

BOARD OF DIRECTORS
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March 2003

Update 2003 – 3

**TO: HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL* –
VOLUME I**

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* approved by the Board of Directors since update 2003 – 2.

This update contains amendments to Item C14-102.01 (Changing Previous Decisions – Reopenings) to ensure consistency with the amendments brought into force by the *Workers Compensation Amendment Act (No. 2), 2002* (Bill 63).

If you have any questions regarding this update or the *Rehabilitation Services & Claims Manual*, please call Publications and Video Distribution at 1-866-271-4879.

DOUGLAS ENNS
Chair, Board of Directors

**RE: Changing Previous Decisions –
Reopenings**

ITEM: C14-102.01

BACKGROUND

1. Explanatory Notes

The Board may, at any time, reopen a matter that has been previously decided by the Board or an officer or employee of the Board, if certain circumstances exist.

2. The Act

Section 96 states, in part:

.....

- (2) Despite subsection (1), any time, on its own initiative, or on application, the Board may reopen a matter that has been previously decided by the Board or an officer or employee of the Board under this Part if, since the decision was made in that matter,
 - (a) there has been a significant change in a worker's medical condition that the Board has previously decided was compensable, or
 - (b) there has been a recurrence of a worker's injury.

- (3) If the Board determines that the circumstances in subsection (2) justify a change in a previous decision respecting compensation or rehabilitation, the Board may make a new decision that varies the previous decision or order.

.....

POLICY

(a) General

The reopening of a previous decision does not affect the application of the decision to the period prior to the significant change in the worker's medical condition or the recurrence of the worker's injury. Rather, it allows compensation or rehabilitation to be varied subsequent to, and as a result of, the significant medical change or recurrence. A reopening involves the adjudication of new matters.

(b) A reopening is not a reconsideration

A reopening is to be distinguished from a reconsideration of a previous decision.

A reconsideration occurs when the Board considers the matters addressed in a previous decision anew to determine whether the conclusions reached about these matters reached were valid. Where the reconsideration results in the previous decision being varied or cancelled, it constitutes a redetermination of those matters.

(c) Grounds for reopening

A decision may be reopened if, since it was made:

- there has been a significant change in a worker's medical condition that the Board has previously decided was compensable; or
- there has been a recurrence of a worker's injury.

“A significant change in a worker's medical condition that the Board has previously decided was compensable” means a change in the worker's physical or psychological condition. It does not mean a change in the Board's knowledge about the worker's medical condition.

A “significant change” would be a physical or psychological change that would, on its face, warrant consideration of a change in compensation or rehabilitation benefits or services. In relation to permanent disability benefits, a “significant change” would be a permanent change outside the range of fluctuation in condition that would normally be associated with the nature and degree of the worker's permanent disability.

A claim may be reopened for repeats of temporary disability, irrespective of whether a permanent disability award has been provided in respect of the compensable injury or disease. A claim may also be reopened for any permanent changes in the nature or degree of a worker's permanent disability.

(d) A recurrence of injury is not a new injury

A recurrence of injury that entitles a worker to request a reopening of an existing claim is to be distinguished from a new injury that entitles the worker to make a new claim.

“Recurrence” refers to a recurrence of the original injury without a second compensable injury. For example, where a compensable injury is aggravated by a second compensable injury, the first injury has not “recurred”. Rather a new injury has occurred that will result in a new claim. The decision whether to reopen the existing claim or initiate a new claim will depend upon the evidence in each case.

(e) Right to request a review

Section 96.2(2)(g) of the *Act* provides that no request may be made to a review officer under section 96.2(1) to review a decision to reopen or not to reopen a matter on an application for a reopening under section 96(2). Section 240(2) provides that a decision to reopen or not to reopen a matter on an application may be appealed directly to the Workers' Compensation Appeal Tribunal ("WCAT").

The effect of these provisions is that the preliminary or threshold question whether the grounds for a reopening on an application have been met under section 96(2)(a) and (b) may not be the subject of a review by a review officer. A party who wishes to dispute the Board's decision in this respect must appeal directly to WCAT.

However, once it is determined that the grounds for a reopening have been met, the Board's decision on the compensation or rehabilitation to be paid or provided as a result of the reopening may be the subject of a request for a review by a review officer under section 96.2(1). The review officer's decision may then be appealed to WCAT under section 239(1).

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	March 18, 2003
AUTHORITY:	ss. 96(2), (3), <i>Workers Compensation Act</i>
CROSS REFERENCES:	Changing Previous Decisions - General (C14-101.01), Changing Previous Decisions - Reconsiderations (C14-103.01), Changing Previous Decisions - Fraud and Misrepresentation (C14-104.01), Changing Previous Decisions - Reviews (C14-105.01)
HISTORY:	New Item consequential to the <i>Workers Compensation Amendment Act (No. 2)</i> , 2002 approved effective March 3, 2003. Subsequent amendments effective March 18, 2003 to clarify that a reopening allows compensation or rehabilitation benefits to be "varied" and that disputes over a decision to reopen or not to reopen a matter "on application" are appealable directly to WCAT under section 240(2)
APPLICATION:	Applies to all decisions on and after March 18, 2003

