

February 2002

Update 2002-2

**TO HOLDERS OF THE *REHABILITATION SERVICES AND CLAIMS MANUAL***

This update of the *Rehabilitation Services and Claims Manual* contains changes to the *Manual* approved by the Panel of Administrators since January 2002.

Changes have been made to policy #66.12 - *Provisional Rate*. A summary of the changes has been included as part of the package.

If you have any questions regarding this update, or the *Rehabilitation Services and Claims Manual*, please call the Publications and Videos section of the WCB at (604) 276-3068, or toll free within BC at 1-800-661-2112, Local 3068.

MAUREEN NICHOLLS  
Chair, Panel Of Administrators

Attachments

## **SUMMARY OF CHANGES - Update 2002-2**

Amendments to the Board's policy on provisional rates to delete any reference to an overpayment occurring absent an administrative error, fraud or misrepresentation on the part of the worker; or where the Board has made a decision outside of its statutory authority.

- #66.12 This policy was amended to provide that where the final wage loss rate on a worker's claim is lower than the provisional rate previously set, no recovery of the payments will be made in the absence of an administrative error, fraud or misrepresentation by the worker, or where the decision under review was one not within the statutory authority of the Board. The policy also refers to policy item #48.41 for the definition of an administrative error.

The Board policy in all cases where a person derives their income from self-employment and other employment, is not to take the net taxable income as the sole criteria for determining average earnings. The net taxable income should be looked at in light of all other relevant facts and particulars, and judgment must be given on what is reasonable in view of all the facts and circumstances. For example, regard must be had to the fact that the *Income Tax Act* may allow deductions to be made from earnings of amounts which are not relevant to a calculation of earnings for the purpose of the *Workers Compensation Act* and which distort the claimant's real earnings position.

Generally speaking, the Board does deduct from the total period over which earnings are being averaged any periods during which the claimant was receiving wage-loss compensation or for which there is medical evidence of disability. It would normally be unfair that a claimant's average earnings should be reduced because of a work injury or other illness. For example, suppose a worker had a 20-day absence due to sickness and an income of \$37,000 in the year before the injury. The calculation of average earnings over the year would be as follows:

Deduct period of absence from days in year	$365 - 20 = 345$
Average weekly earnings	$\frac{37,000}{345} \times 7 = 750.72$

However, this rule does not apply in a case where a claimant is frequently absent from work through illnesses or other non-compensable disabilities. There is a substantial difference between absences due to an occasional illness which reduces a claimant's average earnings below their normal level and a normal work pattern which includes regular absences from work. In the latter case, the claimant's average earnings are most fairly calculated by not making any adjustment for the periods of absence. The procedure would also not apply in situations where a disabled worker, covered under compensation had been maintained on full salary by the employer during the period of disability. This is because the period of disability would not be reflected by a drop in income.

The above principles also apply to absences from work resulting from the taking of educational or training programs. Although periods of unemployment due to a strike are not taken into account in assessing average earnings, employees who are locked out and are not themselves involved in the labour dispute, will be given a credit for the period involved when assessing average earnings.

#### #66.12 *Provisional Rate*

Wage-loss compensation may be based on a provisional rate if there is a delay in obtaining information as to the worker's actual earnings. The worker must be informed that this has been done.

The amount of the provisional rate depends on the information available to the Board Officer. While being careful not to set a rate which is higher than the worker's actual earnings, the Board Officer should, as far as is possible, take into consideration the actual circumstances of the worker, for instance, age, occupation, seniority and union status. The Board Officer should also have regard to statements of earnings already on file or on other recent compensation claims.

Where a Board Officer has made a decision to set a provisional rate, this is an interim rate. If, after payments have been made on a provisional basis, sufficient earnings information is received, the rate may be changed to reflect the additional earnings information received. If insufficient earnings information or no information is received after a reasonable time, the Board Officer will review the rate at least every four weeks until a decision is made to fix the rate. The Board Officer may, on any of these occasions, reduce the rate to the statutory minimum or below if it is felt that the evidence does not support the existing rate. (5) Where payments have been commenced on an interim basis, and the final wage loss rate is lower than the provisional rate previously set, no recovery of the payments will be made in the absence of an administrative error, fraud or misrepresentation by the worker, or where the decision under review was one not within the statutory authority of the Board. For a definition of an administrative error, refer to policy item #48.41.

#### #66.13 *Casual Workers*

The rate of pay of a casual worker at the date of injury is not normally the best representation of the actual loss of earnings. Because of the sporadic employment history of such workers, the Board considers that there is a need to look at the worker's earnings over a longer period of time. It has been the Board's practice to use the casual worker's earnings for the one-year period prior to the injury, but a shorter or longer time could be used if this best represented loss of earnings.

Stevedores are treated as casual workers. Normally they are paid on a seven-day week basis. However, the actual days worked per week may be used if there is a steady work pattern.

Fishers are treated as workers engaged in casual employment. However, this rule cannot be rigidly applied without regard to the particular circumstances of the case. For instance, it is conceivable that a particular fisher could be