the grounds of newly discovered evidence, or evidence that was not adduced to the officer of the board, the written appeal must contain
 - (a) the names and addresses of any witnesses to be produced,
 - (b) a description of any documentary evidence to be offered, and
 - (c) if the evidence is additional medical evidence, a short statement as to how the evidence changes or adds to the previous medical evidence.
- (4) If subsections (2) and (3) are not fully complied with, the board of review shall require the appellant to file with it a completed notice of appeal in Form A.
7. (1) A board of review shall consider any information or argument submitted to it by or on behalf of a worker, employer or dependant, whether made orally or in writing, and may consider any other information obtained by it.
- (2) A board of review may reimburse a person referred to in this section for the costs incurred in obtaining a medical report that is submitted to the board of review, but the payment shall not exceed the rate paid by the board for a similar report.
8. (1) A board of review may
 - (a) obtain medical or other advice to aid it in making a decision, or
 - (b) require a worker to attend for examination by a physician chosen by the board of review.
- (2) Payment for services rendered under subsection (1) shall be made at the rates paid by the Board for similar services.

9. (1) A board of review may allow an appellant or respondent to appear before it in person to give evidence or make a submission.
 - (2) Where a board of review does not permit a person to appear before it to give oral evidence or make a submission, the board of review shall permit that person to make a written submission.
10. A board of review shall, in determining whether or not a record in its possession, including a medical report, should be disclosed to a worker, employer or other person, follow the practice of the Board as set down from time to time in such matters.
11. A board of review may require the Board to make available a copy of a record in the Board's possession that relates to an appeal, and, where the board of review considers it necessary, it may require the original record to be delivered.
12. All records of a board of review, other than personal notes kept by an individual member, shall be delivered to the Board following the decision of the board of review.
13. (1) The boards of review, upon receiving an appeal, shall acknowledge it and provide a copy to the respondent.
 - (2) A respondent who intends to contest the appeal shall within 10 days of its receipt file an appearance in Form B.

1. (1981) 5 W.C.R. 98.

FORM A

To: Boards of Review
#400 – 4946 Canada Way
Burnaby, B.C.
V5G 4J6

Tel: 291-7511

IN THE MATTER OF THE WORKERS' COMPENSATION ACT

NOTICE OF APPEAL

IMPORTANT: If the 90-day appeal period has expired, you are also required to complete the Application for Extension of Time on page 4.

You must fully complete all sections of the Notice of Appeal and the Application for Extension of Time (if necessary) and return this form to the above address.

WORKER'S NAME: _____

CLAIM NO.: _____

EMPLOYER'S NAME: _____

A)

1. Give the date of the decision of the officer of the Board that you are appealing.

DATE: _____

2. Give a brief statement of **why** you feel the decision is wrong:

3. State the compensation benefits to which you think you are entitled:

B) Indicate the method of appeal you prefer by marking an “X” in the appropriate box below.

- I No oral hearing is requested and no further evidence or submissions will be made.

- II No oral hearing is requested, but further written information or submission will be forwarded for consideration within two weeks.

- III An oral hearing is requested before the boards of review before a decision is made. If possible, the hearing should take place at or near the City of *(please specify)* _____

C) NEW INFORMATION OR EVIDENCE:

- (1) Please specify any new evidence, in particular, any new documentary evidence, to be presented to the boards of review at either the oral hearing or in the written submission. You should include, where applicable, the names and addresses of any witnesses to be produced at the oral hearing.

- (2) If additional medical evidence is to be presented, please provide a short statement as to how this evidence changes or adds to previous medical evidence.

(This must be signed.)

Signature of appellant or representative

(It is your responsibility to notify us if you change your address. Until that is done, the address you have provided will be the address of record for the purpose of the appeal.)

Address

Telephone Number

Date

(Name of representative, if any)

Signature of representative

Address

Telephone Number

NOTE: DISCLOSURE:

The Workers' Compensation Board provides disclosure of information on claim files where an appeal has been filed from a decision of the Workers' Compensation Board. Disclosure usually consists of a copy of the claim file being mailed to the applicant.

If you wish disclosure, please complete the attached REQUEST FOR DISCLOSURE and return it to the Workers' Compensation Board, together with a \$10 money order made payable to the Workers' Compensation Board if copying of documents is required.

REQUEST FOR DISCLOSURE

Workers' Compensation Board
6951 Westminster Highway
Richmond, B C.
V7C 1C6

Attention: Registrar

Dear Sirs:

Worker's Name: _____

Claim No.: _____

I wish to receive disclosure of the above claim in connection with the appeal to the boards of review now underway.

_____ is acting as my representative in the appeal and is authorized to receive disclosure of the claim file on my behalf for the purpose of the appeal.

Enclosed is my money order in the amount of \$10 for documentation.

Date

Signature of worker, dependant or employer

Address

FORM B

To: Boards of Review
#400 – 4946 Canada Way
Burnaby, B.C.
V5G 4J6

DATE: _____

IN THE MATTER OF THE WORKERS' COMPENSATION ACT

APPEARANCE

Re: Claim No.: _____

Take notice that _____ intends to participate
(Full name of employer/worker or dependant)
in the processing of the appeal on the above-numbered claim.

(Signature of employer/worker or dependant)

Address: _____

Tel. No.: _____

If an agent, representative
or legal counsel is appointed,
complete:

Name: _____

Address: _____

Tel. No.: _____

NOTE:

- (1) It is the responsibility of the person filing an Appearance to notify the boards of review of any address change.
- (2) If disclosure of the claim file is desired, the attached REQUEST FOR DISCLOSURE must be completed and returned to the Workers' Compensation Board. There is a \$10 fee which is payable to the Workers' Compensation Board by money order and must accompany this request if copies of documents are required.

Part 2 – Fees for Disclosure of Files

THE BOARD HAS RESOLVED that

1. A fee of \$10.00 be paid to the Board by a person requesting disclosure of a file for the first time before copies of documents on the file are provided to that person.
2. The \$10.00 fee also be payable before copies of file documents are provided where there has been a previous request for disclosure by the same person or his representative and the present request relates to a different appeal or proceeding from the previous request or is a request for duplicates of copies previously provided which have been lost.
3. The \$10.00 fee be paid by way of money order or certified cheque payable to the Workers' Compensation Board and that uncertified cheques not be accepted.
4. This directive applies to requests for disclosure made in connection with appeals or other proceedings commenced on or after January 1, 1985. It is dealing with the payment of fees only and makes no change in the eligibility of persons to receive disclosure.

Decision No. 394

RE THE DUAL SYSTEM OF MEASURING DISABILITY

Board Directive considered by:

W.R. Flesher, Chairman
G.W. Hall, Commissioner
J.M. Nutter, Commissioner
M.L. Parr, Commissioner

18th April, 1985

1. INTRODUCTION

Section 23(1) and (3) of the *Workers' Compensation Act* provide as follows:

“(1) Where permanent partial disability results from the injury, the impairment of earning capacity shall be estimated from the nature and degree of the injury, and the compensation shall be a periodic payment to the injured worker of a sum equal to 75% of the estimated loss of average earnings resulting from the impairment, and shall be payable during the lifetime of the worker or in another manner the board determines.”

“(3) Where the board considers it more equitable, it may award compensation for permanent disability having regard to the difference between the average weekly earnings of the worker before the injury and the average amount which he is earning or is able to earn in some suitable occupation after the injury, and the compensation shall be a periodic payment of 75% of the difference, and regard shall be had to the worker’s fitness to continue in the occupation in which he was injured or to adapt himself to some other suitable employment or business.”

Prior to October 2, 1973, the Board had only one basic method of assessing permanent partial disability awards under these provisions or their forerunners. This was known as the physical impairment or loss of function method and is still in use.

Under this method, the Board does not attempt to measure the individual worker’s actual loss of earnings resulting from his permanent disability. It concentrates rather on the worker’s physical condition, and results in a percentage of disability being allocated. Although this percentage can be modified in respect of the worker’s individual circumstances, it is primarily a measure of the loss which on average is expected to result from his particular type of disability.

The physical impairment method can be criticized on the ground that it calculates only the average loss resulting from a disability and is, therefore, prejudicial to workers whose loss from their disability is above average. In recognition of this criticism, the Board, on October 2, 1973, introduced a dual system for assessing permanent disability pensions involving the spinal column and, on October 1, 1977, this was extended to non-spinal injuries. The dual system applies in any case where it is felt that the worker may have suffered a loss of earnings because of his compensable disability which is greater than that allowed for by the physical impairment method of assessment. Under the dual system, awards are calculated as follows:

1. The degree of physical impairment is calculated pursuant to Section 23(1) using the method described above and a possible pension is calculated in accordance with this.
2. A possible pension is calculated pursuant to Section 23(3) according to the projected loss of earnings method described below.
3. The higher of these two results is then used as the pension.

It is not the intention of the dual system to grant automatically an award on a projected loss of earnings basis without regard to the nature of the condition or disability causing the unemployability or loss of earnings. The worker must not only have a disability accepted by the Board, but the disability accepted by the Board must be a significant factor in the reduced employability or loss of earnings potential.

The dual system outlined above will continue in effect.

The purpose of this decision is to review and consolidate the practices followed by the Board in applying the dual system in light of criticisms that have been made of the system and the Board’s experience over the past 10 or 11 years.

2. ASSESSMENT FORMULA FOR PROJECTED LOSS OF EARNINGS METHOD

The projected loss of earnings method adopted by the Board under Section 23(3) for the measurement of permanent disability will from the date of this decision be as set out below:

- A. Average earnings prior to the injury will be determined in accordance with established policies and procedures.
- B. Having regard to the evidence, including the medical evidence, of the limitations imposed by the compensable disability and the fitness of the claimant for different types of work, and having regard to the evidence of the Rehabilitation Consultant about the suitability of the claimant for jobs that could reasonably become available, the Disability Awards Officer will arrive at a conclusion about suitable occupations that the claimant could be expected to undertake over the long-term future.
- C. Earnings that maximize the claimant's long-term potential will be selected from the jobs that are suitable and reasonably available. Earnings in those occupations will be determined as at the time of the injury.
- D. The possible pension will then be 75% of the amount by which the earnings level thus established is less than the average earnings prior to the injury.
- E. Any increase that may be due to the claimant because of an increase in the Consumer Price Index will then be added.

Further comment is required on A to C above which is set out below.

A. Average Earnings Prior to Injury

Section 23(3) of the *Workers' Compensation Act* requires the Board to have regard to the "average weekly earnings of the worker before the injury". This is generally in line with the other sections of the Act which govern the payment of temporary or permanent disability benefits, namely Sections 22, 23(1), 29 and 30. All of these provisions base compensation on the worker's earnings, but use the slightly different term "average earnings".

It has been argued that the use of the term "average weekly earnings" in Section 23(3), as opposed to the term "average earnings" is significant. This argument arises in relation to the provisions of Section 33(1) which give the Board a wide authority to determine the "average earnings and earning capacity of a worker", but place a limit on the earnings that can be used in the form of the maximum wage rate. It is contended that since it specifically refers to "average earnings", Section 33(1) is not relevant to determining "average weekly earnings" under Section 23(3) with the result that the maximum wage rate does not limit those earnings. Rather, the maximum limits only the ultimate pension that can be awarded under that section.

While the Commissioners note the slight difference in terminology, they do not consider this difference to be significant. Section 23(3) clearly requires the Board to determine a worker's earnings prior to the injury and Section 33 is the only section in the Act which provides for how this is to be done. The Commissioners have considered the suggestion that instead of applying to the worker's pre-injury earnings, the maximum should limit the amount of the pension, but do not feel that this suggestion is supported by the provisions of the Act. They concluded that "average weekly earnings" prior to the injury must be determined under the projected loss of earnings method in the same manner as "average earnings" are determined for the purpose of pensions assessed under Section 23(1) and the maximum wage rate must apply to limit those earnings. This will continue the existing practice of the Board.

B. Suitable and Available Occupations for the Claimant

The purpose of direction B in the assessment formula is to arrive at a long-term projection of the earning capacity of the worker. The evidence of the Rehabilitation Consultant should relate to jobs that are suitable and reasonably available to the claimant in the long run and the conclusion of the Disability Awards Officer should be concerned with such of those jobs as will maximize the claimant's long-term earnings potential.

It would not be satisfactory simply to take the wage rate in a job to which the claimant actually returns. For a variety of reasons, the long-term employment prospects of a claimant may be different from the most immediate job opportunities. On the other hand, the phrase "available jobs" does not mean any job position in which there are vacancies. An available job means one reasonably available to the claimant in the long run. For example, a city may have several theatres, and there may be occasional job vacancies for the position of theatre usher; but if there are always numerous better qualified applicants and the realities are that a worker with the particular disability is not likely to obtain such a job, that is not a reasonably available job for him.

In advising on the suitability of the claimant for reasonably available jobs, the Rehabilitation Consultant must have regard to the limitations imposed by the residual compensable disabilities of the claimant and assess his earnings potential in light of all possible rehabilitation measures that might be of assistance, including the possibility of retraining or other measures that may be appropriate to the particular worker.

The guidelines set out below are to be followed in determining suitable and reasonably available jobs for a claimant:

1. Where the worker is doing his best to maximize his earnings, and is following the advice of the Rehabilitation Consultant, and is presenting himself in good faith to obtain a job at the highest level of earnings among the jobs that he is fit to undertake, then the earnings level in the job that he actually obtains is generally the earnings level that should be taken, unless there is evidence that this position is transitory and that jobs at another level of earnings will be available to the worker in the near future.

2. Regard may be had to other jobs than the worker's present one with the same employer to which he might in future progress and this is not limited to jobs which the claimant has a right to because of seniority. The fact that there is a formal or informal competition for a higher job is not a bar to its being considered. On the other hand, it would not be fair to assume that a claimant will receive all possible promotions that might theoretically be open to him. The Board is only concerned with jobs that are, in practice, reasonably available. Thus, the Board will, in general, only have regard to higher paying jobs which a person in the claimant's present job would ordinarily be expected to obtain.
3. A reasonably available job must be one that the worker is fit to undertake, and which would not involve adverse consequences for his health either immediately or in the long run compared with other jobs.
4. Where a suitable job is reasonably available over the long term, it is taken into consideration even though it is not reasonably available at the time of assessment because of general economic conditions.
5. In deciding whether it is reasonable for a worker to refuse a job, regard should be had to the long term as well as the immediate position. For example, job A may have an earnings rate of \$6.00 an hour, and job B may have an earnings rate of \$5.00 an hour; but if job A is subject to fluctuations in the economy and job B appears more stable in the long run, then job B may be the better-paying job in the long run. Therefore, the wage rate in job B should be used in the calculation of projected loss of earnings.
6. A reasonably available job must be one that is within a reasonable commuting distance of the worker's home. Where there is no available job within that commuting distance that the worker could reasonably be expected to undertake, he might be expected to relocate, depending on his age, the availability of a suitable job elsewhere, and other factors; but he will not normally be expected to relocate unless he is offered the expenses of relocation, either by Employment and Immigration Canada or by the Board or by some other government agency.
7. If the worker declines the best-paying reasonably available job because of a personal preference for a lower-paying occupation or for an alternative lifestyle, the wage rate in the best-paying reasonably available job should be used in the formula.

The above guidelines are with some modifications basically the same as those which the Board has followed in the past.

C. Measurement of Earnings Loss

Section 23(3) requires the Board to compare the average weekly earnings of the worker before the injury with "the average amount which he is earning or is able to earn in some suitable occupation after the injury". The latter figure is obtained by ascertaining

the earnings in the occupations which have been found to be suitable and reasonably available according to the criteria set out in B above and determining the earnings figure which will maximize the claimant's long-term earnings potential.

Prior to this decision, a further step was taken in relation to those earnings before they were used in calculating the pension. In cases where the pre-injury average earnings were reduced by the application of the maximum wage rate, the earnings which it was estimated the claimant could earn after the injury were reduced by the same ratio. The explanation for this was that, otherwise, a claimant who was still able to earn the maximum wage rate after the injury could not receive a pension assessed on a projected loss of earnings basis even though, because of his disability, his actual earnings were less than before.

The Commissioners appreciate the reasons for establishing this practice, but on reviewing the Act cannot find that this practice is authorized by its provisions or consistent with its overall intent and purpose. The practice, in fact, contradicts the words from Section 23(3) quoted above which require the actual earnings in the jobs in question to be used and do not authorize any adjustment of these earnings to reflect the fact that the pre-injury earnings were reduced by the maximum wage rate.

The Commissioners consider that the intention of the Act is to protect workers' earnings only up to the maximum wage rate. This is shown by Section 33(1) which results in payments for total disability being limited to 75% of the maximum and by Section 31 which ensures that, where a worker is already receiving payments for a disability, he can receive additional payments for any further disability only to the extent that they do not take his total payments above the maximum. The provisions of the Act governing the Board's assessing of employers for the purpose of obtaining the money used to pay compensation benefits are to the same effect. Section 38(3) provides that, where a worker's earnings exceed the maximum wage rate, the amount of the excess is deducted from the employer's payroll on which the assessments are paid. It seems to the Commissioners that, on general insurance principles, coverage under the Act should not extend to earnings on which assessments have not been paid.

The Commissioners have, therefore, decided, as of the date of this decision, to halt the practice of adjusting the earnings which it is estimated the claimant can earn after the injury by reference to any reduction in his pre-injury earnings because of the maximum wage rate. The effect of this decision is that no pension can be awarded on a projected loss of earnings basis where, following the injury, the claimant is earning or is able to earn at or above the maximum wage rate. Where a claimant was earning at or above the maximum prior to the injury and it is projected that because of the injury his earnings will be less than the maximum, a projected loss of earnings pension can be awarded but only to the extent of the difference between the maximum and the projected earnings.

The question remains as to the date at which earnings in the jobs the worker can do after the injury should be taken. Although the assessment of the pension will often be made some time after the original injury, it would not be fair to compare directly the worker's actual pre-injury earnings with the earnings he might now earn in the jobs

available to him. The effect of inflation upon earnings levels would mean that his real loss would not be properly determined in that way. To allow for this, the practice of the Board has been to use the earnings in the jobs available after the injury as they stood at the date of the injury, and this practice will continue. It occasionally happens that earnings in jobs at the time of the injury are not available. If this occurs, it may be necessary to use the earnings in those jobs as they were at another date and bring the pre-injury earnings into line by applying Consumer Price Index adjustments.

3. DURATION OF PROJECTED LOSS OF EARNINGS PENSION

Pensions assessed on a physical impairment basis are, under the terms of Section 23(1), payable for life. The suggestion has been made that projected loss of earnings pensions should also be payable for life in every case, but the Board has not accepted this. Section 23(3) does not specifically require this, but rather gives the Board a discretion in the matter. Compensation is only payable under Section 23(3) “where the Board considers it more equitable”. Since the section authorizes the Board to calculate a worker’s actual loss of earnings resulting from his injury, it is reasonable for the Board to have authority to terminate benefits payable under the section at a time when, even if he were not disabled because of his compensable injury, the worker would not have been working.

The situation where this issue arises is where the worker reaches retirement age. Any direct loss of earnings which the claimant suffers because of his compensable disability will normally cease at that time. However, the Board has not in practice felt that this in itself was an automatic reason for terminating a projected loss of earnings pension. Rather, it has recognized that, because of his compensable disability, the claimant may have been less able to accumulate retirement benefits. The Board has, therefore, allowed the projected loss of earnings pension to continue in whole or part past the age of retirement when the worker was 65 years of age or younger at the time of the injury. The portion of the pension so continued depended on how close the worker was to the age of 65 years, it being assumed that the older the worker, the less his ability to build up retirement benefits would be affected by the injury. The age of 65 years was set as the age of retirement to be used in all cases. It was realized that this was, in some degree, an arbitrary figure, but it was felt to be preferable to the Board’s having to decide in each case what the date of a person’s retirement was. This would often be a difficult and speculative process.

The Commissioners feel that the reasoning previously adopted by the Board on this question remains valid and that the rules then adopted should continue in effect.

The following principles are, therefore, adopted as of the date of this decision.

1. Where, at the date of injury, the worker is at or below the age of 50 years, the pension is established on the higher of the physical impairment and projected loss of earnings assessment, and the pension so established, unless modified on a review, is payable for life.

2. Where, at the date of injury, the worker is at or above the age of 65 years, the pension is established by the physical impairment method, and that pension is payable for life. No projected loss of earnings pension is awarded.
3. Where, at the date of injury, the worker is in the age range of 51 to 64 years, and where a pension calculated by the projected loss of earnings method is payable, the pension so calculated, unless modified on a review, continues until the age of 65 years. From the age of 65, the pension is at a rate calculated by the physical impairment method, plus a proportion of the difference between the two methods according to the following table.

Age at Date of Injury	Proportion of Difference Between Two Methods
51	14/15ths
52	13/15ths
53	12/15ths
54	11/15ths
55	10/15ths
56	9/15ths
57	8/15ths
58	7/15ths
59	6/15ths
60	5/15ths
61	4/15ths
62	3/15ths
63	2/15ths
64	1/15th

The revised pension commences on the first day of the month following the claimant's 65th birthday.

Where the projected loss of earnings pension is assessed following a recurrence of disability, the age at the date of the recurrence is used for the purpose of the above principles.

4. REVIEWS OF PROJECTED LOSS OF EARNINGS PENSIONS

The basic rule established when the dual system was first introduced was that a pension assessed under the projected loss of earnings method would not be reviewable by reference to changes in economic conditions, but would be reviewable by reference to any change in the medical condition of the claimant. The effect of this policy was that a projected loss of earnings pension would not be reviewed simply because a worker's future earnings turned out to be greater or less than the amount projected. This would only be done if there was a change in his physical condition. That policy has been maintained until the present time.

There were several reasons for the reluctance of the Board to review projected loss of earnings pensions on economic grounds. It was felt that reviews would discourage a disabled worker from rehabilitating himself and increasing his earnings because any increase might result in a decrease in his pension. Reviews would also involve a continuing invasion of the worker's privacy and there would be an administrative cost in carrying out the reviews which would not necessarily result in more accurate projections of the disabled worker's future earnings loss.

After considering the matter carefully, the Commissioners have concluded that while there is some legitimacy in the reasons outlined above, reviews should be allowed for reasons other than a change in the worker's physical condition. They feel that such reviews could be carried out in a way that would increase the accuracy of pension assessments without excessively increasing costs and without unduly interfering with the worker's privacy or rehabilitation. It is not possible to have a system of review which does not in some degree have these disadvantages, but it is felt that, in the system proposed below, they would be outweighed by the benefits.

The Commissioners have decided that there should be an automatic review of an award made on a projected loss of earnings basis at two years from the date of assessment, or, if there is an appeal, two years from the date of the last decision resulting from the appeal process. Following that review, there will be no further automatic reviews, but the Disability Awards Officer will have a discretion to set up a claim for reviews at future dates which he determines. Apart from these reviews carried out by the Disability Awards Officer, there will be no change in the existing practice. Neither a worker nor an employer will have the right to apply for a review of a projected loss of earnings pension at any time unless there has been a change in the claimant's physical condition.

In exercising his discretion whether to set up a pension for later review, an important factor to be considered by the Disability Awards Officer is whether the review he has just conducted resulted in any change. He will normally set up a later review if there was a change in the pension. If a review results in no alteration in the pension, it may be reasonable to conclude that the long-term projection made at the time of the initial assessment was correct and that there is no need for further review. On the other hand, the Disability Awards Officer may feel that at least one further review is required to ensure that the correct result is obtained. If a further review is set up and that review again results in no change, then the Disability Awards Officer would not likely set up a further review. To minimize administrative costs and the adverse impact on a worker's privacy and rehabilitation, the Disability Awards Officer should not continue to set up a claim for future reviews where such reviews are not likely to result in any change in the pension.

To provide further encouragement to a worker's rehabilitation, the Commissioners feel that it is reasonable to allow a worker to earn a certain amount above the amount projected without his pension being affected. Allowance also should be made for the fact that in serious cases a disabled worker may work for small amounts for therapeutic reasons. The Commissioners feel that this concession is consistent with the overall concept of a projected loss of earnings system. Since the object of that system is to predict a worker's long-term earning capacity, it would not, in any event, be reasonable to alter

his pension simply because his earnings are marginally different from the predicted amount. There is likely to be a certain degree of fluctuation in a worker's earnings which does not alter the long-term picture. The Commissioners have concluded that, if at the time of a review a worker's earnings or projected earnings are 5% or less over the earnings previously projected for him, the excess amount will be ignored. Conversely, if it turns out that his earnings or projected earnings are 5% or less below what was previously projected, there will be no increase in his projected loss of earnings pension.

In carrying out the reviews and determining whether a worker's current earnings are 5% or less above the amount projected, allowance will be made for the effect of inflation.

5. PROPORTIONATE ENTITLEMENT

Section 5(5) of the *Workers' Compensation Act* provides as follows:

"Where the personal injury or disease is superimposed on an already existing disability, compensation shall be allowed only for the proportion of the disability following the personal injury or disease that may reasonably be attributed to the personal injury or disease. The measure of the disability attributable to the personal injury or disease shall, unless it is otherwise shown, be the amount of the difference between the worker's disability before and disability after the occurrence of the personal injury or disease."

The effect of this section in relation to projected loss of earnings pensions has been considered under several previous Board decisions. Three possible interpretations of the section can be drawn from these decisions as follows:

- A. There should be no reduction in the pension by virtue of Section 5(5) because, since the claimant was working prior to the injury, the effect of his pre-existing disability was already reflected in his pre-injury earnings. To make a reduction would be, in effect, to penalize the worker twice over for the effects of the pre-existing disability.
- B. There should always be a reduction in the pension where there was a pre-existing disability because the section obliges the Board to do this. Furthermore, although the pre-injury earnings may not, in fact, have been reduced by the effect of the pre-existing disability, the combined effect of the pre-existing and compensable disabilities may produce a much greater loss of earnings than the compensable disability would itself have produced.
- C. In every case where there was a pre-existing disability, the Board has to decide whether the loss of earnings experienced by the worker after the injury is wholly the result of the compensable disability or partly the result of the pre-existing disability. If it decides that the whole loss is the result of the compensable disability, no reduction in the pension is made under Section 5(5). If it decides that a portion of the loss is attributable to the pre-existing disability, a pension is only awarded for the portion attributable to the compensable disability.

Having considered these alternative interpretations, the Commissioners feel that C, which represents the current practice, is the proper interpretation of Section 5(5) with regard to projected loss of earnings pensions. It is fair to claimants in that it allows for the fact that their pre-injury earnings may already have been reduced by the pre-existing disability. On the other hand, it ensures that the Board does not become responsible for losses of earnings which are really attributable to the delayed or progressive effect of non-compensable pre-existing disabilities. The Commissioners recognize that it is often difficult in practice to properly allocate the causes of a loss of earnings where there is pre-existing disability, but do not feel that it is any more difficult than other decisions that have to be made under the Act, or that this difficulty justifies a different interpretation of Section 5(5).

The Board's previous practice has been that, in applying proportionate entitlement, no account is taken of already existing disabilities in parts of the body other than the one affected by the work injury. This is a reasonable position when the pension is being assessed on a physical impairment basis under Section 23(1) since the concern is solely with the degree of loss of body function in the injured part. However, the same is not the case with pensions assessed on a projected loss of earnings basis under Section 23(3). The concern there is with the worker's capacity to obtain employment and this capacity can be affected by disabilities in other parts of the body. The Commissioners have concluded that, if a loss of earnings experienced by a worker after an injury is partly the result of a disability in another part of the body, Section 5(5) can be applied.

6. APPLICATION OF THIS DECISION

The rules set out in this decision will apply to assessments of new permanent disability awards carried out on or after the date of the decision.

These rules will not apply to existing projected loss of earnings awards unless those awards are reassessed on the basis of a change in the worker's physical impairment. Where, on such a reassessment, there is found to have been a deterioration in the worker's physical impairment and the rules laid down by this decision produce a lower pension than the projected loss of earnings pension the worker is currently receiving, his current pension will remain unchanged. The pension will, however, continue to be adjusted in the normal way in accordance with changes in the Consumer Price Index.

This decision replaces Decisions No. 8, 22, 33, 160, 184, 202, 220, 287, and 297.

RE PAYMENTS PENDING APPEALS

Board Resolution considered by:

W.R. Flesher, Chairman
G.W. Hall, Commissioner
J. Nutter, Commissioner
M.L. Parr, Commissioner

1st June, 1985

*Decision No. 20*¹ dealt with the subject of a worker's entitlement to payment on a claim where an appeal against its initial acceptability was lodged by his employer. Specific rules were established to outline when payments on a claim would be withheld pending the processing of the appeal. The question of a subsequent re-opening of an accepted claim was not addressed in that decision. The purpose of this decision is to deal with that matter.

The re-opening of a claim may involve a major financial decision and, while it is basically a medical issue, there can be other relevant factual questions such as the possibility of a second injury or a change in the worker's condition since the claim was previously closed. In many instances, the employer is contacted as part of a re-opening investigation, but in some cases the first notification an employer receives is the standard letter sent by the Adjudicator to him advising him that the claim has been re-opened.

The *Workers' Compensation Act* confers on employers the right to appeal decisions with respect to a worker to the boards of review. The Board has concluded that the limitation of the policies in *Decision No. 20* to new claims only is inconsistent with that statutory right. The time taken to process an appeal means, in many cases, that the full payment of a re-opened claim is made before the appeal is decided. In such instances, the appeal will, from the employer's point of view, lose much of its practical significance. On the other hand, for the general reasons outlined in *Decision No. 20* with respect to initial claims decisions, there should be no automatic withholding of payments on all claims pending appeals by employers against re-opening decisions. It is necessary to preserve a reasonable balance between the interests of claimants to receive payments without undue delay and the interests of employers to have an effective right of appeal. To achieve this object, the Board has decided to implement the following procedures:

1. When a re-opening notification letter is sent to the employer, the letter will ask the employer to contact the Adjudicator within 15 days of the date of the letter if he has any concerns regarding the re-opening. Payments on the claim will, however, be commenced. If the employer does contact the Adjudicator within 15 days of the date of the letter, he will be advised of his rights of appeal. If an appeal is received within a further 10 days of receiving this advice, payments on the claim will be suspended. If an employer delays more than 15 days in

contacting the Adjudicator or 10 days in submitting an appeal following contact with the Adjudicator, payments on the claim will be maintained pending processing of the appeal. The employer should advise the Adjudicator when an appeal is submitted.

2. The boards of review have agreed to give priority to employer appeals where payments are under suspension. Claimants will be advised of the suspension in writing. If a board of review confirms the decision of the Adjudicator, payments will be re-instituted immediately, irrespective of whether the employer intends to appeal further to the Commissioners of the Board. This is in accordance with Section 92 of the *Workers' Compensation Act*. If the board of review does not confirm the decision of the Adjudicator, any amount paid prior to the board of review decision will not be recovered in the absence of fraud or misrepresentation.
3. In some instances, for a variety of reasons, the re-opening of a claim may result in a retroactive entitlement to wage loss benefits. Where a re-opened claim results in a retroactive payment greater than \$3,000.00, the employer will be contacted by telephone or, failing that, by letter, and asked whether he has any objection to the re-opening. If there is no objection, the name and position title of the person contacted will be recorded on the claim file with a statement of his acquiescence. If, however, the employer objects to the re-opening or wishes more time to consider the question, he will be advised that the retroactive payment plus any other payments on the claim will be suspended for a maximum of 10 days from the date of the telephone conversation. This will be confirmed in writing. Where no telephone contact can be made, the same message will be conveyed in a letter and payment of the claim will be withheld for 15 days from the date of the letter. If an appeal is received within 10 days of the telephone contact or 15 days of the letter, no payments will be processed pending its resolution. If no appeal is received, then payments including the retroactive amount will be processed forthwith.

These new procedures will take effect as of the date of this Decision.

1. (1973) 1 W.C.R. 85.

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

W.R. Flesher, Chairman
G.W. Hall, Commissioner
J. Nutter, Commissioner
M.L. Parr, Commissioner

19th June, 1985

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of July 1st, 1985, a ratio by comparing the Consumer Price Index for April 1985 with the Consumer Price Index for October 1984, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for April 1985 was 126.2 and for October 1984 was 123.2, giving a ratio of 1.02435065;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02435065;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of July, 1985;

AND THAT the British Columbia Regulation numbered 7/84 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	January 1, 1985 Dollar Amount	Changed To	July 1, 1985 New Dollar Amount
3(5)	63.08		64.62
13(2)	12,618.65		12,925.92
	2,523.75		2,585.20
17(2)	1,514.20		1,551.07
	504.74		517.03
	504.74		517.03
17(3)(a)(ii)	164.00		167.99
17(3)(c)	529.92		542.82

17(3)(d)	25,237.19	25,851.73
	2,523.75	2,585.20
	22,713.44	23,266.53
17(3)(e)	529.92	542.82
17(3)(f)(iii)(B)	164.00	167.99
17(3)(g)	17,666.06	18,096.24
17(3)(h)(i)	290.21	297.28
17(3)(h)(ii)	290.21	297.28
17(3)(i)(ii)	290.21	297.28
17(13)	1,261.91	1,292.64
18(1)	219.59	224.94
18(1)	68.15	69.81
22(2)	820.25	840.22
29(2)	189.26	193.87
33(5)	820.25	840.22
35(5)	113.09	115.84
71(8)	12,618.65	12,925.92
73(2)	25,237.19	25,851.73
74(3)	126,186.05	129,258.76
75(2)	25,237.19	25,851.73
75(3)	2,523.75	2,585.20
77(2)	2,523.75	2,585.20
Schedule C	529.92	542.82

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

Decision No. 397

RE THE MAXIMUM WAGE RATE

Board Directive considered by:

W.R. Flesher, Chairman
G.W. Hall, Commissioner
J.M. Nutter, Commissioner
M.L. Parr, Commissioner

15th July, 1985

WHEREAS Section 33 of the *Workers' Compensation Act* requires the Board to determine the maximum wage rate to be applicable for the following calendar year in the manner therein prescribed;

AND WHEREAS the Board is of the opinion that the sum of thirty-three thousand three hundred and sixty-three dollars and twenty-two cents (\$33,363.22) represents the same relationship to the sum of eleven thousand two hundred dollars (\$11,200.00) as the annual average of wages and salaries in the Province of British Columbia for the year 1984 bears to the annual average of wages and salaries in the said Province for the year 1972;

AND WHEREAS the said Act provides that the resulting figure may be rounded to the nearest one hundred dollars (\$100.00);

THE BOARD HEREBY DETERMINES that the maximum wage rate to be applicable for the year 1986 under Section 33 of the *Workers' Compensation Act* is thirty-three thousand four hundred dollars (\$33,400.00);

AND THAT in subsection (6) of the said section, the sum of thirty-two thousand four hundred dollars (\$32,400.00) appearing therein will be changed as at the first day of January, 1986 to read thirty-three thousand four hundred dollars (\$33,400.00).

Decision No. 398

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

W.R. Flesher, Chairman
B.M. Korman, Commissioner

9th December, 1985

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of January 1st, 1986, a ratio by comparing the Consumer Price Index for October 1985 with the Consumer Price Index for April 1985, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for October 1985 was 128.4 and for April 1985 was 126.2, giving a ratio of 1.01743265;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.01743265;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of January, 1986;

AND THAT the British Columbia Regulation numbered 220/84 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	July 1, 1985 Dollar Amount	Changed To	January 1, 1986 New Dollar Amount
3(5)(c)	64.62		65.75
13(2)	12,925.92		13,151.25
	2,585.20		2,630.27
17(2)	1,551.07		1,578.11
	517.03		526.04
	517.03		526.04
17(3)(a)(ii)	167.99		170.92
17(3)(c)	542.82		552.28
17(3)(d)	25,851.73		26,302.39
	2,585.20		2,630.27
	23,266.53		23,672.12
17(3)(e)	542.82		552.28
17(3)(f)(iii)(B)	167.99		170.92
17(3)(g)	18,096.24		18,411.71
17(3)(h)(i)	297.28		302.46
17(3)(h)(ii)	297.28		302.46
17(3)(i)(ii)	297.28		302.46
17(13)	1,292.64		1,315.17
18(1)	224.94		228.86
	69.81		71.03
22(2)	840.22		854.87
29(2)	193.87		197.25
33(5)	840.22		854.87
35(5)	115.84		117.86
71(8)	12,925.92		13,151.25
73(2)	25,851.73		26,302.39
74(3)	129,258.76		131,512.08
75(2)	25,851.73		26,302.39
75(3)	2,585.20		2,630.27
77(2)	2,585.20		2,630.27
Schedule C	542.82		552.28

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

RE APPEALS TO WORKERS' COMPENSATION REVIEW BOARD

7th April, 1986

Effective February 20, 1986, amendments to the *Workers' Compensation Act* were proclaimed which replaced the board of review with the Workers' Compensation Review Board (Review Board).

Effective February 20, 1986, the Lieutenant Governor in Council passed the following regulations with respect to the review board:

Interpretation

1. In this regulation

“Act” means the *Workers' Compensation Act*;

“board” means the Workers' Compensation Board;

“chairman”, “vice-chairman” or “member” means the chairman, a vice-chairman or another member of the review board, including a temporary vice-chairman or a temporary member of the review board;

“panel” means a panel of the review board;

“review board” means the Workers' Compensation Review Board established by the Act.

Chairman

2. (1) The chairman has responsibility for the general administration of the review board and may
 - (a) appoint a registrar and, if he deems necessary, a deputy registrar, from among its members,
 - (b) assign duties he considers advisable to the members, designate the matters in which they shall act, the place where they shall act and supervise the carrying out of their duties,

- (c) subject to any agreement made under Section 93(4) of the Act, employ such staff and make such provision for facilities and equipment as he considers necessary for the efficient operation of the review board,
 - (d) assign the duties he considers advisable to the staff of the review board and supervise the carrying out of their duties, and
 - (e) determine the type of records to be kept of the proceedings of the review board.
- (2) The chairman may designate a vice-chairman to be acting chairman during his absence and the acting chairman will have all the powers and authority of the chairman.

Panels

3. (1) The chairman shall
- (a) establish panels of the review board,
 - (b) appoint members to the panels to ensure composition in the manner set out in subsection (2),
 - (c) terminate appointments made and fill vacancies, and
 - (d) assign appeals to the panels.
- (2) A panel shall be composed of
- (a) the chairman or a vice-chairman as presiding member and two other members, one of whom shall have a background associated with employer interests and one of whom shall have a background associated with worker interests,
 - (b) the chairman as presiding member and two vice-chairmen, or
 - (c) the chairman or a vice-chairman sitting alone.
- (3) The chairman may reassign any appeal from one panel to another before evidence is taken on the appeal by the panel to which it was originally assigned.
- (4) Where a person ceases to be a member, he may, with the approval of the chairman, carry out and complete any duties or responsibilities and continue to exercise any powers that he may have had if he had not ceased to be a member in relation to a specific proceeding in which he participated.

- (5) Where a member is unable to complete his duties or responsibilities on a panel, the chairman may
 - (a) appoint a member, including himself, to replace that person,
 - (b) direct that the remaining persons comprising the panel constitute a quorum for the determination of an appeal, and that the findings of the quorum shall be the decision of the panel, or
 - (c) exercise his authority under subsection (3).

Registrar

4. (1) At the direction of the chairman, the registrar shall be responsible for determining all administrative matters pertaining to the filing of and completion of an appeal before the review board and shall carry out the following duties:
 - (a) supervise staff assigned to him by the chairman;
 - (b) review all appeals filed with the review board to determine their compliance with Section 90 of the Act and these regulations;
 - (c) correspond with parties to an appeal to ensure compliance with the requirements for pursuing a valid appeal and to suspend appeals where these requirements are not met after due notice to the affected party;
 - (d) ensure that all issues raised by an appeal have been disposed of before the claim file is returned to the Board;
 - (e) refer claim files to an officer of the Board where a matter under appeal has not been considered in the first instance.

Procedure

5. (1) An appeal to the review board shall be filed at its office or at an office of the Board.
- (2) An appeal shall
 - (a) be in writing signed by the appellant or his agent,
 - (b) specify the decision being appealed and state why, in the opinion of the appellant, the decision is incorrect, and
 - (c) set out the remedy sought.

- (3) Where the grounds of appeal relate to evidence that was apparently not considered by or disclosed to the officer of the Board, the written appeal must contain
 - (a) the names and addresses of any witnesses to be produced,
 - (b) a description of any documentary evidence to be offered, and
 - (c) if the evidence is additional medical evidence, a short statement as to how the evidence will affect the decision under appeal.
- (4) If subsections (2) and (3) are not fully complied with, the review board may require the appellant to file with it a completed notice of appeal in the form determined by the review board.
- (5) The registrar shall acknowledge receipt of every appeal made to the review board and provide a copy to the respondent together with a notice of appearance.
- (6) A respondent, who wishes to participate in the appeal, shall file the notice of appearance with the registrar within 21 days from the date of dispatch of the notice under subsection (5).

Submissions and Evidence

6. (1) Where the review board does not conduct an oral hearing, it shall permit parties to the appeal to make written submissions.
- (2) The review board shall consider relevant information and argument submitted to it by or on behalf of a worker, employer or dependant, whether made orally or in writing.
- (3) The review board may require and receive medical or other evidence and information on oath, affidavit or otherwise as in its discretion it considers proper to make a fair decision.
- (4) The review board may require a worker to attend for examination by a physician chosen by the review board.
- (5) The review board shall, in determining whether or not a record in its possession, including a medical report, should be disclosed to a worker, employer or other person, follow the practice of the Board.
- (6) The review board has the right to examine an original or copy of a record in the Board's possession that relates to a matter under appeal.

Expenses

7. (1) The review board may order the Board to reimburse a person for the cost incurred in
 - (a) attending an oral hearing,
 - (b) obtaining a medical report submitted to the review board, or
 - (c) attending an examination required under section 6(4).
- (2) The amount of costs authorized under subsection (1) shall not exceed the rates paid by the Board for similar services.

General

8. (1) All records of the review board, other than personal notes kept by a member, shall be delivered to the Board following the finding of the review board.
- (2) Subject to the Act, all reasonable time limits set by a panel for the due conduct of an appeal shall be complied with unless waived by the chairman or the panel.
- (3) Where forms are set by the review board, they shall be used in the proceedings before the review board.

Decision No. 400

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

G.W. Hall, Acting Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner

17th June, 1986

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of July 1st, 1986, a ratio by comparing the Consumer Price Index for April 1986 with the Consumer Price Index for October 1985, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for April 1986 was 131.1 and for October 1985 was 128.4, giving a ratio of 1.02102804;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02102804;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of July, 1986;

AND THAT the British Columbia Regulation numbered 344/84 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	January 1, 1986 Dollar Amount	Change To	July 1, 1986 New Dollar Amount
3(5)(c)	65.75		67.13
13(2)	13,151.25		13,427.80
	2,630.27		2,685.58
17(2)	1,578.11		1,611.29
	526.04		537.10
	526.04		537.10
17(3)(a)(ii)	170.92		174.51
17(3)(c)	552.28		563.89
17(3)(d)	26,302.39		26,855.48
	2,630.27		2,685.58
	23,672.12		24,169.90
17(3)(e)	552.28		563.89
17(3)(f)(iii)(B)	170.92		174.51
17(3)(g)	18,411.71		18,798.87
17(3)(h)(i)	302.46		308.82
17(3)(h)(ii)	302.46		308.82
17(3)(i)(ii)	302.46		308.82
17(13)	1,315.17		1,342.83
18(1)	228.86		233.67
	71.03		72.52
22(2)	854.87		872.85
29(2)	197.25		201.40
33(5)	854.87		872.85
35(5)	117.86		120.34
71(8)	13,151.25		13,427.80
73(2)	26,302.39		26,855.48
74(3)	131,512.08		134,277.52
75(2)	26,302.39		26,855.48
75(3)	2,630.27		2,685.58

77(2)	2,630.27	2,685.58
Schedule C	552.28	563.89

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

Decision No. 401

RE EXPERIENCE RATING

Board Directive considered by:

G.W. Hall, Acting Chairman
J.M. Nutter, Commissioner
B.M. Korman, Commissioner

27th June, 1986

Effective January 1, 1986, the Board has introduced a new experience rated assessment (ERA) system pursuant to Section 42 of the *Workers' Compensation Act*. The purpose of an experience rating program is twofold. It is, firstly, to promote improved workplace safety and, secondly, to provide improved assessment equity. It achieves these objectives by departing from the normal principle that the rate of assessment paid by an employer is dependent on the claims costs of all the employers in his class or subclass of industry and by varying each employer's rate in accordance with his individual claim cost experience.

The initial experience rating program was introduced in 1932 and since that time has been subject to periodic review by the Board. In 1979, a review of the program resulted in a discussion paper being circulated to industry. Following the receipt of industry's response, the Board asked the Assessment Department to continue the review and submit a report to it. In January 1983, a proposal on experience rating was prepared and this was circulated to employer associations, individual employers who requested copies, unions and other interested parties. Those who made written submissions were invited to meet with the Financial Services Division of the Board to discuss the proposal. Oral presentations continued through early 1983 and early 1984.

The Board proposal, written responses from industry and unions, oral representation and Board discussion culminated in the introduction of the new ERA program which has the following general characteristics:

1. Previous experience rating plans applied to selective industries. Most recently, the plan was confined to employers in the forest, metal, mining and construction

industries, who met a specific set of criteria. This is replaced by a single plan applicable to virtually all industries in the province.

2. The new plan will include most employers by reducing some of the previous qualifying restrictions.
3. The new system will eliminate much of the complexity associated with previous plans so that it can be readily understood by employers.

The details of the new plan are as follows:

1. The plan is prospective in nature. A previous year's experience is used to adjust a future year's assessment rate. This is in contrast to a retrospective system which uses previous years' cost experience to adjust a previously paid assessment.
2. The latest two years of claims costs available to the Board is used to determine the employer's experience.
3. The latest two years of claims costs is divided by the corresponding payroll for those years to arrive at a claim cost ratio. The firm's claim cost ratio is compared to the ratio for the industry. The industry ratio is calculated using the total two-year assessable payroll for employers in the industry compared to the accumulated claim costs used in each firm's claim cost ratio calculation.
4. If the individual firm's claim cost ratio is better than the industry average, the firm receives a reduction in the industry basic assessment rate, while those with a less favourable ratio than average receive an increase in their basic assessment rate.
5. For every 3% variation from the industry average, the employer will receive a 1% adjustment, either upward or downward, to his basic assessment rate.
6. The maximum adjustment to the basic assessment rate will be 33-1/3%.
7. Very small firms and those with only one year of payroll and claim cost experience are experience rated using the above criteria but participate at a 50% level. This means that, once the experience rating has been calculated, the result is divided by 2.
8. It is intended that the experience rating program should have as little impact as possible on the basic assessment rate. The Board aims to achieve balance between total dollars refunded and total dollars collected through the experience rating program. If this objective is not satisfied, the basic rate will be affected. For example, if the plan refunded more than it collected, the basic rate would need to be increased to make up the difference.

9. The costs included in the experience rating calculation exclude those associated with industrial diseases. This is because disabilities from diseases only arise after extended periods of exposure to industrial conditions. Claims of this nature cannot be practically assigned to an individual employer.
10. When assigning claim costs to an employer, fault is not considered. If a claim is accepted as a work caused injury, the costs are charged to the employer irrespective of fault. Generally, the employer is considered responsible for safety on the job and it would be impractical and contrary to the spirit of the *Workers' Compensation Act* to readjudicate claims to determine fault prior to assigning costs for the purpose of an employer's experience rating.
11. Firms engaged in industries which are not compulsorily covered by the *Workers' Compensation Act* are not experience rated.

The program will be implemented in two phases. The first has been implemented in phase one and applies to employers in the previously experience rated industries set out above, namely forest, metal, mining and construction, plus those in the heavy manufacturing and trucking industries. Approximately half of the registered employers within British Columbia are engaged in the first phase industries and the second half will be experience rated in phase two which is scheduled for implementation in 1987.

The preceding description outlines the general concept and some of the details associated with the ERA program. If further information is required, it can be obtained from the Board's Assessment Department.

Decision No. 402

RE ADJUSTMENTS ACCORDING TO THE CONSUMER PRICE INDEX

NOTICE

25th July, 1986

Section 25 of the *Workers' Compensation Act* provides for most of the cash figures in the Act to be adjusted by the Board every six months according to changes in the Consumer Price Index. Apart from those figures, there are various other cash figures that the Board determines. These figures are not automatically adjusted under Section 25, but may be reviewed from time to time by the Board as the need arises to determine whether they should be adjusted and the amount of any adjustment. The Board has carried out a review of these amounts and its conclusion with respect to each is set out below.

PERSONAL CARE ALLOWANCES

The allowances set out on page 67 of *Decision No. 324*¹ are increased as follows:

	Daily	Monthly
Level 1	\$ 9.00	\$ 270.00
Level 2	15.75	472.50
Level 3	22.75	682.50
Level 4	29.50	885.00
Level 5	36.25	1,087.50

INDEPENDENCE AND HOME MAINTENANCE ALLOWANCE

The allowance set out on page 70 of *Decision No. 324* is increased to \$143.00 per month.

COST SHIFTING BETWEEN CLASSES²

The word “substantial” in Section 10(8) is interpreted to mean \$25,000.00.

RATES OF SUBSISTENCE

There will be no change in the amounts contained in *Decisions No. 200*³ and *357*⁴.

TRAINING ALLOWANCES FOR SURVIVING SPOUSES

The minimum income figures of \$150.00 and \$32.00 per week found at page 237 of *Decision No. 56*⁵, as amended by *Decision No. 364*⁶, are increased to \$171.00 and \$36.50 respectively.

CLOTHING ALLOWANCES⁷

Clothing allowances are increased as follows:

Upper Limb Amputee	\$173.00
Lower Limb Amputee	346.00
Where a worker requires a leg brace, but is not entitled to personal care allowance	346.00
Upper and Lower Limb Amputee	519.00

The adjusted figures set out above will come into effect on August 1, 1986. The Board will review these figures in the future if and when it appears that they may need further adjustment.

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1. (1980) 5 W.C.R. 66.
 2. *Decision No. 65*, (1974) 1 W.C.R. 270.
 3. (1976) 3 W.C.R. 4.
 4. (1982) 5 W.C.R. 187.
 5. (1974) 1 W.C.R. 234.
 6. (1982) 5 W.C.R. 187.
 7. *Decision No. 319*, (1980) 5 W.C.R. 57.

Decision No. 403

RE APPEALS TO WORKERS' COMPENSATION REVIEW BOARD

Board Directive considered by:

G.W. Hall, Acting Chairman
J.M. Nutter, Commissioner
A.P. Devine, Commissioner
B.M. Korman, Commissioner

23rd September, 1986

On February 20, 1986, legislation was proclaimed into effect which replaced the board of review with the Workers' Compensation Review Board as the independent external appeal body in the Workers' Compensation system. In *Decision No. 280*¹, the Board set out its policy and procedures as to how it would deal with decisions returned to it from the board of review. The purpose of this directive is to set out the Board's policy and procedures concerning findings of the new Review Board.

In the *Workers' Compensation Act* as it was prior to February 20, 1986, Section 90(3) read as follows:

"Where the board of review does not confirm the original decision, that decision will be reconsidered by the Board."

The new legislation repealed the whole of Section 90 and substituted a new section which does not contain a provision equivalent to the old subsection (3). In addition, Section 96(2) of the Act was amended to read as follows:

". . . the board may at any time at its discretion re-open, rehear and redetermine any matter which has previously been dealt with by it, by an officer of the board or by the review board."

As in *Decision No. 280*, the Commissioners must establish a balance between preserving the integrity of the findings of the independent Review Board and ensuring that those findings are fundamentally in line with the practice of the Board. We consider that this objective can be met by requiring a Board officer whose decision is not consistent with a Review Board finding to alter his or her decision to accord with the finding unless he feels that one of the following conditions exist:

1. The finding is on a matter outside the jurisdiction of the Review Board.
2. The finding conflicts with the provisions of the *Workers' Compensation Act* or is otherwise based on an error of law.
3. The finding conflicts with Commissioners' earlier decisions, or a decision of a Medical Review Panel, on the same claim.
4. The finding conflicts with Board policy. Where there is no apparent policy in effect on the issue being considered by the Review Board, it would be expected that the matter would be referred back to the Board for direction and guidance.
5. The finding amounts to an "original decision" rather than a conclusion on appeal.²
6. The finding is against the overwhelming weight of the evidence.

These grounds are largely the same as those set out in *Decision No. 280* in relation to board of review decisions under Section 90(3) as it existed prior to February 20, 1986. The first five raise matters of law, policy and jurisdiction and have not, in the past, been the subject of major controversy. The only ground that has been changed and requires discussion is the sixth.

In *Decision No. 280*, the Commissioners stated that they would not conclude that a board of review decision should not be implemented simply because they disagreed with the conclusion reached. They stated it would only be in those rare cases where the decision was unreasonable by **any** standard on the basis of the evidence cited that they would decide not to implement it.

We feel that the same general philosophy should govern referrals of Review Board findings. However, we feel the test that the finding be "unreasonable by any standard" is too restrictive. When taken literally, virtually no reconsideration could ever take place under this criterion. This would not meet the objective that Review Board findings should be kept within the general confines of the practice followed by the Board.

In altering this part of *Decision No. 280*, we are conscious of the need to set a criterion which does not go too far in the other direction. It remains our objective to implement the findings of the Review Board whenever possible. We, therefore, wish to state clearly that, in our view, a Review Board finding is not contrary to the overwhelming weight of the evidence simply because the Board Officer reviewing it would have weighed the evidence differently. "Overwhelming" must retain its normal meaning of "overcome by

great superiority of force or number”³³ or “irresistible by numbers, amount, etc.”³⁴ The Review Board finding must be clearly against the great preponderance of the evidence as a whole and not just one of two or more alternative conclusions that could reasonably be supported by the evidence.

It will not generally be the practice of the Board to seek out information with which to challenge otherwise valid Review Board findings. However, in some rare cases it may be necessary to supplement incomplete evidence to determine if the findings are reasonable. Alternatively, significant new evidence may be received by the Board without being specifically requested in the ordinary course of administering the claim. *Decision No. 280* required that in these situations, the new evidence should be referred back to the board of review to reconsider its decision. However, we feel that such a procedure would produce additional delay without necessarily finally resolving the matter at issue and should not, therefore, be the normal practice.

Where the finding of the Review Board does not confirm the decision appealed against and the Board officer concludes that one of the six grounds listed above does exist or that further investigation is necessary with respect to the finding, we do not feel that he should be able to make a final decision to maintain his own previous decision or to carry out further investigation. There will, therefore, be a referral procedure which he must follow involving a review of his decision by senior Board Managers. Where they concur with his decision, the matter will be referred to the Commissioners who, pursuant to Section 96(2) of the Act, will “re-open, rehear and redetermine” the matter dealt with in the Review Board finding. It should be made clear that this will be a complete rehearing of the matter dealt with by the Review Board on the merits. The six criteria set out above will limit the Review Board findings which are referred to the Commissioners, but, once the referral has been made, will not limit the Commissioners’ consideration of the matter.

This does not mean that under the Section 96(2) proceedings the Commissioners will review findings of the Review Board other than those specifically referred to them. It will, however, be the practice to advise the parties of their right to submit an appeal against those other findings under Section 91 of the *Workers’ Compensation Act* and that any such appeal will be dealt with at the same time as the Section 96(2) proceedings. The combination of the two proceedings is possible because both involve a full rehearing of the issues being dealt with. Following a decision of the Commissioners under Section 96(2), no appeal will lie under Section 91 on an issue dealt with in that decision.

The parties to the proceedings under Section 96(2) will have the same rights to disclosure of the file and of additional information obtained for the purpose of the proceedings and to make submissions in support of their case as they would on an appeal under Section 91.

Dissent in Part: Beverley Korman, Commissioner

I am unable to agree with the majority on the inclusion of #6 in the criteria to be followed in considering a Review Board finding. The criterion of “overwhelming weight of evidence” has, in the opinion of Board critics, been historically over-used at the Board in referrals to the Commissioners and has been the centre of the controversy and misunderstanding surrounding the policy of having Review Board findings reviewed by the Commissioners.

While I recognize that any legal decision must have some evidentiary basis, it is my perception that those few decisions that are without an evidentiary base would be decisions contrary to both policy and law.

It is a well-recognized doctrine of Administrative Law that an administrative tribunal makes an error if it makes a decision based on no evidence. Criterion #6 goes beyond establishing that an evidentiary base existed for the Review Board finding. It is, in my opinion, too subjective a test and one that allows the Board to go further and reweigh the evidence to re-evaluate the quality of the Review Board’s judgment. The effect is that the Board is invited to remake the Review Board’s decision according to its own judgment. I believe that the process of reweighing and redetermining the evidence is more appropriate on an appeal to the Commissioners under Section 91 of the Act.

While I agree that the *Workers’ Compensation Act* charges the Commissioners with ultimate responsibility for interpreting the Act and establishing policy, it is my opinion that criteria #1 to #5 are sufficient to safeguard the integrity of the system and carry out the Board’s responsibility for establishing and maintaining workers’ compensation policy in the province.

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1. (1978) 3 W.C.R. 43.
 2. “Original decision” has the same meaning as in *Decision No. 280*.
 3. Webster’s Third International Dictionary.
 4. Oxford Concise Dictionary, Fifth Ed.

RE THE MAXIMUM WAGE RATE

BOARD MINUTE

22nd September, 1986

WHEREAS Section 33 of the *Workers' Compensation Act* requires the Board to determine the maximum wage rate to be applicable for the following calendar year in the manner therein prescribed;

AND WHEREAS the Board is of the opinion that the sum of forty-one thousand one hundred and nine dollars and forty-three cents (\$41,109.43) represents the same relationship to the sum of forty thousand dollars (\$40,000.00) as the annual average of wages and salaries in the Province of British Columbia for the year 1985 bears to the annual average of wages and salaries in the said Province for the year 1984;

AND WHEREAS the said Act provides that the resulting figure may be rounded to the nearest one hundred dollars (\$100.00);

THE BOARD HEREBY DETERMINES that the maximum wage rate to be applicable for the year 1987 under Section 33 of the *Workers' Compensation Act* is forty-one thousand one hundred dollars (\$41,100.00);

AND THAT in subsection (6) of the said section, the sum of forty thousand dollars (\$40,000.00) appearing therein will be changed as at the first day of January, 1987, to read forty-one thousand one hundred dollars (\$41,100.00).

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

*G.W. Hall, Acting Chairman
 B.M. Korman, Commissioner
 J.M. Nutter, Commissioner
 A.P. Devine, Commissioner*

2nd December, 1986

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of January 1st, 1987, a ratio by comparing the Consumer Price Index for October 1986 with the Consumer Price Index for April 1986, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for October 1986 was 134.0 and for April 1986 was 131.1, giving a ratio of 1.02212052;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02212052;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of January, 1987;

AND THAT the British Columbia Regulation numbered 206/85 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	July 1, 1986 Dollar Amount	Change To	January 1, 1987 New Dollar Amount
3(5)(c)	67.13		68.61
13(2)	13,427.80		13,724.83
	2,685.58		2,744.99
17(2)	1,611.29		1,646.93
	537.10		548.98
	537.10		548.98
17(3)(a)(ii)	174.51		178.37
17(3)(c)	563.89		576.36

17(3)(d)	26,855.48	27,449.54
	2,685.58	2,744.99
	24,169.90	24,704.55
17(3)(e)	563.89	576.36
17(3)(f)(iii)(B)	174.51	178.37
17(3)(g)	18,798.87	19,214.71
17(3)(h)(i)	308.82	315.65
17(3)(h)(ii)	308.82	315.65
17(3)(i)(ii)	308.82	315.65
17(13)	1,342.83	1,372.53
18(1)	233.67	238.84
	72.52	74.12
22(2)	872.85	892.16
29(2)	201.40	205.86
33(5)	872.85	892.16
35(5)	120.34	123.00
71(8)	13,427.80	13,724.83
73(2)	26,855.48	27,449.54
74(3)	134,277.52	137,247.81
75(2)	26,855.48	27,449.54
75(3)	2,685.58	2,744.99
77(2)	2,685.58	2,744.99
Schedule C	563.89	576.36

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

RE RECURRENCE OF DISABILITIES

Board Decision considered by:

J.A. Nielsen, Chairman
A.P. Devine, Commissioner
B.M. Korman, Commissioner
J.M. Nutter, Commissioner

16th January, 1987

The Commissioners have reviewed the Board's policy guidelines under Section 32 of the *Workers' Compensation Act*. That section gives the Board a discretion to determine compensation benefits on a re-opening of a claim more than three years after an injury by reference to the worker's current earnings. The Board's present guidelines are set out in *Decision No. 249*¹.

The guidelines set out below will apply effective October 27, 1986, in place of those contained in *Decision No. 249*. They apply in situations where there is a recurrence of temporary disability or an occurrence of or increase in a permanent disability at some time following an injury or disablement from industrial disease.

1. Disability Occurring Within Three Years of Injury

Claims being re-opened within three years of the date of injury (or the equivalent date in the case of industrial diseases) will be re-opened using the wage rate set on the claim at the time of the injury. This could be either the original rate or the eight-week rate change figure if such an adjustment has occurred. Any pension awarded under the same claim is deducted from the amount of the payments. No deduction is made of any pension awarded on another claim except to the extent that the combined total exceeds the current maximum. Consumer Price Index adjustments are made if applicable. Section 32 has no application in these cases.

2. Temporary Disability Occurring After Three Years Where The Claimant Is Employed

- A. Where the worker's earnings at the time of the occurrence of disability **exceed** the earnings rate originally set on the claim (or the eight-week review rate, if applicable) plus Consumer Price Index adjustments, Section 32(1) is normally applied so as to treat the recurrence of disability as the happening of the injury. Wage loss compensation is based on the worker's earnings immediately prior to the recurrence and, where there is an existing permanent partial disability pension granted in respect of the original injury, Section 32(2) applies. Therefore, the pension is not deducted from the wage loss benefits except to the extent

that the combined total exceeds the maximum wage rate in effect at the time of the recurrence. An eight-week rate review will be carried out if the disability following the re-opening of the claim continues for that period. Any Consumer Price Index increases occurring in the six months following the recurrence will, by virtue of Section 25(2), not be applicable to the wage loss payments being made.

- B. Where the claimant is employed at the **same rate** as originally set on the claim (or eight-week review rate, if applicable) plus applicable Consumer Price Index adjustments, the previous rate will be used as under #1 above. The discretion contained in Section 32(1) will not be exercised.
- C. Where the worker is employed at a **lower rate** than the rate originally set on the claim (or eight-week review rate, if applicable) plus applicable Consumer Price Index increases, a determination will be made as to the reason for the lower figure.
 - (i) If it is determined that the reduced earnings level is due to the effects of the injury or disease accepted on the claim, the rate originally set on the claim (or eight-week review rate if applicable) will be used on the re-opening as in #1 above. Care must be exercised in making this determination to ensure that consistency is maintained with prior decisions reached on the claim. If, for example, a prior decision has been reached that a pension or higher pension which the claimant asked for should not be awarded because the claimant was capable of undertaking certain occupations, it will not now be possible to conclude that the claimant's not being employed in those occupations is due to the effects of his injury.
 - (ii) If it is determined that the lower earnings level is due to a matter of personal choice on the part of the claimant, such as, for example, a voluntary change in life-style, the reduced earnings figure will be used on re-opening. Section 32 will be applied and the rules set out in A above will apply in relation to the reduced figure. If it is concluded that this voluntary or elective change in earnings status is indicative of the future, no eight-week rate change on the basis of prior earnings will be carried out should the disability following re-opening extend to that point.
 - (iii) If it is determined that the reduced earnings at the time of re-opening are due to employment difficulties occasioned by economic circumstances, the current rate of earnings will be used for the first eight weeks at which point a review will be carried out. Section 32 will be applied and the rule set out in A above will apply to the reduced figure. Since the eight-week review permits a consideration of the one-year, three-year, or even five-year's earnings prior to the injury, it will have the effect of adjusting for the long term any temporary aberrations in earnings capacity caused by economic fluctuations.

3. Temporary Disability Recurring After Three Years Where The Claimant is Unemployed

Where the worker is unemployed at the time of the re-opening, a determination will be made of the reasons for this.

- (i) If it is determined that the unemployed status prior to the recurrence is due to the effects of the injury or disease accepted on the claim, the rate originally set on the claim (or the eight-week review rate, if applicable) will be used as in #1 above. The discretion in Section 32 will not be exercised. As in 2(C)(i) above, care must be exercised to ensure that the determination is consistent with prior decisions on the claim.
- (ii) If it is determined that the worker's unemployed status prior to the recurrence is not due to the effects of the injury, no wage loss benefits are payable unless the disability following re-opening will produce a potential for income loss by removing the worker as a viable entity in the labour force. In the latter case, benefits will be paid on the basis of the wage rate originally set on the claim (or the eight-week review rate, if applicable). In determining whether there is a "potential loss", the following are among the questions that might be considered.
 - (a) Was the claimant's unemployment a matter of personal choice on his part?
 - (b) Does the claimant's life-style render it unlikely that he will, in practice, obtain employment? For example, if he has moved his residence to a remote area where there are virtually no employment opportunities, this would indicate that there was no potential loss.
 - (c) Are there any other health conditions or personal problems that limit the possibility of employment?
 - (d) Was the worker being paid UIC benefits? Since the payment of such benefits requires a confirmation that the worker is fit for work, this would be an indicator that there was a potential loss.
 - (e) Has the worker been making an active, ongoing, job search? Has he registered with the Canada Employment and Immigration Commission?
 - (f) Has the worker maintained his union status, made himself available for dispatch to jobs, been dispatched to jobs or declined offers of dispatch?
 - (g) Was the worker listed as seeking employment by the Ministry of Human Resources?

4. Permanent Disability Occurring or Increasing More Than Three Years After Injury

The rules set out above in relation to wage loss benefits are, in general, equally applicable to permanent disability pensions. These rules have the effect that in one situation no wage loss benefits are paid, notably when the worker is unemployed otherwise than through the effects of the injury and it is determined that he has no potential loss of earnings. The Commissioners have concluded that a pension assessed on a physical impairment basis under Section 23(1) of the *Workers' Compensation Act* should, however, be paid in that situation and (subject to any appropriate wage rate review being carried out) calculated on the basis of the wage rate originally set on the claim. Pensions are distinguishable from wage loss benefits since they are concerned with the long term as opposed to the current situation. A permanent disability award is payable under Section 23(1) for significant impairments even though the worker has returned to work with no loss of earnings and may not have a loss of earnings in the future. The section directs that the pension is payable for life and appears to rest on an assumption that over the many years ahead some loss will on average be experienced. It follows that, just because a person is unemployed and does not now foreseeably have an actual loss of earnings, it does not mean that he should not receive an award under Section 23(1). However, the situation is different for projected loss of earnings awards under Section 23(3). Since that assessment aims to predict the worker's actual loss of earnings over the future, no award can be made when the worker is unemployed for reasons unrelated to his injury and it is determined that he will not have a potential loss of earnings.

5. Prior Occasion When Section 32 Was Applied

Where on a previous re-opening of the claim, Section 32 or its predecessor has been used to base compensation on the current earnings, any rate resulting from the application of that section is ignored for the purposes of a later re-opening.

1. (1977) 3 W.C.R. 137.

RE ASSESSMENT OF PERMANENT DISABILITIES

Board Decision considered by:

J.A. Nielsen, Chairman
A.P. Devine, Commissioner
B.M. Korman, Commissioner
J.M. Nutter, Commissioner

17th February, 1987

The Commissioners are concerned that a misunderstanding has developed regarding the assessment of a pension which consists of what are often referred to as a worker's "subjective complaints". In particular, *Decision No. 318* has been used to rationalize automatic granting of an award of up to 2.5% of total disability to recognize complaints of pain and discomfort which do not accompany an objective clinical impairment.

Decision No. 318 was issued to explain the position of the Commissioners on whether or not stress testing would be of value in the assessment of awards for permanent partial disability. In that decision, the Commissioners made an award of 2.5% in a case where there were primarily subjective complaints. However, this only represented the Commissioners' decision on the particular facts of that case. It was not intended that it be used as justification for awards in other cases for the so-called "subjective complaints" that a worker might describe in the absence of objective symptoms of disability.

In assessing a pension for permanent partial disability, regard must be had to the requirements of the *Workers' Compensation Act*. Section 23(1) requires that a pension be paid when a permanent partial disability results from the injury and will produce an impairment of earning capacity. In making a determination under this section, it is incumbent upon the Disability Awards Officer to enquire carefully into all of the circumstances of a worker's condition resulting from a compensable injury. The Disability Awards Officer should consider both the objective physical findings noted by the doctors who examined the claimant and his subjective complaints of pain. The fact that the complaints are largely subjective does not automatically preclude a finding that a worker has a disability within the meaning of Section 23(1). Nor, on the other hand, does the fact that subjective complaints exist automatically warrant a finding of disability. In all cases, a decision must be made on the particular facts of the claim as to whether or not a disability exists.

With regard to the question as to what type of evidence will be sufficient to justify a conclusion that a permanent disability exists in these cases, it is not possible to lay down an exclusive list. However, some suggestions can be made. There will, in the first place, be the claimant's own evidence regarding the nature and extent of his complaints and whether that evidence is credible and consistent. Regard must also be had to the claimant's conduct and activities and whether they are consistent with his complaints.

There will then be the evaluations of the claimant by the various professional personnel and Board's staff who have been involved in his case, for example, doctors, psychologists, rehabilitation consultants, and assessors in the Board's Industrial Department. Consideration will have to be given to the objective observations of these persons as well as their subjective assessments. They may be able to comment on whether the claimant's complaints are of a type and extent that might reasonably result from the type of injury which he suffered.

When there is little clinical evidence of objective impairment, extreme caution must be exercised in concluding that there is a permanent disability resulting from that injury. The evidence that is relied upon to support the assessment of such an award must be fully documented. It must clearly demonstrate that there is a permanent disability for which the payment of a pension award may be supported.

Decision No. 408

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

J.A. Nielsen, Chairman

1st June, 1987

B.M. Korman, Commissioner

J.M. Nutter, Commissioner

A.P. Devine, Commissioner

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of July 1st, 1987, a ratio by comparing the Consumer Price Index for April 1987 with the Consumer Price Index for October 1986, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for April 1987 was 137.0 and for October 1986 was 134.0, giving a ratio of 1.02238806;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02238806;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of July, 1987;

AND THAT the British Columbia Regulation numbered 404/85 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	January 1, 1987 Dollar Amount	Change To	July 1, 1987 New Dollar Amount
3(5)(c)	68.61		70.15
13(2)	13,724.83		14,032.10
	2,744.99		2,806.45
17(2)	1,646.93		1,683.80
	548.98		561.27
	548.98		561.27
17(3)(a)(ii)	178.37		182.36
17(3)(c)	576.36		589.26
17(3)(d)	27,449.54		28,064.08
	2,744.99		2,806.45
	24,704.55		25,257.63
17(3)(e)	576.36		589.26
17(3)(f)(iii)(B)	178.37		182.36
17(3)(g)	19,214.71		19,644.89
17(3)(h)(i)	315.65		322.72
17(3)(h)(ii)	315.65		322.72
17(3)(i)(ii)	315.65		322.72
17(13)	1,372.53		1,403.26
18(1)	238.84		244.19
	74.12		75.78
22(2)	892.16		912.13
29(2)	205.86		210.47
33(5)	892.16		912.13
35(5)	123.00		125.75
71(8)	13,724.83		14,032.10
73(2)	27,449.54		28,064.08
74(3)	137,247.81		140,320.52
75(2)	27,449.54		28,064.08
75(3)	2,744.99		2,806.45
77(2)	2,744.99		2,806.45
Schedule C	576.36		589.26

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

RE THE MAXIMUM WAGE RATE

Board Directive considered by:

J.A. Nielsen, Chairman
A.P. Devine, Commissioner
J.M. Nutter, Commissioner

18th August, 1987

WHEREAS Section 33 of the *Workers' Compensation Act* requires the Board to determine the maximum wage rate to be applicable for the following calendar year in the manner therein prescribed;

AND WHEREAS the Board is of the opinion that the sum of forty-one thousand three hundred and thirty-eight dollars and fifty-eight cents (\$41,338.58) represents the same relationship to the sum of forty thousand dollars (\$40,000.00) as the annual average of wages and salaries in the Province of British Columbia for the year 1986 bears to the annual average of wages and salaries in the said Province for the year 1984;

AND WHEREAS the said Act provides that the resulting figure may be rounded to the nearest one hundred dollars (\$100.00);

THE BOARD HEREBY DETERMINES that the maximum wage rate to be applicable for the year 1988 under Section 33 of the *Workers' Compensation Act* is forty-one thousand three hundred dollars (\$41,300.00);

AND THAT in subsection (6) of the said section, the sum of forty-one thousand one hundred dollars (\$41,100.00) appearing therein will be changed as at the first day of January, 1988, to read forty-one thousand three hundred dollars (\$41,300.00).

RE DISCLOSURE OF BOARD FILES

Board Directive considered by:

J.A. Nielsen, Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner

8th October, 1987

Decision No. 338, which sets out the guidelines for disclosure of claim files to claimants and employers, suggests that the Board's disclosure practices be reviewed from time to time in light of actual experience and appropriate additions or revisions made. *Decision No. 370* outlines one such series of modifications.

As part of this periodic review process, the Board has recently considered whether disclosure of claim files should be granted to claimants and employers, upon request, once an appealable decision has been made. This would represent an expansion of the Board's present policy under which a claimant or employer must have a valid appeal to the review board, the Commissioners or a Medical Review Panel before disclosure is granted.

Decision No. 338 states that, in requiring that there be a valid appeal in process before disclosure is granted, the Board is merely following the rules of natural justice. Under these rules, a party to an appeal has a right to know the case against him prior to the appellate body making a decision affecting his interests. Since, however, the rules are not intended to enable a person merely to satisfy his curiosity about the information which an administrative body holds, disclosure is not granted before initial adjudication decisions on claims. The granting of disclosure prior to initial decisions would result in extensive delays and procedural complexities in reaching these decisions, frustrating the goal that payments to which claimants are entitled be sent out as quickly as possible.

The Board is satisfied that its reasons for not granting disclosure before initial claims adjudication decisions are still valid. It no longer considers, however, that restricting disclosure to situations where an appeal has been initiated is the only viable alternative. Based upon its experience since *Decision No. 338* was issued, the Board is of the opinion that allowing disclosure where there is an appealable claims adjudication decision would be a suitable compromise.¹ On the one hand, disclosure at this point would assist both claimants and employers in deciding whether they should appeal. On the other hand, delays and complexities in the initial decision-making process would be avoided.

As part of its review, the Board has also considered the extent of claim file disclosure being granted to employers. Currently, a claimant who is a party to an appeal on a claim receives, in response to his or her request, a copy of all the documents on the claim file, with the exception of medical accounts which contain no relevant information. The

employer, on the other hand, receives only copies of those documents which, in the Board's opinion, are relevant to the issue in dispute. The Board has considered whether, in light of actual experience, this distinction is still appropriate.

Decision No. 338 explains the restriction on employer disclosure as follows:

"In essence our position represents a compromise between the right of a worker to have the information on his file kept confidential and the right of an employer to disclosure under the rules of natural justice. While the recent court decisions deal specifically only with a claimant's right to see his file, we feel that the principles which led the Court to order disclosure must also apply to employers. Employers are given status under the *Workers' Compensation Act* to pursue and oppose appeals regarding claims and have interests which can be adversely affected by a decision in favour of a worker. Therefore they must also be entitled to see the claim file under the rules of natural justice. On the other hand, the right of the claimant to privacy means that the employer's right should not be extended beyond what the rules strictly require. Therefore, the employer's right is limited to seeing the documents which are relevant to the issue under appeal."

Implicit in the foregoing is the principle that the rules of natural justice take precedence over the claimant's right to privacy. If this were not the case, no disclosure would have been extended to employers at all.

The distinction between claimant and employer disclosure has been maintained for some years. Based upon its experience during this period, however, it appears to the Board that the compromise which was discussed in *Decision No. 338* does not comply with the rules of natural justice.

The present guidelines for employer disclosure require that a Board employee identify the information in a claim file which he or she considers to be relevant to the issues in dispute on an appeal and disclose the documents containing it. Experience has shown, however, that it is often virtually impossible for any person to determine, in advance of the consideration of an appeal, which information the actual decision-maker will consider relevant to its disposition. It is not, in the Board's opinion, merely a matter of taking more care or exercising better judgment with respect to relevancy, but of achieving a level of prediction which, in many cases, is simply not possible.

The Board is satisfied that the problems associated with determining relevancy are real, rather than theoretical. Appeals to the Commissioners against Review Board findings, requests for reconsideration of Commissioners' decisions and threats of court actions, based on alleged breaches of natural justice arising from non-disclosure, have confirmed that omissions do occur. Because employers do not have access to the complete claim file, they only become aware of the existence of undisclosed, but relevant, information through comments at oral hearings or references in letters communicating findings or decisions. The credibility of the system becomes greatly reduced when this occurs. Even, however, without such occurrences, employers cannot be sure that all the information considered by the decision-maker was disclosed to them, since they do not have access to the claim file to verify this.

It is the Board's view that the problems associated with employer disclosure will only be resolved by granting them the same access to claim files as that enjoyed by claimants. Being mindful, however, of the concerns expressed in *Decision No. 338*, the Board has sought legal advice of a distinguished jurist² in this respect. The Board was advised that, in his opinion, the Court of Appeal decision³ which required it to disclose claim files to claimants who are parties to appeals applied equally to employer disclosure, and that an employer who was party to an appeal had the right to full disclosure upon request. The conclusions reached as a result of actual experience with restricted employer disclosure have therefore been reinforced.

Conclusion

Based on the foregoing, the Board has decided to amend its disclosure policy as follows:

1. Disclosure of a claim file will be granted to a claimant or employer where there is an appealable decision on that claim file, even though there is no valid appeal in process.
2. Where an employer has a right under *Decision No. 338* or *Decision No. 370* to receive disclosure of a claim file, that disclosure will consist of the same disclosure which would be granted to the claimant.

These changes will be effective immediately.

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1. For this purpose, a decision will cease to be appealable when the time limit for appeal expires, unless a request for an extension of time is granted.
 2. The Hon. M.M. McFarlane, Q.C.
 3. *Napoli v. W.C.B.: Bourdin v. W.C.B.* (1981), 29 B.C.L.R. 371 (C.A.)

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

J.A. Nielsen, Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner

3rd December, 1987

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of January 1st, 1988, a ratio by comparing the Consumer Price Index for October 1987 with the Consumer Price Index for April 1987, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for October 1987 was 139.8 and for April 1987 was 137.0, giving a ratio of 1.02043796;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02043796;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of January, 1988;

AND THAT the British Columbia Regulation numbered 138/86 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	July 1, 1987 Dollar Amount	Change To	January 1, 1988 New Dollar Amount
3(5)(c)	70.15		71.58
13(2)	14,032.10		14,318.89
	2,806.45		2,863.81
17(2)	1,683.80		1,718.21
	561.27		572.74
	561.27		572.74
17(3)(a)(ii)	182.36		186.09
17(3)(c)	589.26		601.30
17(3)(d)	28,064.08		28,637.65
	2,806.45		2,863.81
	25,257.63		25,773.84

17(3)(e)	589.26	601.30
17(3)(f)(iii)(B)	182.36	186.09
17(3)(g)	19,644.89	20,046.39
17(3)(h)(i)	322.72	329.32
17(3)(h)(ii)	322.72	329.32
17(3)(i)(ii)	322.72	329.32
17(13)	1,403.26	1,431.94
18(1)	244.19	249.18
	75.78	77.33
22(2)	912.13	930.77
29(2)	210.47	214.77
33(5)	912.13	930.77
35(5)	125.75	128.32
71(8)	14,032.10	14,318.89
73(2)	28,064.08	28,637.65
74(3)	140,320.52	143,188.39
75(2)	28,064.08	28,637.65
75(3)	2,806.45	2,863.81
77(2)	2,806.45	2,863.81
Schedule C	589.26	601.30

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

Decision No. 412

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

J.A. Nielsen, Chairman

1st June, 1988

B.M. Korman, Commissioner

J.M. Nutter, Commissioner

E.W. Wood, Commissioner

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of July 1st, 1988, a ratio by comparing the Consumer Price Index for April 1988 with the Consumer Price Index for October 1987, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for April 1988 was 142.5 and for October 1987 was 139.8, giving a ratio of 1.01931330;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.01931330;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of July, 1988;

AND THAT the British Columbia Regulation numbered 287/86 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	January 1, 1988 Dollar Amount	Change To	July 1, 1988 New Dollar Amount
3(5)(c)	71.58		72.96
13(2)	14,318.89		14,595.44
	2,863.81		2,919.12
17(2)	1,718.21		1,751.39
	572.74		583.80
	572.74		583.80
17(3)(a)(ii)	186.09		189.68
17(3)(c)	601.30		612.91
17(3)(d)	28,637.65		29,190.74
	2,863.81		2,919.12
	25,773.84		26,271.62
17(3)(e)	601.30		612.91
17(3)(f)(iii)(B)	186.09		189.68
17(3)(g)	20,046.39		20,433.55
17(3)(h)(i)	329.32		335.68
17(3)(h)(ii)	329.32		335.68
17(3)(i)(ii)	329.32		335.68
17(13)	1,431.94		1,459.60
18(1)	249.18		253.99
	77.33		78.82
22(2)	930.77		948.75
29(2)	214.77		218.92
33(5)	930.77		948.75
35(5)	128.32		130.80
71(8)	14,318.89		14,595.44
73(2)	28,637.65		29,190.74
74(3)	143,188.39		145,953.83
75(2)	28,637.65		29,190.74

75(3)	2,863.81	2,919.12
77(2)	2,863.81	2,919.12
Schedule C	601.30	612.91

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

Decision No. 413

RE THE MAXIMUM WAGE RATE

Board Directive considered by:

J.A. Nielsen, Chairman

25th July, 1988

J.M. Nutter, Commissioner

B.M. Korman, Commissioner

E.W. Wood, Commissioner

WHEREAS Section 33 of the *Workers' Compensation Act* requires the Board to determine the maximum wage rate to be applicable for the following calendar year in the manner therein prescribed;

AND WHEREAS the Board is of the opinion that the sum of forty-two thousand two hundred and fifteen dollars and nineteen cents (\$42,215.19) represents the same relationship to the sum of forty thousand dollars (\$40,000.00) as the annual average of wages and salaries in the Province of British Columbia for the year 1987 bears to the annual average of wages and salaries in the said Province for the year 1984;

AND WHEREAS the said Act provides that the resulting figure may be rounded to the nearest one hundred dollars (\$100.00);

THE BOARD HEREBY DETERMINES that the maximum wage rate to be applicable for the year 1989 under Section 33 of the *Workers' Compensation Act* is forty-two thousand two hundred dollars (\$42,200.00);

AND THAT in subsection (6) of the said section, the sum of forty-one thousand three hundred dollars (\$41,300.00) appearing therein will be changed as at the first day of January, 1989, to read forty-two thousand two hundred dollars (\$42,200.00).

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

J.A. Nielsen, Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner
E.W. Wood, Commissioner

19th December, 1988

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of January 1st, 1989, a ratio by comparing the Consumer Price Index for October 1988 with the Consumer Price Index for April 1988, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for October 1988 was 145.7 and for April 1988 was 142.5, giving a ratio of 1.02245614;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02245614;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of January, 1989;

AND THAT the British Columbia Regulation numbered 217/87 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	July 1, 1988 Dollar Amount	Change To	January 1, 1989 New Dollar Amount
3(5)(c)	72.96		74.60
13(2)	14,595.44		14,923.20
	2,919.12		2,984.67
17(2)	1,751.39		1,790.72
	583.80		596.91
	583.80		596.91
17(3)(a)(ii)	189.68		193.94
17(3)(c)	612.91		626.67

17(3)(d)	29,190.74	29,846.25
	2,919.12	2,984.67
	26,271.62	26,861.58
17(3)(e)	612.91	626.67
17(3)(f)(iii)(B)	189.68	193.94
17(3)(g)	20,433.55	20,892.41
17(3)(h)(i)	335.68	343.22
17(3)(h)(ii)	335.68	343.22
17(3)(i)(ii)	335.68	343.22
17(13)	1,459.60	1,492.38
18(1)	253.99	259.69
	78.82	80.59
22(2)	948.75	970.06
29(2)	218.92	223.84
33(5)	948.75	970.06
35(5)	130.80	133.74
71(8)	14,595.44	14,923.20
73(2)	29,190.74	29,846.25
74(3)	145,953.83	149,231.39
75(2)	29,190.74	29,846.25
75(3)	2,919.12	2,984.67
77(2)	2,919.12	2,984.67
Schedule C	612.91	626.67

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

F.W. Greer, Acting Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner
E.W. Wood, Commissioner

5th June, 1989

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of July 1st, 1989, a ratio by comparing the Consumer Price Index for April 1989 with the Consumer Price Index for October 1988, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for April 1989 was 149.0 and for October 1988 was 145.7, giving a ratio of 1.02264928;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02264928;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of July 1989;

AND THAT the British Columbia Regulation numbered 435/87 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	January 1, 1989 Dollar Amount	Change To	July 1, 1989 New Dollar Amount
3(5)(c)	74.60		76.29
13(2)	14,923.20		15,261.20
	2,984.67		3,052.27
17(2)	1,790.72		1,831.28
	596.91		610.43
	596.91		610.43
17(3)(a)(ii)	193.94		198.33
17(3)(c)	626.67		640.86

17(3)(d)	29,846.25	30,522.25
	2,984.67	3,052.27
	26,861.58	27,469.98
17(3)(e)	626.67	640.86
17(3)(f)(iii)(B)	193.94	198.33
17(3)(g)	20,892.41	21,365.61
17(3)(h)(i)	343.22	350.99
17(3)(h)(ii)	343.22	350.99
17(3)(i)(ii)	343.22	350.99
17(13)	1,492.38	1,526.18
18(1)	259.69	265.57
	80.59	82.42
22(2)	970.06	992.03
29(2)	223.84	228.91
33(5)	970.06	992.03
35(5)	133.74	136.77
71(8)	14,923.20	15,261.20
73(2)	29,846.25	30,522.25
74(3)	149,231.39	152,611.37
75(2)	29,846.25	30,522.25
75(3)	2,984.67	3,052.27
77(2)	2,984.67	3,052.27
Schedule C	626.67	640.86

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

Decision No. 416

RE THE MAXIMUM WAGE RATE

Board Directive considered by:

F.W. Greer, Acting Chairman

J.M. Nutter, Commissioner

B.M. Korman, Commissioner

E.W. Wood, Commissioner

15th August, 1989

WHEREAS Section 33 of the *Workers' Compensation Act* requires the Board to determine the maximum wage rate to be applicable for the following calendar year in the manner therein prescribed;

AND WHEREAS the Board is of the opinion that the sum of forty-three thousand four hundred and twenty-nine dollars and forty cents (\$43,429.40) represents the same relationship to the sum of forty thousand dollars (\$40,000.00) as the annual average of wages and salaries in the Province of British Columbia for the year 1988 bears to the annual average of wages and salaries in the said Province for the year 1984;

AND WHEREAS the said Act provides that the resulting figure may be rounded to the nearest one hundred dollars (\$100.00);

THE BOARD HEREBY DETERMINES that the maximum wage rate to be applicable for the year 1990 under Section 33 of the *Workers' Compensation Act* is forty-three thousand four hundred dollars (\$43,400.00);

AND THAT in subsection (6) of the said section, the sum of forty-two thousand two hundred dollars (\$42,200.00) appearing therein will be changed as at the first day of January, 1990, to read forty-three thousand four hundred dollars (\$43,400.00).

Decision No. 417

RE ADJUSTMENTS ACCORDING TO THE CONSUMER PRICE INDEX

Board Decision considered by:

F.W. Greer, Acting Chairman

B.M. Korman, Commissioner

J.M. Nutter, Commissioner

E.W. Wood, Commissioner

25th September, 1989

Section 25 of the *Workers' Compensation Act* provides for most of the cash figures in the Act to be adjusted by the Board every six months according to changes in the Consumer Price Index. Apart from those figures, there are various other cash figures that the Board determines. These figures are not automatically adjusted under Section 25, but may be reviewed from time to time by the Board as the need arises to determine whether they should be adjusted and the amount of any adjustment. The Board has carried out a review of these amounts and its conclusion with respect to each is set out below.

PERSONAL CARE ALLOWANCES

The allowances set out on page 67 of *Decision No. 324*¹ are increased as follows:

	Daily	Monthly
Level 1	\$10.00	\$ 300.25
Level 2	17.50	525.50
Level 3	25.25	759.00
Level 4	32.75	984.00
Level 5	40.25	1,209.25

INDEPENDENCE AND HOME MAINTENANCE ALLOWANCE

The allowance set out on page 70 of *Decision No. 324* is increased to \$159.00 per month.

CLOTHING ALLOWANCES

Clothing allowances are increased as follows:

Single Upper Limb Amputee	\$192.00
Double Upper Limb Amputee	385.00
Where a worker requires a leg brace, but is not entitled to personal care allowance	385.00
Upper and Lower Limb Amputee	577.00

RATES OF SUBSISTENCE

The sum of \$13.50 in paragraph B.1. of *Decision No. 200*² is amended to the sum of \$32.45 and the sum of \$5.00 in that same paragraph is amended to the sum of \$12.04.

The meal allowances set out on page 188 of *Decision No. 357*³ are increased as follows:

Breakfast	Lunch	Dinner	Per Day
\$7.50	\$8.50	\$16.00	\$32.00

MILEAGE

Where a mileage allowance is payable to a claimant for attending for a medical examination or treatment, the rate shall be \$0.25 per mile.

TRAINING ALLOWANCES FOR SURVIVING SPOUSES

The minimum income figures of \$75.00 and \$16.00 per week found at page 237 of *Decision No. 56*⁴ are increased to \$205.84 and \$43.91 respectively.

WITNESSES

Where the expenses of a witness are payable, and the witness has taken time off from a paid occupation to attend an inquiry or appeal, the witness will be reimbursed for lost earnings at a fixed rate of \$47.00 per half day, including travelling time.

This amount has been calculated with reference to the average weekly wage in the province for the preceding year (\$466.41 in 1988).

COST SHIFTING BETWEEN CLASSES⁵

The word “substantial” in Section 10(8) is interpreted to mean \$27,800.

The increased figures set out above will come into effect on 1 October 1989. The Board will review these figures on an annual basis.

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1. (1980) 5 W.C.R. 66.
 2. (1976) 3 W.C.R. 4.
 3. (1982) 5 W.C.R. 187.
 4. (1974) 1 W.C.R. 234.
 5. *Decision No. 65*, (1974) 1 W.C.R. 270.

Decision No. 418

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

F.W. Greer, Acting Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner
E.W. Wood, Commissioner

27th November, 1989

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of January 1st, 1990, a ratio by comparing the Consumer Price Index for October 1989 with the Consumer Price Index for April 1989, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for October 1989 was 153.2 and for April 1989 was 149.0, giving a ratio of 1.02818792;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02818792;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of January 1990;

AND THAT the British Columbia Regulation numbered 284/88 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	July 1, 1989 Dollar Amount	Change To	January 1, 1990 New Dollar Amount
3(5)(c)	76.29		78.44
13(2)	15,261.20		15,691.38
	3,052.27		3,138.31
17(2)	1,831.28		1,882.90
	610.43		627.64
	610.43		627.64
17(3)(a)(ii)	198.33		203.92
17(3)(c)	640.86		658.92
17(3)(d)	30,522.25		31,382.61
	3,052.27		3,138.31
	27,469.98		28,244.30
17(3)(e)	640.86		658.92
17(3)(f)(iii)(B)	198.33		203.92
17(3)(g)	21,365.61		21,967.86
17(3)(h)(i)	350.99		360.88
17(3)(h)(ii)	350.99		360.88
17(3)(i)(ii)	350.99		360.88
17(13)	1,526.18		1,569.20
18(1)	265.57		273.06
	82.42		84.74
22(2)	992.03		1,019.99
29(2)	228.91		235.36
33(5)	992.03		1,019.99
35(5)	136.77		140.63
71(8)	15,261.20		15,691.38
73(2)	30,522.25		31,382.61
74(3)	152,611.37		156,913.17
75(2)	30,522.25		31,382.61

75(3)	3,052.27	3,138.31
77(2)	3,052.27	3,138.31
Schedule C	640.86	658.92

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

Decision No. 419

RE SCHEDULE B

Board Resolution considered by:

F.W. Greer, Acting Chairman

4th May, 1990

B.M. Korman, Commissioner

J.M. Nutter, Commissioner

E.W. Wood, Commissioner

Pursuant to Section 6(4)(a) of the *Workers' Compensation Act*, the Board has decided to amend Schedule B by inserting paragraph 3A and replacing paragraph 4(a) as follows:

Description of Disease	Description of Process or Industry
3A. Bilateral diffuse pleural thickening or fibrosis, over 5 mm thick and extending over more than a quarter of the chest wall	Where there is exposure to airborne asbestos dust and the claimant has not previously suffered collagen disease, chronic uremia, drug-induced fibrosis, tuberculosis or other infection or trauma capable of causing pleural thickening or fibrosis.
4. Cancer:	
(a) Carcinoma of the lung when associated with:	
(i) asbestosis	Where there is exposure to airborne asbestos dust.
or	

(ii) bilateral diffuse pleural thickening or fibrosis, over 5 mm thick and extending over more than a quarter of the chest wall

Where there is exposure to airborne asbestos dust and the claimant has not previously suffered collagen disease, chronic uremia, drug-induced fibrosis, tuberculosis or other infection or trauma capable of causing pleural thickening or fibrosis.

Decision No. 420

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

*F.W. Greer, Acting Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner
E.W. Wood, Commissioner*

24th May, 1990

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of July 1st, 1990, a ratio by comparing the Consumer Price Index for April 1990 with the Consumer Price Index for October 1989, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for April 1990 was 156.4 and for October 1989 was 153.2, giving a ratio of 1.02088773;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02088773;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of July 1990;

AND THAT the British Columbia Regulation numbered 1/89 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	January 1, 1990 Dollar Amount	Change To	July 1, 1990 New Dollar Amount
3(5)(c)	78.44		80.08
13(2)	15,691.38		16,019.14
	3,138.31		3,203.86
17(2)	1,882.90		1,922.23
	627.64		640.75
	627.64		640.75
17(3)(a)(ii)	203.92		208.18
17(3)(c)	658.92		672.68
17(3)(d)	31,382.61		32,038.12
	3,138.31		3,203.86
	28,244.30		28,834.26
17(3)(e)	658.92		672.68
17(3)(f)(iii)(B)	203.92		208.18
17(3)(g)	21,967.86		22,426.72
17(3)(h)(i)	360.88		368.42
17(3)(h)(ii)	360.88		368.42
17(3)(i)(ii)	360.88		368.42
17(13)	1,569.20		1,601.98
18(1)	273.06		278.76
	84.74		86.51
22(2)	1,019.99		1,041.30
29(2)	235.36		240.28
33(5)	1,019.99		1,041.30
35(5)	140.63		143.57
71(8)	15,691.38		16,019.14
73(2)	31,382.61		32,038.12
74(3)	156,913.17		160,190.73
75(2)	31,382.61		32,038.12
75(3)	3,138.31		3,203.86
77(2)	3,138.31		3,203.86
Schedule C	658.92		672.68

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

RE THE MAXIMUM WAGE RATE

Board Directive considered by:

F.W. Greer, Acting Chairman
J.M. Nutter, Commissioner
B.M. Korman, Commissioner
E.W. Wood, Commissioner

17th July, 1990

WHEREAS Section 33 of the *Workers' Compensation Act* requires the Board to determine the maximum wage rate to be applicable for the following calendar year in the manner therein prescribed;

AND WHEREAS the Board is of the opinion that the sum of forty-five thousand seven hundred and sixty dollars and four cents (\$45,760.04) represents the same relationship to the sum of forty thousand dollars (\$40,000.00) as the annual average of wages and salaries in the Province of British Columbia for the year 1988 bears to the annual average of wages and salaries in the said Province for the year 1984;

AND WHEREAS the said Act provides that the resulting figure may be rounded to the nearest one hundred dollars (\$100.00);

THE BOARD HEREBY DETERMINES that the maximum wage rate to be applicable for the year 1991 under Section 33 of the *Workers' Compensation Act* is forty-five thousand eight hundred dollars (\$45,800.00);

AND THAT in subsection (6) of the said section, the sum of forty-three thousand four hundred dollars (\$43,400.00) appearing therein will be changed as at the first day of January, 1991, to read forty-five thousand eight hundred dollars (\$45,800.00).

RE THE CONSUMER PRICE INDEX

Board Resolution considered by:

F.W. Greer, Acting Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner
E.W. Wood, Commissioner

29th November, 1990

WHEREAS Section 25 of the *Workers' Compensation Act* requires the Board to determine as of January 1st, 1991, a ratio by comparing the Consumer Price Index for October 1990 with the Consumer Price Index for April 1990, and by applying that ratio to adjust those periodical payments of compensation referred to in subsection (2), and to adjust each dollar amount mentioned in the Act, except those referred to in subsection (5);

AND WHEREAS the Board is advised that the Consumer Price Index for October 1990 was 121.2 and for April 1990 was 118.1, giving a ratio of 1.02624894;

THE BOARD HEREBY DETERMINES that the ratio applicable under Section 25(1) is 1.02624894;

AND THAT all periodical payments of compensation described in Section 25(2) shall be adjusted by applying that ratio as of the 1st day of January 1991;

AND THAT the British Columbia Regulation numbered 154/89 be repealed.

AND THAT all dollar amounts referred to in all sections of the Act described in Section 25(4) shall be adjusted as follows:

Section No.	July 1, 1990 Dollar Amount	Change To	January 1, 1991 New Dollar Amount
3(5)(c)	80.08		82.18
13(2)	16,019.14		16,439.63
	3,203.86		3,287.96
17(2)	1,922.23		1,972.69
	640.75		657.57
	640.75		657.57
17(3)(a)(ii)	208.18		213.64
17(3)(c)	672.68		690.34

17(3)(d)	32,038.12	32,879.09
	3,203.86	3,287.96
	28,834.26	29,591.13
17(3)(e)	672.68	690.34
17(3)(f)(iii)(B)	208.18	213.64
17(3)(g)	22,426.72	23,015.40
17(3)(h)(i)	368.42	378.09
17(3)(h)(ii)	368.42	378.09
17(3)(i)(ii)	368.42	378.09
17(13)	1,601.98	1,644.03
18(1)	278.76	286.08
	86.51	88.78
22(2)	1,041.30	1,068.63
29(2)	240.28	246.59
33(5)	1,041.30	1,068.63
35(5)	143.57	147.34
71(8)	16,019.14	16,439.63
73(2)	32,038.12	32,879.09
74(3)	160,190.73	164,395.57
75(2)	32,038.12	32,879.09
75(3)	3,203.86	3,287.96
77(2)	3,203.86	3,287.96
Schedule C	672.68	690.34

And pursuant to Section 25(4), all sections containing such dollar amounts are deemed to be amended accordingly.

RE ADJUSTMENTS ACCORDING TO THE CONSUMER PRICE INDEX

Board Decision considered by:

F.W. Greer, Acting Chairman
B.M. Korman, Commissioner
J.M. Nutter, Commissioner
E.W. Wood, Commissioner

26th February, 1991

Section 25 of the *Workers' Compensation Act* provides for most of the cash figures in the Act to be adjusted by the Board every six months according to changes in the Consumer Price Index. Apart from those figures, there are various other cash figures that the Board determines. These figures are not automatically adjusted under Section 25, but may be reviewed from time to time by the Board as the need arises to determine whether they should be adjusted and the amount of any adjustment. The Board has carried out a review of these amounts and its conclusion with respect to each is set out below.

PERSONAL CARE ALLOWANCES

The allowances set out on page 67 of *Decision No. 324*¹ are increased as follows:

	Daily	Monthly
Level 1	\$10.75	\$ 323.50
Level 2	18.75	566.00
Level 3	27.25	817.50
Level 4	35.25	1,060.00
Level 5	43.50	1,302.75

INDEPENDENCE AND HOME MAINTENANCE ALLOWANCE

The allowance set out on page 70 of *Decision No. 324* is increased to \$171.00 per month.

CLOTHING ALLOWANCES

Clothing allowances are increased as follows:

Single Upper Limb Amputee	\$207.00
Bilateral Upper Limb Amputee	415.00
Lower Limb Amputee or Requires a Leg Brace	415.00
Upper and Lower Limb Amputee	622.00

RATES OF SUBSISTENCE

The sum of \$13.50 in paragraph B.1. of *Decision No. 200*² is amended to the sum of \$34.96 and the sum of \$5.00 in that same paragraph is amended to the sum of \$12.97.

The meal allowances set out on page 188 of *Decision No. 357*³ are increased as follows:

Breakfast	Lunch	Dinner	Per Day
\$8.00	\$9.00	\$17.00	\$34.00

MILEAGE

Where a mileage allowance is payable to a claimant for attending for a medical examination or treatment, the rate shall be \$0.27 per mile.

TRAINING ALLOWANCES FOR SURVIVING SPOUSES

The minimum income figures of \$75.00 and \$16.00 per week found at page 237 of *Decision No. 56*⁴ are increased to \$221.73 and \$47.30 respectively.

WITNESSES

Where the expenses of a witness are payable, and the witness has taken time off from a paid occupation to attend an inquiry or appeal, the witness will be reimbursed for lost earnings at a fixed rate of \$49.00 per half day, including travelling time.

This amount has been calculated with reference to the average weekly wage in the province of \$491.44 for 1989.

COST SHIFTING BETWEEN CLASSES⁵

The word “substantial” in Section 10(8) is interpreted to mean \$29,950.00.

The increased figures set out above will come into effect on 1 March 1991.

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1. (1980) 5 W.C.R. 66.
 2. (1976) 3 W.C.R. 4.
 3. (1982) 5 W.C.R. 187.
 4. (1974) 1 W.C.R. 234.
 5. *Decision No. 65*, (1974) 1 W.C.R. 270.

SUBJECT MATTER INDEX

VOLUMES 1 TO 6

Subject	Volume	Page	Decision Number
ADJUDICATION – INTERIM-----	3	103	236
ADJUDICATION – PRECEDENT/POLICY			
Decisions publication -----	1	1	1
Policy publication -----	5	230	371
ADMISSION – INDUSTRY			
Security/investigation firms-----	3	94	233
ALCOHOLISM-----	5	139	348
APPLICATION FOR COMPENSATION			
Cumulative trauma -----	4	52	282
Hearing loss -----	3	188	267
Injury pre-Jul 1 74-----	2	152	140
Out of time -----	5	258	379
ARTHRITIS			
Spine -----	2	15	99
Thumb -----	3	91	231
ASSAULT			
Police outside of work -----	2	181	148
ASSESSMENT – PENALTY – OUTSTANDING BALANCE			
Non-reporting or payment regulations -----	5	171	351
ASSESSMENT – REMITTANCE REQUIREMENT			
Minimum assessment/report yearly or quarterly regulations -----	5	171	351
ASSIGNMENT – OTHER AGENCY – UNEMPLOYMENT -----	1	125	31
ASTHMA			
Red cedar -----	3	19	206
-----	5	96	333

Subject	Volume	Page	Decision Number
BRONCHITIS/EMPHYSEMA-----	2	60	110
-----	2	126	128
-----	3	21	207
-----	3	104	238
BUNKHOUSE – INJURY -----	1	158	39
-----	3	35	213
CANCER – INJURY CONSEQUENCE-----	5	19	301
CARPAL TUNNEL SYNDROME -----	4	52	282
CHARGE EMPLOYER – INJURY EMPLOYER FAULT-----	3	144	251
-----	4	1	269
CHARGE EMPLOYER – NON-REGISTRATION	2	81	111
CHILDREN – MEANING			
Illegitimacy-----	2	175	146
Unborn-----	1	297	74
CHIROPRACTOR – SCOPE OF TREATMENT	6	3	387
CLAIMANT – REPORT TO EMPLOYER			
Regulations-----	1	259	61
CLASSIFICATION SYSTEM			
Class 11 removed-----	3	133	248
CLOTHING ALLOWANCE			
Consumer Price Index adjustment -----	6	86	423
COMMISSIONERS			
Decision-making procedure-----	5	168	350
Oral hearings-----	5	134	347
Procedural decisions by Review Board -----	2	274	174
COMMON-LAW SPOUSE-----	1	319	87

Subject	Volume	Page	Decision Number
COMMUTATION			
Death prior to -----	2	139	135
General policy -----	5	267	382
Short life expectancy -----	2	30	104
Subsequent pension review -----	1	91	21
COMPETITION INJURY -----	2	109	120
CONSEQUENTIAL INJURY			
Impaired mobility -----	2	311	195
Treatment/travel -----	2	186	152
CONSUMER PRICE INDEX – NON-STATUTORY REVIEW			
January 1975 -----	2	3	92
July 1975 -----	2	101	117
January 1976 -----	2	233	166
-----	2	270	171
February 1976 -----	2	275	175
July 1976 -----	2	307	193
January 1977 -----	3	33	211
-----	3	43	217
July 1977 -----	3	120	245
January 1978 -----	3	161	258
-----	3	186	266
July 1978 -----	4	37	278
January 1979 -----	4	59	285
-----	4	90	291
July 1979 -----	5	28	305
-----	5	57	319
January 1980 -----	5	33	309
-----	5	42	315
July 1980 -----	5	65	323
January 1981 -----	5	85	328
-----	5	95	332
July 1981 -----	5	108	337
January 1982 -----	5	114	340
-----	5	129	345
July 1982 -----	5	174	353
January 1983 -----	5	192	359
-----	5	208	364
-----	5	212	366
July 1983 -----	5	238	373

Subject	Volume	Page	Decision Number
January 1984 -----	5	250	376
-----	5	265	381
July 1984 -----	6	2	386
January 1985 -----	6	12	391
August 1986 -----	6	48	402
October 1989 -----	6	76	417
March 1991 -----	6	86	423
CONSUMER PRICE INDEX DOLLAR			
AMOUNTS IN ACT – SIX-MONTH REVIEW			
July 1974 -----	1	201	46
January 1975 -----	1	309	82
July 1975 -----	2	82	112
January 1976 -----	2	217	159
July 1976 -----	2	302	191
January 1977 -----	3	41	216
July 1977 -----	3	119	244
January 1978 -----	3	184	265
July 1978 -----	4	35	277
January 1979 -----	4	89	290
July 1979 -----	5	27	304
January 1980 -----	5	40	314
July 1980 -----	5	63	322
January 1981 -----	5	93	331
July 1981 -----	5	107	336
January 1982 -----	5	127	344
July 1982 -----	5	172	352
January 1983 -----	5	210	365
July 1983 -----	5	236	372
January 1984 -----	5	263	380
July 1984 -----	6	1	385
January 1985 -----	6	13	392
July 1985 -----	6	36	396
January 1986 -----	6	38	398
July 1986 -----	6	44	400
January 1987 -----	6	55	405
July 1987 -----	6	62	408
January 1988 -----	6	68	411
July 1988 -----	6	69	412
January 1989 -----	6	72	414
July 1989 -----	6	74	415
January 1990 -----	6	78	418
July 1990 -----	6	81	420
January 1991 -----	6	84	422

Subject	Volume	Page	Decision Number
CONSUMER PRICE INDEX – PARTIALLY COMMUTED PENSION -----	1	311	83
CONTAGIOUS DISEASES -----	2	23	101
CONTINUITY OF INCOME -----	5	58	320
CRIME – INJURY CONSEQUENCE -----	3	57	222
CRIMINAL INJURY COMPENSATION			
Decision on Claim October 1 1973 -----	1	75	16
Decision on Claim April 10 1975 -----	2	133	131
Decision on Claim April 14 1975 -----	2	134	132
Decision on Claim April 17 1975 -----	2	135	133
Decision on Claim October 6 1975 -----	2	271	172
Decision on Claim October 16 1975 -----	2	272	173
Decision on Claim January 6 1976 -----	2	279	178
Decision on Claim February 3 1976 -----	2	280	179
Decision on Claim February 27 1976 -----	2	283	181
Decision on Claim July 7 1976 -----	3	1	198
Legal fees -----	1	301	77
DECISION			
Complaint/inquiry -----	5	216	368
Notification of denial of claim -----	1	264	63
DEPENDANT – MEANING -----	1	45	10
Illegitimate child -----	2	175	146
DEPENDANT – NON-RESIDENT			
Consumer Price Index -----	1	300	76
DISCLOSURE – FILES			
Assessment/Occupational Safety and Health file -----	5	224	370
Claim file -----	5	109	338
Employer right -----	6	65	410
Fee -----	6	14	393
Inspection reports -----	1	49	11
Pre-August 27 1981 medical reports -----	2	103	119
DISCLOSURE – ISSUES BEFORE ADJUDICATION -----	1	85	20
Protested claim -----	1	264	63

Subject	Volume	Page	Decision Number
DISEASE – “SUFFERS” Prevention of disease -----	1	11	3
DISEASE – DISABLED FROM EARNING-----	2	183	150
DISEASE – RECOGNIZED -----	3	142	250
DISEASE – RECOGNIZED – ON CLAIM -----	3	104	238
DISEASE – RECOGNIZED – REGARDING OCCUPATION Osteoarthritis thumbs -----	3	87	231
DISEASE – RECOGNIZED – BY REGULATION Alcoholism -----	5	139	348
Procedure -----	2	5	94
Various diseases -----	2	4	93
DISEASE – RECOGNIZED – SCHEDULE B ---- Cancer-----	5	78	326
Cancer gastro-intestinal -----	2	113	122
Cancer pleura -----	3	93	232
Cancer pleura -----	6	80	419
Pneumoconiosis hard metal -----	3	117	243
-----	3	122	246
DISEASE – PRESUMPTION – SCHEDULE B --- -----	3	142	250
-----	5	78	326
DRUGS/SUPPLIES – GENERAL Appliance repair -----	3	115	242
EMERGENCY ACTION INJURY Observe plane crash -----	3	147	252
EMPLOYER – REPORT – PENALTY FOR FAILURE Penalty appeals -----	1	287	70
EMPLOYER – SAFETY/HEALTH RESPONSIBILITY -----	2	163	144
EMPLOYMENT RELATIONSHIP – OTHER PERSON’S JOB -----	3	82	230

Subject	Volume	Page	Decision Number
EMPLOYMENT RELATIONSHIP – PRESUMPTION			
Accident Decision June 20 1975 -----	2	110	121
Accident Decision October 3 1975 -----	2	171	145
Accident Decision October 16 1978 -----	4	60	286
EMPLOYMENT RELATIONSHIP – SPECIFIC INCIDENT -----	2	127	129
EVIDENCE – MEDICAL			
Burden of proof -----	1	221	52
Conflict of opinion -----	1	19	7
EXHAUSTION – PHYSICAL AND EMOTIONAL			
Stress -----	2	25	102
EXPENSES			
Claim inquiry/appeal -----	1	229	54
EXPENSES – COSTS AWARDED AGAINST PARTY -----	1	229	54
-----	3	24	208
Section 11 -----	2	262	169
EXPENSES – LEGAL FEES -----	1	229	54
-----	1	285	69
Costs against party -----	3	24	208
Solicitor’s Lien -----	1	53	12
EXPENSES – PRODUCING EVIDENCE			
Medical report -----	5	1	294
EXPENSES – WITNESS -----	1	229	54
-----	6	121	423
EXPERIENCE RATING – ERA PLAN -----	6	46	401
EYEGASSES/APPLIANCES – REPLACEMENT			
“Accident” -----	1	12	4
-----	3	69	227
“Corroboration” -----	2	298	189
-----	3	69	227
“Fault” -----	3	69	227
Wage loss benefits -----	3	151	253

Subject	Volume	Page	Decision Number
FARMING COVERAGE -----	5	202	361
FATAL CLAIM – APPORTIONMENT -----	2	185	151
FISHING REGULATIONS			
December 22 1976 -----	3	58	223
December 31 1976 -----	3	63	224
-----	3	65	225
-----	3	67	226
August 8 1979 -----	5	32	307
FOSTER-PARENTS			
Natural parent -----	2	175	146
FUNERAL -----	1	316	85
GANGLIA -----	3	109	239
HEARING AIDS -----	2	84	113
-----	5	15	299
-----	5	215	367
HEARING LOSS -----	3	188	267
Commencement of payments regulations -----	2	140	136
Commencement of section 7 -----	2	143	137
-----	2	230	164
Disablement from -----	1	157	38
HERNIAE -----	5	43	316
Bilateral -----	5	185	356
HOMEMAKERS' SERVICES -----	5	66	324
HORSEPLAY -----	2	309	194
INCAPACITY – IN CARE -----	3	127	247
INDEPENDENCE/HOME MAINTENANCE ALLOWANCE -----	5	66	324
Consumer Price Index adjustment -----	6	86	423

Subject	Volume	Page	Decision Number
INDUSTRY COVERAGE			
Commercial stock audit -----	2	182	149
Consulting -----	3	39	215
Out of province -----	3	76	229
Retail/wholesale -----	1	240	58
Supplying manpower/Farming -----	3	100	235
INJURY – MEANING			
Cumulative trauma time limit -----	4	52	282
Distinguished from Disease -----	2	127	129
INSANITARY/INJURIOUS PRACTICES -----			
	5	5	295
INSPECTIONS -----			
Advance notice -----	2	20	100
INTEREST -----			
	5	281	384
INTOXICATION -----			
	1	209	48
	1	210	49
	2	118	124
Fisherman entering boat -----	1	45	10
LEGAL SERVICES AS REHABILITATION -----			
	3	12	203
LUNCHROOM INJURY – PERSONAL PROPERTY			
Paring knife -----	3	28	209
MAXIMUM – ANNUAL REVIEW			
1975 -----	1	284	68
1976 -----	2	162	143
1977 -----	3	15	204
1978 -----	3	161	257
1979 -----	4	58	284
1980 -----	5	33	308
1981 -----	5	85	327
1982 -----	5	113	339
1983 -----	5	190	358
	5	204	362
1984 -----	5	248	375
1985 -----	6	11	390
1986 -----	6	37	397

Subject	Volume	Page	Decision Number
1987 -----	6	54	404
1988 -----	6	64	409
1989 -----	6	71	413
1990 -----	6	75	416
1991 -----	6	83	421
MEDICAL FEES			
Contracts for services -----	2	148	139
MEDICAL REVIEW PANEL – CERTIFICATE			
Binding -----	3	104	238
Board authority -----	1	78	17
Cause of disability -----	1	78	17
MEDICAL REVIEW PANEL – COMPOSITION DISQUALIFICATION -----	1	169	41
MEDICAL REVIEW PANEL – ELIGIBILITY			
“Medical decision” -----	3	45	219
Officer decision appeal -----	3	176	263
Time limit -----	4	49	281
MEDICAL REVIEW PANEL – FATAL CLAIM			
Certificate on living worker -----	2	276	176
MEDICAL REVIEW PANEL – REFERRAL TO PANEL -----	5	13	298
MEDICAL TREATMENT			
Refusal -----	4	94	293
Research -----	2	277	177
MISCONDUCT			
Doing other person’s job -----	3	82	230
Intoxication -----	1	45	10
-----	1	209	48
-----	2	118	124
Violation of regulation -----	2	44	108
MULTIPLE SCLEROSIS – INJURY CONSEQUENCE -----	3	74	228

Subject	Volume	Page	Decision Number
NATURAL CAUSES – MOTION AT WORK ----	2	110	121
Bending down -----	2	161	142
-----	2	171	145
Showering -----	2	97	115
Walking up stairs -----	4	60	286
 NOISE CONTROL			
Assessment of employer -----	1	312	84
 OCCUPATIONAL SAFETY AND HEALTH			
Awards -----	2	27	103
-----	2	178	147
Enforcement procedures -----	2	203	158
Safety Committee -----	1	49	11
 OUT-OF-PROVINCE INJURY			
Claimant working in province -----	5	193	360
Firefighter -----	5	6	296
 OVERPAYMENT RECOVERY			
Fraud -----	5	251	377
Review board jurisdiction -----	5	35	313
 PENALTY ASSESSMENT -----	1	217	51
-----	2	203	158
Appeal by employer -----	1	291	71
Cominco Review October 1973 -----	1	60	15
Cominco Review Nov 1973 -----	1	84	19
Cominco Review Apr 1974 -----	1	139	36
Cominco Review Dec 1975 -----	2	234	167
Cominco Review Apr 1976 -----	2	293	186
Cominco Review Jun 1976 -----	2	303	192
Cominco Review March 1977 -----	3	97	234
Cominco Review Dec 1977 -----	3	194	268
Cominco Review Apr 1978 -----	4	21	274
Cominco Review January 1980 -----	5	47	317
Cominco Review Sep 1981 -----	5	114	341
Cominco Review Jun 1982 -----	5	176	354
No prior order -----	1	17	6
Not criminal proceeding -----	1	99	23
 PENSION COMMENCEMENT -----	5	58	320

Subject	Volume	Page	Decision Number
PENSION REVIEW -----	1	91	21
-----	1	114	27
PENSION REVIEW – S.24			
Calculation formulae -----	5	70	325
Claims covered regulations -----	5	206	363
PENSION REVIEW – S.26-----	1	294	72
Later Consumer Price Index -----	1	323	88
PERMANENT PARTIAL DISABILITY – DUAL SYSTEM			
General policy -----	6	23	394
Loss due to other causes -----	5	276	383
Pre-injury periods off work -----	4	38	279
PERMANENT PARTIAL DISABILITY – DUAL SYSTEM – REVIEW			
Pre-dual system award -----	2	59	109
PERMANENT PARTIAL DISABILITY – SCHEDULE-----	2	6	95
Arms right left -----	2	6	95
Devaluation -----	4	84	289
Enhancement -----	2	6	95
Enhancement spine-----	3	165	260
Publication -----	1	41	9
Sexual impotence -----	2	198	157
PERMANENT PARTIAL DISABILITY – SUBJECTIVE COMPLAINTS -----	6	61	407
PERMANENT TOTAL DISABILITY – MINIMUM			
Dual system -----	3	174	262
PERSONAL ACT -----	1	209	48
Truck driver cashing cheque -----	1	7	2
PERSONAL ACT – EMPLOYER PERSONAL BENEFIT			
Moving bed -----	2	222	162
PERSONAL CARE ALLOWANCE -----	5	66	324
Consumer Price Index adjustment -----	6	86	423

Subject	Volume	Page	Decision Number
PERSONAL OPTIONAL PROTECTION – NONE	2	98	116
PNEUMOCONIOSIS			
Hard metal employment relationship -----	3	122	246
Hard metal recognition -----	3	117	243
POLLUTION -----	2	281	180
PROPORTIONATE ENTITLEMENT -----	4	6	270
Dual system -----	6	23	394
Other agency award -----	5	254	378
PROSECUTION -----	1	17	6
-----	1	135	34
-----	2	203	158
PROTECTIVE EQUIPMENT – MOVING MACHINERY			
Firefighting -----	1	223	53
PSYCHOLOGICAL INJURY -----	1	19	7
Physical and emotional exhaustion -----	2	25	102
PSYCHOLOGICAL CONDITION/PAIN – INJURY CONSEQUENCE -----	1	19	7
-----	2	198	157
RAYNAUD’S PHENOMENON -----	5	96	333
RECONSIDERATION -----	1	114	27
-----	1	118	29
Appeal -----	3	30	210
Appeal time limits -----	4	49	281
Discretion not to reverse -----	2	152	140
Policy change -----	1	91	21
Procedure -----	5	216	368
RECREATIONAL ACTIVITY INJURY -----	5	118	343
Ski instructor -----	4	91	292
Teacher -----	4	16	273
REFUSAL OF UNSAFE WORK -----	5	154	349

Subject	Volume	Page	Decision Number
REHABILITATION			
Re-employment by employer -----	2	33	105
Right to -----	1	55	13
REHABILITATION RESIDENCE -----	3	4	200
RELIEF OF COSTS			
Appeals -----	1	287	70
Enhancement by existing condition -----	4	10	271
Transfer to another class -----	1	270	65
-----	2	85	114
Transfer to another class/Consumer Price			
Index adjustment -----	6	86	423
Treatment injury -----	2	11	97
REOPENING CLAIM -----	1	118	29
Distinguish from new claim -----	1	198	44
Distinguish from new claim/Review board ----	1	137	35
RESPIRATOR – SEALING			
Firefighting -----	1	223	53
RETRAINING			
Spouse -----	1	234	56
Spouse support/Consumer Price Index			
adjustment -----	6	86	423
Workers -----	1	261	62
REVIEW BOARD -----	1	247	60
Commissioners extend time limit -----	1	303	79
Expenses -----	1	229	54
Regulations -----	6	40	399
REVIEW BOARD – JURISDICTION			
Disability awards -----	5	219	369
Medical appeal officer decision -----	3	176	263
Overpayments -----	5	35	313
Rehabilitation -----	5	219	369
Relief of costs/penalties -----	1	287	70
SAFETY HEAD GEAR			
Head gear -----	1	306	80

Subject	Volume	Page	Decision Number
SILICOSIS – “DISABLED” -----	1	200	45
SKIN DISEASE -----	5	96	333
SUBSISTENCE -----	3	4	200
-----	5	187	357
Consumer Price Index adjustment -----	6	86	423
SUICIDE – INJURY CONSEQUENCE -----	1	123	30
SURGERY – INJURY CONSEQUENCE -----	1	78	17
-----	4	28	276
TEMPORARY PARTIAL DISABILITY -----	3	168	261
TEMPORARY TOTAL DISABILITY – LIGHT WORK -----	5	31	306
TEMPORARY TOTAL DISABILITY – PAY EMPLOYER			
Termination pay -----	2	42	107
TEMPORARY TOTAL DISABILITY – TERMINATION			
At future date -----	1	238	57
-----	5	22	302
Condition stabilized -----	5	58	320
Light work -----	5	31	306
Training program -----	3	111	240
THIRD PARTY – CERTIFICATION TO COURT			
Costs -----	2	262	169
Factors -----	5	88	330
THIRD PARTY – SUBROGATION			
Reopening after excess -----	2	137	134
TRANSPORTATION -----	5	35	312
Consumer Price Index adjustment -----	6	86	423
TRAVEL – ACCESS ROAD – CAPTIVE -----	1	212	50
-----	2	123	126

Subject	Volume	Page	Decision Number
TRAVEL – ACCESS ROAD – SPECIAL HAZARD			
Mountain highway -----	2	123	126
Railway crossing -----	1	212	50
TRAVEL – EMPLOYER PAYMENT -----	2	299	190
Remote workplace -----	5	88	330
Union dispatch -----	1	109	26
TRAVEL – EMPLOYER VEHICLE			
Bus contractor -----	5	193	360
TRAVEL – ENTRY TO PREMISES -----	1	45	10
Leaving premises -----	2	101	49
Picket line -----	3	159	256
TRAVEL – IRREGULAR START POINTS -----	2	284	182
TRAVELLING EMPLOYEE – PERSONAL ACT	1	7	2
Driving after drinking -----	1	209	48
Salesman preparing for trip -----	2	297	188
Slip in hotel bathroom -----	3	37	214
VACATION INJURY -----	4	55	283
VIBRATIONS -----	1	317	86
VOCATIONAL SCHOOLS -----	2	230	165
VOLUNTEERS – ADMISSION -----	2	221	161
-----	2	191	153
WAGE RATE – LONG-TERM COMPUTATION			
Time off work -----	4	38	279
WAGE RATE – REOPENING			
Class average -----	5	276	383
General policy -----	6	57	406
WAGE RATE – UNEMPLOYMENT PAY -----	4	38	279
WAIVER OF BENEFITS			
Agreement by parties -----	1	127	32

Subject	Volume	Page	Decision Number
WIDOW – NO CHILD			
Widow age 40 to 49 -----	1	269	64
Widow under 40 -----	1	245	59
WIDOW – PRE-JULY 7 1984 ADDITIONAL PAYMENT -----	1	299	75
WIDOW – SEPARATED -----	4	24	275
WIDOW – TERMINATION OF BENEFITS – REMARRIAGE			
Allowance -----	2	15	98
-----	2	102	118
-----	3	162	259
Reinstatement -----	1	326	90
WORKER STATUS – COMMENCEMENT -----	1	109	26
WORKER STATUS – CORPORATION			
One-man company -----	5	101	335
Piercing corporate veil -----	3	76	229
Registration as employer -----	3	155	255
Registration of tree planters -----	2	143	138
WORKER STATUS – DISPUTES			
Taxi drivers -----	1	127	32
Truck driver -----	2	286	183
WORKER STATUS – LABOUR CONTRACTOR	3	155	255
WORKER STATUS – LENT EMPLOYEE -----	3	76	229
WORKER STATUS – TERMINATION -----	1	210	49
-----	2	262	169
WORKERS IN INDUSTRY -----	1	240	58
Inmates -----	3	113	241
WORKERS’ COMPENSATION ACT			
Amendment Act 1974 -----	1	170	42
-----	1	197	43
-----	1	203	47
-----	2	143	137

Subject	Volume	Page	Decision Number
Amendment Act 1974 -----	2	230	164
Amendment Act 1975 -----	2	113	123
-----	2	120	125
Section renumbering -----	5	61	321

REPLACED DECISIONS – VOLUMES 1 TO 6

OLD DECISION			NEW DECISION		
Volume	Page	Decision Number	Volume	Page	Decision Number
1	16	5	5	267	382
1	27	8	6	23	394
1	56	14	1	263	62
1	82	18	1	300	76
1	96	22	6	23	394
1	102	24	1	118	29
1	106	25	6	40	399
1	116	28	5	134	347
1	133	33	6	23	394
1	154	37	3	69	227
1	165	40	6	57	406
1	233	55	1	261	62
1	275	66	6	40	399
1	276	67	5	267	382
1	296	73	Rehabilitation Services and Claims Manual #99.41		
1	302	78	Rehabilitation Services and Claims Manual #69.11		
1	303	79	Rehabilitation Services and Claims Manual #102.31		
1	308	81	6	57	406

OLD DECISION			NEW DECISION		
Volume	Page	Decision Number	Volume	Page	Decision Number
1	324	89	5	66	324
2	1	91	Workers' Compensation Act		
2	9	96	6	40	399
2	41	106	5	101	335
2	126	127	6	40	399
2	131	130	5	206	363
2	156	141	5	101	335
2	192	154	3	12	203
2	195	155	5	267	382
2	196	156	5	206	363
2	218	160	6	23	394
2	223	163	3	58	223
2	261	168	Rehabilitation Services and Claims Manual #99.51		
2	267	170	3	63	224
2	289	184	6	23	394
2	291	185	6	23	394
2	295	187	3	65	225
2	312	196	Workers' Compensation Amendment Act 1989		
2	314	197	Rehabilitation Services and Claims Manual #108.20		

OLD DECISION			NEW DECISION		
Volume	Page	Decision Number	Volume	Page	Decision Number
3	3	199	5	206	363
3	8	201	Workers' Compensation Amendment Act 1989		
3	11	202	6	23	394
3	34	212	5	267	382
3	45	218	5	267	382
3	50	220	6	23	394
3	53	221	3	104	238
3	103	237	Workers' Compensation Amendment Act 1989		
3	137	249	6	57	406
3	153	254	Workers' Compensation Amendment Act 1989		
3	182	264	5	101	335
4	14	272	5	267	382
4	43	280	Workers' Compensation Amendment Act 1989		
4	67	287	6	23	394
4	71	288	5	70	325
5	11	297	6	23	394
5	15	300	5	258	379
5	24	303	5	109	338

OLD DECISION			NEW DECISION		
Volume	Page	Decision Number	Volume	Page	Decision Number
5	34	310	5	267	382
5	34	311	5	267	382
5	55	318	6	61	407
5	86	329	5	154	349
5	98	334	6	40	399
5	117	342	5	171	351
5	131	346	5	281	384
5	241	374		Workers' Compensation Amendment Act 1989	
6	6	388		Rehabilitation Services and Claims Manual #48.22	
6	10	389		Mines Act	
6	34	395		Rehabilitation Services and Claims Manual #105.20	
6	50	403		Workers' Compensation Amendment Act 1989	

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