

July 2003

Update 2003 – 6

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

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* implemented since update 2003 – 5.

These amendments include:

- the insertion of a statement to refer readers to the appropriate policies in Chapter 6 and Appendix 4, Volume II of the *Rehabilitation Services & Claims Manual*;
- miscellaneous changes to policy item #31.40, Amount of Compensation under Section 7; and
- housekeeping changes to chronic pain policies to reflect the wording of Panel of Administrators resolution #2002/11/19-04.

A summary of the amendments is attached and the amended pages are included as part of the package.

If you have any questions regarding subscription information for updates to the *Rehabilitation Services & Claims Manual*, please call WCB Customer Service provided by Benwell Atkins/Moore at 1-866-271-4879.

DOUGLAS J. ENNS
Chair, Board of Directors

Attachments

SUMMARY OF AMENDMENTS - Update 2003 - 6

Policy Item #22.33	A revised application statement that states the policy applies to all new claims received and all active claims that are currently awaiting an initial adjudication.
Policy Item #22.35	A revised application statement that states the policy applies to all new claims received and all active claims that are currently awaiting an initial adjudication.
Policy Item #31.40	These changes are to correct an error in the percentage of permanent partial disability for hearing loss in one ear
Chapter 6	The Board of Directors approved a number of changes to the <i>Permanent Disability Evaluation Schedule</i> . These changes apply to all section 23(1) award assessments and reassessments undertaken with reference to the <i>Permanent Disability Evaluation Schedule</i> on or after August 1, 2003
Policy Item #39.01	A revised application statement that states the policy applies to all new claims received and all active claims that are currently awaiting an initial adjudication.
Policy Item #97.40	A revised application statement that states the policy applies to all new claims received and all active claims that are currently awaiting an initial adjudication.
Appendix 4	The Board of Directors approved a number of changes to the <i>Permanent Disability Evaluation Schedule</i> . These changes apply to all section 23(1) award assessments and reassessments undertaken with reference to the <i>Permanent Disability Evaluation Schedule</i> on or after August 1, 2003

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- (b) the symptoms and signs of the disease occurred shortly after the injury; and
- (c) there has been no preceding history of neurologic deficit.

#22.32 *Cancer*

In claims where trauma is alleged to be the cause of cancer, the following five criteria (12) should be satisfied before a cancer can be even remotely considered to be traumatically induced.

1. Authenticity and adequacy of trauma.
2. Previous integrity of the wounded part.
3. Origin of tumour at exact point of injury.
4. Reasonable time limit between injury and time of appearance of tumour.
5. Positive diagnosis of the presence and nature of the tumour.

Recent reviews of the medical literature have been completed to ascertain whether or not there is new evidence to associate trauma as a causal agent in cancer.

Except in the case of skin cancer, there is little firm evidence to associate trauma with cancer as an etiologic agent. In particular, reviews of several studies (13) of bone cancer fail to establish a causal relationship between trauma and cancer, although there is general recognition of what has been called “traumatic determinism”, i.e. that an injury may call the person’s attention to a pre-existing tumour.

#22.33 *Psychological Problems*

Psychological problems arising from a physical or psychological injury are acceptable as compensable consequences of the injury. However, there must be evidence that the claimant is psychologically disabled. It cannot be assumed that such a disability exists simply because the claimant has unexplained subjective complaints or is having difficulty in psychologically or emotionally adjusting to any physical limitations resulting from the injury.

When a claim is submitted for psychological problems resulting directly from the claimant’s employment without the occurrence of any physical trauma, reference should be made to #13.20 and #32.10.

When a psychological impairment becomes permanent, it will be necessary to determine whether there is entitlement to a permanent disability pension. The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment is found in #38.10.

EFFECTIVE DATE: January 1, 2003
APPLICATION: Applies to new claims received and all active claims that are currently awaiting an initial adjudication.

#22.34 *Alcoholism and Drug Dependency Problems*

Where it is claimed that an alcohol problem may have arisen out of and as a result of a compensable injury, the compensability of the problem is thoroughly investigated in the same manner as followed in investigating the relationship of other problems to an injury. Because of the psychological nature of the problem, this investigation would normally include a reference to a Board Psychologist. The decision on acceptability will however be made by the Claims Adjudicator.

Any pre-existing alcohol problem can be treated in the same way as any other pre-existing condition. The Claims Adjudicator will have to decide whether the claimant's problems are simply a continuation of the previous problems or have been worsened by the injury.

The above procedure would also apply if a claimant whose alcohol problems have previously been accepted by the Board seeks to re-open the claim because of further problems of this type. The request would have to be investigated and if appropriate, a reference made to a Board Psychologist, and a determination made as to whether the current problems are related to the injury and the previous problem, or to some pre-existing condition or other cause.

This policy also has general application in the adjudication of drug dependency problems. For the policy regarding the prescription of narcotics and other drugs of addiction, reference should be made to #77.30.

For the Board's policy toward applications for compensation for alcoholism as an occupational disease, reference should be made to #32.15.

#22.35 *Pain and Chronic Pain*

A worker's pain symptoms may be accepted as compensable where medical evidence indicates that the pain results as a consequence of a work injury or occupational disease. This policy discusses the scope of coverage in cases where pain is accepted as compensable. Pain is not assessed as a psychological impairment.

provide an opinion on the appropriate course of treatment and rehabilitation for the worker.

3. Compensation:

Where a worker is participating in treatment and/or rehabilitation for temporarily disabling pain, a worker's entitlement to temporary wage loss benefits may be considered under section 29 or 30 of the *Act*.

Where chronic pain is considered by the Board officer to become permanent, entitlement to permanent partial disability benefits may be considered under section 23 of the *Act*.

EFFECTIVE DATE: January 1, 2003

APPLICATION: Applies to new claims received and all active claims that are currently awaiting an initial adjudication.

#23.00 REPLACEMENT AND REPAIR OF ARTIFICIAL APPLIANCES, EYEGLASSES, HEARING AIDS, AND DENTURES – SECTION 21(8)

The Board may assume the responsibility of replacement and repair of

- (a) artificial appliances, including artificial members damaged or broken as the result of an accident arising out of and in the course of the employment of the worker; and
- (b) eyeglasses, dentures and hearing aids broken as a result of an accident arising out of and in the course of employment if that breakage is accompanied by objective signs of personal injury, or, where there is no personal injury, if the accident is otherwise corroborated and the Board is satisfied the worker was not at fault. (15)

In no other circumstances can the Board accept responsibility for damage to a worker's personal possessions.

With the exception of eyeglasses, no compensation for broken appliances, etc. can be paid under the *Government Employees Compensation Act* to employees of the Federal Government unless the breakage resulted from an accident that also caused personal injury. In claims for broken eyeglasses, the adjudication principles used are the same as those which apply under the provincial *Workers Compensation Act*.

#23.10 Meaning of Authority in Section 21(8)

The payment of compensation under Section 21(8) is not a legal right. The section merely confers authority on the Board to pay the compensation provided for. Whether the Board exercises its authority or not is within its discretion. Compensation will be payable in respect of all claims which fall within the terms of the section.

#23.20 Appliances Covered by Section 21(8)

The reference to “eyeglasses” in Section 21(8)(b) includes contact lenses.

Where an injury involves damage to dental crowns and fixed bridgework, they are regarded as part of the natural anatomy for the purpose of adjudication.

Therefore such claims are adjudicated as claims for personal injury under Section 5(1) rather than under Section 21(8).

#23.30 Meaning of Damaged or Broken under Section 21(8)

Section 21(8) refers to items being “damaged” or “broken”. However, suppose an accident occurs which causes the loss of a worker’s glasses. For instance, they may “fly off” somewhere unknown or be dropped into a place which is inaccessible. Where this follows from an “accident” as defined in #23.40 below, and it is reasonable to assume that, though lost, the worker’s glasses are broken, Section 21(8) may be applied as if they are in fact “broken”.

#23.40 Meaning of Accident under Section 21(8)

Compensation is not payable under Section 21(8) unless the damage or breakage results from an accident arising out of and in the course of the claimant’s employment.

The meaning of “accident” in this section was considered in a Board decision where it was stated:

“It appears to us that the purpose of Section 21(8) is to provide a form of insurance protection against damage to eyeglasses through chance events. In this case, however, the damage was nothing unexpected. The replacement of eyeglasses in the plant where this occurred is a

hazardous occupational noise if in the Board’s opinion the results of such earlier tests best represent the true measure of the worker’s hearing loss which is due to exposure to occupational noise.

Section 7(3.1) of the Act provides:

“The board may make regulations to amend Schedule D in respect of

- (a) the ranges of hearing loss,
- (b) the percentages of disability, and
- (c) the methods or frequencies to be used to measure hearing loss.”

Where the loss of hearing amounts to total deafness measured in the manner set out in Schedule D, but with no loss of earnings resulting from the loss of hearing, Section 7(2) provides that compensation shall be calculated as for a disability equivalent to 15% of total disability. Where the loss of hearing does not amount to total deafness, and there is no loss of earnings resulting from the loss of hearing, Section 7(3) provides that compensation shall be calculated as for a lesser percentage of total disability, and, unless otherwise ordered by the Board, shall be based on the percentages set out in Schedule D. Schedule D is set out below.

SCHEDULE D

Non-Traumatic Hearing Loss

Complete loss of hearing in both ears equals 15% of total disability. Complete loss of hearing in one ear with no loss in the other equals 3% of total disability.

Loss of Hearing in Decibels Measured in Each Ear in Turn	Percentage of Total Disability	
	Ear Most Affected PLUS Ear Least Affected	
0-27	0	0
28-32	0.3	1.2
33-37	0.5	2.0
38-42	0.7	2.8
43-47	1.0	4.0
48-52	1.3	5.2
53-57	1.7	6.8
58-62	2.1	8.4
63-67	2.6	10.4
68 or more	3.0	12.0

The loss of hearing in decibels in the first column is the arithmetic average of thresholds of hearing measured in each ear in turn by pure tone, air conduction audiometry at frequencies of 500, 1000 and 2000 Hertzian waves, the measurements being made with an audiometer calibrated according to standards prescribed by the Board.

In assessing permanent disability awards under Section 7, there is no automatic allowance for presbycusis. In some cases, however, the existence of presbycusis may be relevant in deciding whether the worker has suffered a hearing loss due to their employment. The age adaptability factor is not applied to awards made under Section 7.

Where a worker has an established history of exposure to noise at work, and where there are other non-occupational causes or components in the worker's loss of hearing, and where this non-occupational component cannot be accurately measured using audiometric tests, then "Robinson's Tables" will apply. "Robinson's Tables" will only be applied where there is some positive evidence of non-occupational causes or components in the worker's loss of hearing (for example, some underlying disease) and will not be applied when the measured hearing loss is greater than expected and there is only a speculative possibility without evidential support that this additional loss is attributable to non-occupational factors.

"Robinson's Tables" were statistically formulated to calculate the expected hearing loss following a given exposure to noise. In applying these tables, the cumulative period of noise exposure is calculated. A factor for aging is then added. For pension purposes, the resulting calculation is then compared on "Robinson's Tables" to the worst 10% of the population (i.e., at the same levels and extent of noise exposure, 90% of individuals will have better hearing than the worker).

In some cases, it will be found that a worker has already suffered a conductive hearing loss in one ear, unrelated to their work, which might well have afforded some protection against work-related noise-induced hearing loss in that ear. The normal practice in this situation would be to allocate the higher measure in Schedule D (the "ear least affected" column) to the other ear which has the purely noise-induced hearing loss.

A difficulty occurs where the worker is not employed at the time when their disability commenced. If there are no current earnings on which to base the pension, the Adjudicator should generally refer back to the employments in which the worker was most recently engaged and base the pension on their previous earnings thus discovered.

EFFECTIVE DATE: August 1, 2003
APPLICATION: To all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003.

The evidence that is relied upon to support the assessment of a section 23(1) award must be fully documented.

4. Entitlement to a Section 23(1) Assessment:

Entitlement to a section 23(1) award for chronic pain may only be considered after all appropriate medical treatment and rehabilitation interventions have been concluded.

(a) Specific Chronic Pain – Consistent with the Impairment

Where a worker has specific chronic pain that is consistent with the associated compensable physical or psychological permanent impairment, the section 23(1) award will be considered to appropriately compensate the worker for the impact of the chronic pain. Pain is considered to be consistent with the associated compensable impairment where the pain is limited to the area of the impairment, or medical evidence indicates that the pain is an anticipated consequence of the physical or psychological impairment. In these cases, an additional award for the specific chronic pain will not be provided, as it would result in the worker being compensated twice for the impact of the pain.

(b) Specific and Non-Specific Chronic Pain – Disproportionate to the Impairment

A worker's entitlement to a section 23(1) award for chronic pain will be considered in the following cases:

- i) Where a worker experiences specific chronic pain that is disproportionate to the associated objective physical or psychological impairment.

Pain is considered to be disproportionate where it is generalized rather than limited to the area of the impairment or the extent of the pain is greater than that expected from the impairment.

In these cases, a separate section 23(1) award for chronic pain may be considered in addition to the award for objective permanent impairment.

- ii) Where a worker experiences disproportionate non-specific chronic pain as a compensable consequence of a work injury or disease.

Disproportionate pain, for the purposes of this policy, is pain that is significantly greater than what would be reasonably expected given the type and nature of injury or disease.

Where a Board officer determines that a worker is entitled to a section 23(1) award for chronic pain in the above noted situations, an award equal to 2.5% of total disability will be granted to the worker.

EFFECTIVE DATE: January 1, 2003
APPLICATION: Applies to new claims received and all active claims that are currently awaiting an initial adjudication.

#39.10 Scheduled Awards *Permanent Disability Evaluation Schedule*

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

Scheduled awards are awards made under the Permanent Disability Evaluation Schedule, which is set out in Appendix 4. This is a rating schedule of percentages of impairment for specific injuries or mutilations. (4)

The Permanent Disability Evaluation Schedule is a set of guide-rules, not a set of fixed rules. The Disability Awards Officer or Adjudicator in Disability Awards is still free to apply other variables in arriving at a final pension; but the “other variables” referred to means other variables relating to the degree of physical impairment, not other variables relating to social or economic factors, nor rules (including schedules and guide-rules) established in other jurisdictions. In particular, the actual or projected loss of earnings of a worker because of the disability is not a variable which can be considered. (5)

Any revision of the schedule must be undertaken by procedures that are appropriate to changes of a legislative nature. It will not be done through appeal decisions in individual cases. The schedules in use in other jurisdictions are part of the material that would be looked at in any revision of the schedule used here; but they are not part of the material relevant in the decision of any individual claim.

In cases where the specific impairment is not covered by the schedule, but the part of the body in question is covered, the Disability Awards Officer or Adjudicator must first determine the percentage loss of function in the damaged area. This determination is based on the findings of the permanent functional impairment evaluation and other medical and non-medical evidence available. The final award is arrived at by taking this percentage of the percentage allocated in the schedule to the disabled part of the body. Because the schedule is used in the calculation, this type of award is still considered as a scheduled one. For example, the amputation of an arm down to the proximal third of the humerus or its disarticulation at the shoulder is scheduled at 70% of total disability. Suppose a worker suffers a severe crush injury to the arm which culminates in a permanent loss of half its function. The final assessment would be 50% of 70%, i.e. 35% of total disability.

#39.11 *Age Adaptability Factor*

The percentage rate derived by use of the simple physical impairment method is modified by the application of an age variable. This age adaptability factor is used for claimants over the age of 45 where the disability is calculated in accordance with the schedule. The disability is increased by 1% of the assessed disability for each year over 45 up to a maximum of 20% of the assessed disability.

Example:

Award effective at age 55
Scheduled disability 50% of total disability
Age adaptability factor 10% of 50% = 5% of total disability
Disability assessed at 55% of total disability

The worker's age at the effective date of the disability award is used, not his or her age at the time of the injury.

The age adaptability factor is not applied to non-scheduled awards. However, the worker's age is one of the overall considerations in making the judgment.

The age adaptability factor set out above has only been applied since October 2, 1958. Awards made prior to that date were subject to differing rules.

#39.12 *Enhancement*

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

The combined effect of two separate disabilities may be greater than the separate effect of each. Therefore, where a worker has an additional disability which pre-existed the injury or the injury causes more than one disability, the Board may, in certain situations, increase the overall percentage of disability that would otherwise be awarded. This is known as the "enhancement factor".

One situation where this may be done is where the worker has impairment in both arms or both legs. An enhancement factor of 50% of the lesser disability may be added to the total of the percentages awarded for each separate disability. Suppose, for example, a worker suffers an injury causing total immobility in the right ankle. That would be assessed pursuant to the schedule at 12% of total disability. There may be an adjustment for age; but suppose it appeared that, at the time of the work injury, the worker was already suffering from a serious disability involving total immobility in the left knee. The Disability Awards Officer or Adjudicator in Disability Awards may well conclude that having regard to the impaired mobility that the worker was already suffering through the disability in the left leg, the compensable disability in the right ankle results in a greater degree of physical impairment than it would for a person with a normal left leg.

Enhancement factors applied where more than one finger of the same hand is affected are dealt with in #39.22-32.

Prior to October 27, 1977, the Board did not normally permit an enhancement factor in respect of spinal column disabilities. However, subsequent to that date, the Board has concluded that such a factor may be added for combinations of disabilities when one of those disabilities involves the spinal column and that disability is shown to have been enhanced by the others. A factor of 50% of the disability attributed to the spine is added. Therefore, if the disability in the back is 10%, and the sum of the other disabilities is 16%, the enhancement factor is 5% and the total disability awarded 31%. This has not been retroactively applied to awards made prior to October 27, 1977.

#39.13 Devaluation

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

The percentages set out in the Permanent Disability Evaluation Schedule represent the loss occurring when a disability exists alone in an otherwise healthy limb or body. When a disability exists alongside another disability in the same or another part of the body, adjustments may have to be made. This adjustment may be in an upward direction. For instance, as indicated in #39.12, an enhancement factor may be added in certain cases when the combined effect of two disabilities in different areas of the body exceeds the sum of the schedule percentages allocated to each disability. On the other hand, where the sum of the schedule percentages allocated to several disabilities exceeds their actual combined effect, a downward adjustment is required. This is known as “devaluation”.

If the schedule provides that the total loss of a particular part of the body causes a certain percentage loss of future earning capacity, then a partial loss of the use of that particular part will leave only a portion of the function of that part of the body remaining. If the schedule allocates 70% to the amputation of an arm at the shoulder, the occurrence of a fused index finger and thumb, worth 18%, will leave only 52% of the value of the arm. Any subsequent disabilities will be measured by reference to the remaining percentage, not the whole percentage set out in the schedule, i.e. 52% rather than 70% in the above example. Therefore, if, following the fused index finger and thumb, the claimant suffers a fused elbow, and then a frozen shoulder, the relevant percentages of disability awarded will be as follows:

- | | | |
|----|--|----------------|
| A. | Value of whole arm in schedule | 70% of total |
| B. | Value of fused index finger and thumb
in schedule | 18% disability |

C.	Remaining value of arm (A-B)	52%
D.	Value of fused elbow in schedule	20%
E.	Percentage awarded for fused elbow ($\frac{D}{A} \times C$)	14.9%
F.	Remaining value of arm (C-E)	37.1%
G.	Value of frozen shoulder in schedule	35%
H.	Percentage awarded for frozen shoulder ($\frac{G}{A} \times F$)	18.6%
I.	Total percentage of disability awarded (B + E + H)	51.5%

A claimant will never receive more than 70% for disabilities existing in one arm.

#39.20 Amputations of Arms or Legs

In assigning a rating level to any amputation, it must be assumed that the stump is structurally perfect, that it is well padded, that the scar is properly placed and that there is no undue tenderness on areas which are subject to pressure. Uncorrectable defects such as scarring, tenderness, grafts, muscle wasting, nerve damage may warrant a rating level higher than the schedule. In the case of major limb amputations, rating levels assigned should have regard to the type and probable usefulness of the prosthesis to which they are adaptable. Amputations always involve scheduled awards.

Where a worker suffers a permanent disability to the dominant hand, the fact the worker is unaccustomed to using the other hand to the same extent does not affect the percentage of measured disability. It is usually a temporary handicap rather than a permanent problem. Whether the worker was left- or right-handed is, therefore, not a relevant factor in establishing a pension for a permanent partial disability. It is, however, a factor that may sometimes be relevant in establishing temporary benefits, or in the provision of rehabilitation services. For example, it might be relevant in deciding exactly when the worker is fit to return to work, whether more exercise is needed, or whether retraining may be needed.

#39.21 Amputation of One Finger

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

It is usually considered that there must be shortening of the bone before an award is granted for finger amputations.

The percentages of disability awarded in respect of amputations of the fingers are set out in the Permanent Disability Evaluation Schedule (items 13 to 40).

In considering the index and middle fingers, if the amputation of the portion of the distal phalanx involves:

- (a) less than 1/4 of the phalanx, it is not normally considered significant enough to have any impact on future earning capacity.
- (b) 1/4 to 3/4 of the phalanx, it is considered as an amputation equivalent to 1/2 the value of the whole phalanx.
- (c) 3/4 of the phalanx or greater, it is considered as an amputation equivalent to the whole phalanx.

In considering the ring and little fingers, if the amputation of the portion of the distal phalanx involves:

- (a) less than 1/2 of the phalanx, it is not normally considered significant enough to have any impact on future earning capacity.
- (b) 1/2 to 3/4 of the phalanx, it is considered as an amputation equivalent to 1/2 of the value of the whole phalanx.
- (c) 3/4 of the phalanx or greater, it is considered as an amputation equivalent to the whole phalanx.

These are guidelines and discretion can be used in this area. For example, it is possible that with a loss of less than 1/2 of the distal phalanx of the ring finger there may be scarring and sensitivity remaining. Discretion could then be exercised because of the additional disabilities and an award considered.

#39.22 *Amputation of More than One Finger*

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

Enhancement factors for multiple finger disabilities are built into the hand charts, in the Permanent Disability Evaluation Schedule. To determine what chart or combinations of charts apply to particular multiple finger disabilities, the following procedure is used.

1. Determine the most distal component(s) of the finger(s) involved. Use the applicable chart and record the percentage of disability.
2. Follow this procedure for each next level involved.
3. Total the percentages from each common level to determine the overall percentage of disability.

Examples Using the *Permanent Disability Evaluation Schedule*

1. Index finger amputated at M.P. joint, middle finger amputated at D.I.P. joint.

Take Chart #2

distal phalanx of index	1.4%
distal phalanx of middle	1.4%

Take Chart #1

middle phalanx of index	1.6%
proximal phalanx of index	<u>1.6%</u>

Overall Award 6.0%

2. Index finger amputated at M.P. joint, middle finger at P.I.P. joint, and ring finger at D.I.P. joint.

Take Chart #8

distal phalanx of index	1.7%
distal phalanx of middle	1.7%
distal phalanx of ring	1.0%

Take Chart #2

middle phalanx of index	2.8%
middle phalanx of middle	2.8%

Take Chart #1

proximal phalanx of index	<u>1.6%</u>
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Overall Award 11.6%

#39.23 *Amputation of Thumb*

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

Partial amputation of the phalanx of a thumb is considered in the following fractions: 1/4, 1/3, 1/2, 2/3, 3/4. For example, if a worker suffered an amputation of the thumb involving 2/3 of the distal phalanx, an award of 2/3 of 4% or 2.67% would be considered.

#39.24 *Amputation of Thumb and One or More Fingers*

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

The percentage of disability of the thumb is determined and the percentage of disability for the finger or fingers is determined. Normally, an enhancement factor of 100% of the lesser of these two disabilities is then added. The Disability Awards Officer or Adjudicator in Disability Awards does have discretion, based on the severity of the injuries, to adjust the enhancement factor, but normally a 100% multiple of the lesser is used.

More serious disabilities of this type are awards listed in the Permanent Disability Evaluation Schedule, items 9-12.

#39.30 **Restrictions of Movement in Arms or Legs**

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

Restrictions of movement in the joints of the body are measured and documented during the permanent functional impairment evaluation. The Disability Awards Officer or Adjudicator in Disability Awards then applies the measurement to the appropriate item in the Permanent Disability Evaluation Schedule.

These awards are always scheduled.

#39.31 *Finger Restrictions*

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

When considering restriction of finger movement, the full range of flexion restriction is taken into consideration, but only 50% of the range of restricted extension. This is because extension is not considered as vital as flexion. The formula used to compute a percentage value for restriction of finger movement is:

$$\frac{\text{Restriction Degrees}}{\text{Normal Degrees}} \times 3/4 \times \text{amputation value at the joint concerned}$$

This formula is used as it is normally considered that a fused finger joint is equal to 3/4 of the value of an amputation at the same level.

Items #51, #52 and #53 of the Permanent Disability Evaluation Schedule allow a higher value to be applied if necessary (up to value of amputation). These are normally used when the fused finger is essentially useless and there would be no difference in the disability if the finger had been amputated.

When more than one finger is involved, the appropriate multiple finger chart from the Permanent Disability Evaluation Schedule is used to determine the amputation value at the joint concerned, thus building in any enhancement factor.

#39.32 *Thumb Restrictions*

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

The basic principles set out in #39.31 also apply here. The formula used to compute a percentage value for restriction of thumb movement is:

$$\frac{\text{Restriction Degrees}}{\text{Normal Degrees}} \times 1/2 \times \text{amputation value at the joint concerned}$$

This formula is used in that it is normally considered that a fused thumb joint is equal to 1/2 of the value of an amputation at the same level.

Where a finger and thumb are affected, an enhancement factor is added in the manner set out in #39.24.

#39.40 Sensory Losses

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

Some sensory losses are specifically listed in the Permanent Disability Evaluation Schedule. Others, though not specifically referred to, may be assessed on a judgment basis as part of the overall disability incurred in a part of the body covered in the schedule.

The complete loss of the major nerves in the arms and legs is covered in items 73 to 76 of the Permanent Disability Evaluation Schedule.

When the fingers lose sensitivity as the result of an injury, an award of up to the full amputated value of the joint can be granted. This especially relates to the thumb, index and middle fingers, when the pinch grip is involved.

Awards for hearing loss are dealt with in #31.00.

#39.41 *Loss of Taste and/or Smell*

Although there is not a scheduled award for the loss of either or both of these senses, the Board's policy is to allow 3% for a loss of smell. This includes the partial loss of taste, which always in practice accompanies a complete loss of smell. A loss of taste alone is regarded as a non-scheduled award.

If the loss of sense of taste or smell results from an occupational disease, the requirements of Section 6 must be met before a pension can be awarded, including the requirement that there be a disablement from earning full wages. (6)

#39.42 *Visual Acuity*

For pension purposes, loss of visual acuity should be measured both before and, if correction is possible, after correction with conventional lenses. The intent of this evaluation is to determine the nature and degree of the injury.

Section 23(1) of the Workers Compensation Act provides compensation based on the existence of a permanent partial "disability". The degree of disability is the extent to which the injury is presumed to impair the earning capacity of the average worker. In determining the degree of disability for the purposes of calculating an award under Section 23(1), measurement of the loss of visual acuity is usually based on the best vision obtainable after correction with conventional lenses. Effective application of corrective lenses should eliminate any impairment of earning capacity.

The Permanent Disability Evaluation Schedule, items 84 to 90, sets out the percentages of disability payable for loss of visual acuity. These values have been developed based on corrected vision in order to establish an accurate measure of disability.

The Board recognizes that certain occupations require perfect uncorrected vision as a condition of employment. A worker who was employed in such an occupation prior to the injury may suffer an actual loss of earnings. In these circumstances, it may be more equitable to provide compensation under Section 23(3). A Section 23(3) pension is calculated by determining the difference between the average earnings of the worker before the injury and the average amount the worker is able to earn in some suitable occupation after the injury.

As total blindness in one eye is assessed at 16% of total and total blindness in two eyes is equal to 100% of total disability, the value attached to the total loss of the second eye is 84%. When assessing a bilateral visual loss which is less than total, each eye is first assessed separately in accordance with the schedule. 84/16 times the percentage applied to the better eye is then added to the percentage applied to the poorer eye.

Where the work injury leaves the worker with an aphakic eye, an award of 12% of total is made. This award is on the assumption that the worker has 20/20 vision. If the vision is worse, the worker receives an additional award equal to the percentage allocated in the schedule to the loss of visual acuity, but this additional award is devalued according to the rules set out in #39.13. If, for example, a worker with an aphakic eye has 20/60 vision the percentage is calculated as follows:

A. Percentage for blind eye	16%
B. Percentage for aphakic eye	12%
C. Percentage for loss of visual acuity equal to 20/60 (Item 87 in schedule)	4%
D. Additional percentage awarded where B combined with C <u>4% (C)</u> 16% (A) X [16%(A) – 12%(B)]	1%
E. Total percentage awarded [(B) + (D)]	13%

The above formula would also apply in other situations where a compensable eye disease is combined with a loss of visual acuity.

#39.43 *Sexual and Reproductive Function*

Sexual function is defined as the ability to engage in sexual activity. It must be distinguished from reproductive function, which is defined as the ability to procreate.

Cases involving sexual or reproductive function are classified as follows:

1. Impaired sexual or reproductive function resulting from paraplegia, quadriplegia, or similar disabilities.

In these cases, the worker is generally receiving an award for total disability, and where that is so, there is no scope for considering impaired sexual or reproductive function as a separate compensable item.

2. Where a physical injury other than to the genital organs or their related structures results in a psychological disturbance, and impaired sexual function is a symptom or consequence of the psychological disorder.

In this situation, the psychological problem, including the impaired sexual function, should be considered according to the principles applicable to psychological problems, and the impaired sexual function should not be considered as a separate matter. In cases of this kind, it is normal to explore the possibilities of treatment before regarding the case as one for a permanent disability award.

3. Where a compensable injury or occupational disease has caused permanent damage to the genital organs or related structures resulting in impaired sexual or reproductive function.

The reference here is to cases where the remedial treatment has been considered and found not to be possible. Where impaired sexual or reproductive function in this category occurs, a permanent disability award will be given. The *American Medical Association Guide to the Evaluation of Permanent Impairment* will be used to determine the appropriate percentage of disability.

A worker with impaired sexual or reproductive function derived from physical damage to the sexual or reproductive organs or related structures may suffer actual psychological symptoms over and above what might normally be assumed for impaired sexual or reproductive function. In such a case, it will not be appropriate to simply grant an award which is based on the ordinary assumed psychological effect. An assessment of the actual psychological disability suffered by the worker should be carried out in accordance with the general policy for assessing such disabilities under Section 23(1) of the Act. If, after that assessment, it is found that the worker is entitled to a general psychological award of an amount higher than what might normally be awarded for impaired sexual or reproductive function, the worker will be paid this award in lieu of the award for impaired sexual or reproductive function.

With regard to impairment of sexual function, this policy applies to impairments occurring on or after April 6, 1992. For impairments occurring prior to that date, the policy was to use a table of percentages of disability for an impairment resulting from physical damage to the genital organs. The percentage varied

according to the age of the worker. There was a maximum of 15% for a worker aged 45 at the time of injury reducing to 5% for a worker aged 65 or over. The table of percentages did not apply to an impairment of sexual function resulting from paraplegia, quadriplegia or similar disabilities, to impairment of sexual function resulting from psychological causes, to female workers or to impairment of reproductive function. Awards in these situations were considered separately. (7)

With regard to impairment of reproductive function, this policy applies to impairments occurring on or after April 6, 1992 as well as to existing impairments in respect of which a request for an award is subsequently submitted to the Board. However, no payments under this policy will be made in respect of the time period prior to April 6, 1992.

#39.44 *Assessment of Pensions for Hand-Arm Vibration Syndrome*

To measure the extent of any permanent disability resulting from Hand-Arm Vibration Syndrome, the evaluation is carried out in the following manner:

1. The Disability Awards Medical Advisor assesses the vascular, sensorineural and musculoskeletal impairments of the worker in reference to the following table.

ELEMENTS	Process (Assess each hand separately)	Points Applied
<i>Vascular Element:</i>	Assess vascular elements: blanching of fingers in cold temperature, pain, swelling, ulcers, gangrene & amputations: <ul style="list-style-type: none"> • Distal phalange on index, middle and ring finger = 1 point each • Middle phalange on index, middle and ring finger = 1 point each • Proximal phalange on index, middle and ring finger = 2 points each • All phalanges on little finger = 1 point • All phalanges on thumb finger = 1 point • Distal half of palm (top) = 1 to 2 points • Proximal half of palm (bottom) = 1 point 	17 points max per hand
	ADD: Double value of sum of above if there is evidence of trophic changes (i.e., ulcers)	17 points max per hand
	MAXIMUM points for Vascular element	34 points per hand

<i>Sensorineural Element:</i>	Assess sensorineural impairment (evidence of numbness, tingling and reduced sensory perception)	2 points max per hand
	Assess manual dexterity (i.e., difficulty with buttons and writing) <ul style="list-style-type: none"> • Additional 1 to 2 points per hand if reduction occurs 	2 points max per hand
	MAXIMUM points for sensorineural element	4 points per hand
<i>Musculoskeletal Element:</i>	Assess musculoskeletal impairment (loss of grip strength)	2 points max per hand
	MAXIMUM points from vascular, sensorineural and musculoskeletal elements for each hand	40 points per hand
	Add total points for both hands.	

2. The Board Officer in Disability Awards assesses the worker's disability using the Disability Awards Medical Advisor's assessment of impairment and the following table.

Conversion of Points to Percentages of Disability

Points System	% Disability	Points System	% Disability	Points System	% Disability
1 - 4	1	21 - 30	6	Beyond 40	Maximum of 20
5 - 15	2	31 - 35	8		
16 - 20	4	36 - 40	10		

Where the Board Officer in Disability Awards considers it more equitable, section 23(3) of the *Workers Compensation Act* will apply in the assessment of pensions for Hand-Arm Vibration Syndrome.

EFFECTIVE DATE: November 19, 2002
APPLICATION: To all section 23(1) decisions adjudicated after the effective date.

#39.50 Non-Scheduled Awards

Any award where the schedule is not directly or indirectly used in the assessment is a non-scheduled award. This covers impairments in all parts of the body not listed in the schedule. Disabilities resulting from multiple injuries or occupational diseases may also involve non-scheduled awards. The rules governing respiratory and skin diseases are set out in #29.00 and #30.50 respectively.

In the case of non-scheduled awards, the Disability Awards Officer or Adjudicator in Disability Awards use their own judgment to arrive at a percentage of disability appropriate to the particular claimant's impairment. Regard will be had to, inter alia, the permanent functional impairment evaluation, the circumstances of the claimant, medical opinions of Board or non-Board doctors, and to schedules of disability used in other jurisdictions.

Neither the age adaptability or enhancement factors nor devaluation are formally applied in respect of non-scheduled awards. (The exception is that an enhancement factor may be added with respect to spinal injuries as outlined in #39.12.) However, in making a judgment as to the correct percentage of disability, the Disability Awards Officer or Adjudicator will have regard to the age of the claimant, to existing disabilities in other parts of the claimant's body, or to the combined effect of more than one disability in the same part of the body.

#39.60 Minimum Pension

The minimum compensation for permanent partial disabilities is calculated in the same manner as for temporary total disability but only to the extent of the partial disability. (8) Thus, for example, if a worker is injured on January 2, 1986, and suffers a residual disability assessed at 10% of total disability, the minimum compensation will be the lesser of 10% of \$197.25 or 10% of his average earnings prior to the injury. (The formula for converting this weekly figure to the monthly equivalent is contained in #68.00.)

The minimum for permanent total disability does not apply simply because a worker is found to be totally unemployable under Section 23(3). (9)

#39.61 *Injury Prior to March 18, 1943*

Notwithstanding any other provision of the Act, all periodic payments awarded as compensation for permanent partial disability to workers injured prior to March 18, 1943, who, on January 1, 1955, or after that are in receipt of those periodical payments are calculated or recalculated at a rate of sixty-six and two-thirds per cent of average earnings of not less than two thousand dollars nor more than two thousand five hundred dollars per annum. Compensation is not payable under this provision for any period prior to January 1, 1955. (10)

#39.62 *Injury Prior to January 1, 1965*

In regard to payments made on or after January 1, 1965, permanent partial disability pensions awarded in respect of injuries occurring before that date were recalculated in accordance with the then minimum for permanent total disability but to the extent only of the partial disability. This minimum was an amount equal to \$30.00 per week (\$130.00 per month), unless the worker's average earnings were less, in which case compensation would be paid in an amount equal to the average earnings.

Any increase resulting from the above provisions did not apply to a commuted pension or the commuted portion of a pension.

In considering whether the worker's earnings were less than the minimum, the artificial wage created by the application of #39.61 was not taken into account. Only the worker's actual earnings were relevant.

#40.00 PROJECTED LOSS OF EARNINGS METHOD

Section 23(3) provides that "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 the worker is earning or is able to earn in some suitable 75% of the difference, and regard must be had to the worker's fitness to continue in the occupation in which the worker was injured or to adapt to some other suitable employment or business."

On October 2, 1973, the Board introduced a dual system for assessing permanent disability pensions involving the spinal column. Effective October 1, 1977, this system was extended to non-spinal injuries. This system implements Section 23(3) of the Act.

Under this system, awards are calculated as follows:

1. The degree of physical impairment is calculated using the method described in #39.00, and a possible pension is calculated in accordance with this.
2. A possible pension is calculated according to the projected loss of earnings method described in #40.10.
3. The higher of these two results is then used as the pension.

Where the claimant is aged 51 years or above, this system is modified in the manner set out in #40.20.

It is not the policy of the Board to grant an award under the dual system 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. Therefore, the Board has declined to grant awards under the dual system when the unemployability of the worker is related directly to psychological problems which are not considered acceptable as part of the claim.

Where a Disability Awards Officer or Adjudicator in Disability Awards decides that no pension can be awarded on a physical impairment basis because the impairment is unlikely to affect the worker's earning capacity, no pension can be awarded on a projected loss of earnings basis. While Section 23(3) is not

expressed to be dependent on an award being made under Section 23(1), this must in practice be the case. The Board could not consistently decide at the same time both that a worker's impairment was too minimal to affect earning capacity and that it would cause a loss of earnings in the future.

The Board will not make a temporary award on a projected loss of earnings basis.

#40.10 Assessment Formula

The rules, set out in #40.10-#40.30 apply to assessments of new permanent disability awards carried out on or after April 18, 1985.

These rules do not apply to earlier 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 these rules produce a lower pension than the projected loss of earnings pension the worker is currently receiving, the 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.

Where a pension was calculated on the policies prior to April 18, 1985, and an appeal results in a reconsideration of the pension, the reconsideration will be carried out under the same rules that applied at the time the **original decision** was made.

The rules for assessing a projected loss of earnings pension under Section 23(3) adopted by the Board are:

1. Average earnings prior to the injury will be determined in accordance with established policies and procedures.
2. 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 Adjudicator in Disability Awards will arrive at a conclusion about suitable occupations that the claimant could be expected to undertake over the long-term future.
3. 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.
4. 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.

5. Any increase that may be due to the claimant because of an increase in the Consumer Price Index will then be added.
6. Since the assessment on a projected loss of earnings basis 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 the injury and it is determined that there will not be a potential loss of earnings.

It may be helpful to illustrate how the dual system works. Consider the example of a skilled tradesperson in a trade that involves manual labour earning an average of \$3,500 per month. Assume, in 1985, the worker suffered a back injury as a result of being crushed under a load dropped from an overhead crane and had spinal surgery, following which the worker was unfit to return to the former occupation. Having regard to age and educational background, the worker is not considered suitable for retraining; but is able to take an unskilled clerical job and can now earn \$2,150 per month. Average earnings in 1985 for that occupation would be approximately \$1,900 per month. The pension is now being assessed in 1986. The way it might work out is as follows:

Method 1

Medical assessment estimates the degree of physical impairment, measured according to the physical impairment method, at 10% of total disability	10%
Average actual earnings prior to injury	\$3,500.00 per month
Statutory ceiling applicable in 1985	\$2,700.00 per month
Amount that would be payable for total disability (75% x \$2,700.00)	\$2,025.00 per month
Compensation payable as partial disability pension (10% of total disability)	\$202.50 per month

Method 2

Actual average earnings in 1985	\$3,500.00 per month
Statutory ceiling in 1985	\$2,700.00 per month
Average earnings obtainable in unskilled clerical work in 1985	\$1,900.00 per month
Compensable loss of projected earnings (\$2,700.00 less \$1,900.00)	\$800.00 per month

75% thereof	\$600.00 per month
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Being entitled to the greater of the two amounts, the claimant will now receive a pension of \$600.00 per month plus applicable Consumer Price Index increases.

#40.11 *Average Earnings Prior to Injury*

Further comment is required on items 1 to 3 in #40.10.

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 suggested that the use of the term “average weekly earnings” in Section 23(3), as opposed to the term “average earnings” is significant. This 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 noting the slight difference in terminology, 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 Board has 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.

The average earnings prior to the injury are calculated according to the normal rules set out in #68.00.

In making this calculation, regard will not normally be had to promotions which might have been received if the worker had not been injured. This is so even though the worker returns to the pre-injury job following the injury, is promoted, but is unable to remain in the job because of the disability.

When calculating the pre-injury earnings of a person covered by personal optional protection, a departure is made from the normal rule of using the rate of earnings for which coverage has been purchased. (11) For the purpose of the projected loss of earnings assessment, actual pre-injury earnings are used, but the amount of the award can never exceed the amount of earnings for which the coverage was purchased.

#40.12 Suitable and Available Occupations for the Claimant

The purpose of direction 2 in the assessment formula set out in #40.10 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 Adjudicator in Disability Awards should be concerned with such of those jobs as will maximize the claimant's long-term earnings potential.

It is not 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.

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 the claimant's 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 followed in determining suitable and reasonably available jobs for a claimant:

1. Where the worker is doing his or her best to maximize earnings, and is following the advice of the Rehabilitation Consultant, and is presenting himself or herself in good faith to obtain a job at the highest level of earnings among the jobs that the worker is fit to undertake, then the earnings level in the job that is actually obtained 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 present one with the same employer to which the worker 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. 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 health consequences 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 \$16.00 an hour, and job B may have an earnings rate of \$15.00 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, the worker might be expected to relocate, depending on age, the availability of a suitable job elsewhere, and other factors; but relocation will not normally be expected unless the worker is offered the expenses of relocation, either by the Canada Employment and Immigration Commission 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 life-style, the wage rate in the best-paying reasonably available job should be used in the formula.

For the distinction between the jobs which can be considered properly available for the purpose of the projected loss of earnings method and those which can be considered as available for the purpose of assessing temporary partial disability benefits, reference should be made to #35.21.

#40.13 *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 the worker 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 #40.12

and determining the earnings figure which will maximize the claimant's long-term earnings potential.

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, additional payments can be made for any further disability only to the extent that they do not take the total payments above the maximum. 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 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.

Although assessment of a pension will often be made some time after the original injury, it would not be fair to compare directly the actual pre-injury earnings with the earnings the worker might now earn in the jobs available. The effect of inflation upon earnings levels would mean that the real loss would not be properly determined in that way. The practice of the Board is to use the earnings in the jobs available after the injury as they stood at the date of the injury. 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.

#40.14 Provision of Employability Assessments

Workers are provided with a copy of a completed employability assessment before a pension decision is made. They have 30 days in which to provide a written submission. All such submissions received within this time frame will be considered before the final decision is made. Workers are also advised that, at their request, a copy will be made available to their treating physicians. If the details of the employability assessment and its impact on the pension are known and agreed to, the 30-day waiting period may be waived.

#40.20 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. It was suggested that projected loss of earnings pensions should also be payable for life in every case, but the Board does not accept 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 the injury, it is reasonable for the Board to have authority to terminate benefits payable under the

section at a time when, even if not disabled because of the compensable injury, the worker would not have been working.

The situation where this issue arises is when the worker reaches retirement age. The Board considers age 65 years to be the standard retirement age. Any direct loss of earnings the worker suffers because of the compensable disability will normally cease at that time. However, the Board does not, in practice, feel this is an automatic reason for terminating a projected loss of earnings pension. Rather, it is recognized because of the compensable disability, the worker may be less able to accumulate retirement benefits. The Board, therefore, allows the projected loss of earnings pension to continue in whole or part past the standard age of retirement where the worker was under 65 years of age at the time of the injury. The portion of the pension so continued depends on how close the worker was to the age of 65 years, the assumption being that the older the worker, the less the ability to build up retirement benefits would be affected by the injury.

The following principles apply:

1. Where, at the date of injury, the worker is at or below the age of 50 years, the pension is established based on the higher of the physical impairment and projected loss of earnings assessment, and the pension so established is payable for life.
2. Where, at the date of injury, the worker is at or above the age of 65 years, the pension will usually be established by the physical impairment method, and that pension is payable for life. No projected loss of earnings pension is awarded unless clear and objective evidence is presented that the worker would have continued to work past age 65 if the injury had not occurred. Where a projected loss of earnings pension is awarded, it will cease when the worker reaches retirement age, as determined by a Board officer, and compensation will thereafter be established by the physical impairment method.
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, will usually continue 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 worker'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.

In cases where the worker presents clear and objective evidence that he or she would have worked past age 65 if the injury had not occurred, the projected loss of earnings pension may continue in whole past that age. In these situations, the formula provided in the table above does not apply. From the age of retirement, as determined by a Board officer, compensation will be established by the physical impairment method.

4. Where an injury occurs in the age range 51-64 years, and full wage-loss payments are made from the date of injury up to or beyond the worker's 65th birthday, a pension will usually be established by the physical impairment method, and that pension will be payable for life.

A projected loss of earnings pension may be awarded if the worker presents clear and objective evidence that he or she would have worked past the standard retirement age had the injury not occurred. In these situations, the projected loss of earnings pension will cease when the worker reaches retirement age, as determined by a Board officer, and compensation will thereafter be established by the physical impairment method.

In calculating a worker's projected loss of earnings, no account is taken of any disability or retirement pensions received from the employer to which the worker

has contributed or any other source than the Board. However, a Board officer may take into account the fact that the worker has retired or is about to retire in deciding whether there is a projected loss of earnings in the first place. The formula set out above only applies when it has been determined that there is such a loss and the pension is assessed on the basis of that loss.

EFFECTIVE DATE: March 3, 2003 (as to deletion of reference to pension review)

APPLICATION: Not applicable.

#40.31 *Existing Pension Assessed Prior to Establishment of Dual System;*

Differing rules apply to spinal and non-spinal disabilities.

Upon any application for reopening of entitlement to pension benefits in the case of an injury involving the spinal column, the dual method of assessment is applied if the worker is under the age of 64 years and a pension has not previously been calculated or considered under the dual method. This applies regardless of the date of injury, but the effective date for any readjustment is the date of the application for reopening. Where the claimant was in receipt of a term pension that has expired or the claimant has commuted a life pension, the pension so expired or commuted is recalculated as a notional life amount. If the projected loss of earnings method produces a pension in excess of that notional life amount, a new pension will be instituted, but only to the extent of the excess.

Any pension for a non-spinal disability which has been assessed since October 1, 1977, on the basis of functional impairment only, and where the application of the dual system was not considered, will be reconsidered on that basis should such a request be made. Should an application be made for reopening of a pension assessed before October 1, 1977, on the basis of changed medical circumstances, and it is concluded that the application has merit and the pension should be reassessed, that reassessment will include consideration of a loss of earnings award as of the date of the changed medical condition but not retroactive to the date the pension was first established. In the case of applications for reconsideration on the basis of significant new evidence or error in law in the original decision, even if the new evidence or submission results in a change in the original decision, no consideration can be given to a loss of earnings award unless, of course, the original decision was made since October 1, 1977. In other words, a simple request to reopen the claim on the basis that a claimant wishes to have a pension reassessment under the new system must be rejected on the ground that the "new system" is effective only from October 1, 1977 for non-spinal disability.

#41.00 PAYMENT OF PENSIONS

Pensions are normally payable monthly and last for life. However, some are paid as lump sums. The cheques are mailed to the claimant's home address or, if she or he elects, direct to their bank by electronic direct bank deposit.

When a payment to a worker has been lost or stolen or otherwise not received or cashed by the worker, the worker may request a reissue of payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

#41.10 Commencement of Pension

The general rule is that the pension commences at the date when the claimant's temporary disability ceased and his condition stabilized or was first considered to be permanent.

Where a worker has been paid any temporary disability benefits under Section 29 or 30 of the Act, the pension will take effect from the date following the termination of these temporary benefits. For the majority of cases, this will adequately reflect the financial impact of the disability on the worker's earnings.

There may, however, be the unusual situation where a worker has or could have returned to a significant level of employment with a minimal loss of income. Wage-loss benefits under Section 30 would be 75% of this minimal figure.

Should the worker eventually be assessed at a pension rate which is higher than the rate paid for temporary benefits under Section 30, it would appear that the worker may have suffered a loss of compensation income. The Act, however, precludes the payment of both temporary and permanent benefits for the same condition at the same time.

A problem of pension retroactivity also occurs when, although the worker had a temporary partial disability, the worker had or could have returned to full employment and has not, therefore, actually been paid any benefits under Section 30. As previously stated, the Act requires that the Board recognize a disability as either temporary or permanent, but not both concurrently. When carrying out the final disability assessment, the Officer in Disability Awards will have the benefit of the earlier examination, or at least some other documentary evidence on file, on which the decision was made to delay the pension. If the findings on the latter examination are the same as the initial findings, or only show a minimal degree of change, it is reasonable to consider the condition as having plateaued from the date of the first examination. In that event, the date of the first examination should be the starting date of the pension. If, on the other hand, the latest examination shows a measurable and significant change since the first examination, the worker will be considered as having been, in the interim, temporarily disabled. In that event, the date of the last examination will be the starting date of the pension.

When there was no examination by either a Board Medical Advisor or an External Service Provider when wage-loss benefits were terminated under Section 30, and there is no other measurable data on file with which to make a comparison with the final assessment of the Officer in Disability Awards, the pension will be backdated to the date benefits were terminated under Section 30.

#41.11 Commencement Following Medical Review Panel Certificate

Where a pension is being revised following an examination and certificate by a Medical Review Panel, it is not proper to automatically make the adjustment only from the date of the certificate. While this may be correct in some cases, it is not defensible as a general policy.

Where a certificate of a Medical Review Panel is received indicating results that differ from previous decisions of the Board or findings of the former Workers' Compensation Review Board, it must be considered what further decisions are required as a proper response to the certificate of the Panel.

Suppose, for example, there has been a dispute from the outset about whether a worker is suffering from disability "A" (which is compensable), or disability "B" (which is not compensable). The Board decided that it was "B", and that decision was maintained throughout the appeal system. Suppose the Medical Review Panel then decided that the worker is suffering from "A". It may be agreed by all concerned that the worker has not changed from "B" to "A", and that if suffering from "A" now, the worker must have been suffering from "A" at the outset. In that circumstance, there is obviously entitlement to compensation as from the date when first suffering from the disability.

There may be another case where it is agreed by all concerned that the degree of disability has not changed, and yet the Medical Review Panel has concluded that the worker is suffering from a disability more extensive than that which the Disability Awards Medical Advisor or External Service Provider found. In that case too, the pension adjustment must be retroactive.

In a third case, it may appear that a different condition diagnosed by the Medical Review Panel has resulted from a recent change and, in such a case, it would be proper to commence the disability award from the date of the certificate. In a fourth case, it might appear that there was some progressive deterioration and, in that case, a sliding scale may be appropriate so that the revised disability award is partially retroactive, but not to the full amount.

In other words, there can be no standard rule that a revised disability award should or should not be retroactive. The previous decisions on the claim must be reconsidered in the light of the certificate of the Panel, and new conclusions must be reached to whatever extent is necessary to give full effect to the certificate of the Panel.

EFFECTIVE DATE: March 3, 2003 (as to reference to the former Review Board)
APPLICATION: Not applicable.

#41.12 *Retroactive Awards*

Where a pension is awarded retroactively, the payments due prior to the date of the award will be paid in the form of a lump sum.

In calculating that sum, entitlement in respect of a portion of a month is determined by reference to the actual calendar days in a particular month. For example, if a worker is entitled to an award of \$1,000 per month, for the period March 17 to 31 (15 calendar days), the calculation is as follows:

$$\frac{\$1,000}{31 \text{ days}} \times 15 \text{ days} = \$483.87$$

A reduction in the lump sum is made in respect of periods of time during the period following the commencement of the pension when the claimant received wage-loss or rehabilitation benefits. However, no such reduction is made when the pension is awarded in the form of a lump sum and the monthly equivalent is less than \$20.00 per month at the time of the commutation.

The payment of interest on the lump sum is dealt with in #50.00.

#41.20 **Termination of Pension**

Pensions are normally payable throughout the claimant's lifetime, but for various reasons may be terminated prior to that time. For example, the claimant's disability may disappear, (12) the rule set out in #40.20 may result in a loss of earnings pension being wholly or partially terminated at age 65, or the Board may exercise certain powers discussed in #48.00 and #49.00.

In situations where a claimant in receipt of a pension dies from causes unrelated to the disability, the pension will be paid for the full month in which the death occurred. The past Board policy which came into effect on November 12, 1982 and required an apportionment of the pension in situations where there was no surviving dependants is rescinded. The effect of this policy will be that no overpayments will be considered to have arisen for the period from the date of the claimant's death up to the end of the month covered by the last pension payment.

If the worker dies prior to the implementation of the pension, the award is calculated and paid to the date of death. The situation where such a worker would have received a lump sum award is dealt with in #45.00.

#41.30 **Pension Adjustments**

If a pension to a worker or a dependant is paid or increased on the basis of a Review Division decision, and the finding is later reversed by the Workers' Compensation Appeal Tribunal, the pension payments are terminated or adjusted as of the date of the Workers' Compensation Appeal Tribunal decision. In such

cases, the capitalization is adjusted by the reversal of an amount equivalent to the unused portion of the capitalization or, in the case of a modification, the adjustment applies to the amount of the capitalization affected by the modification. The policy regarding relief of costs to employers in such circumstances is detailed in policy item #113.10.

EFFECTIVE DATE: March 3, 2003 (as to references to Review Division and Workers' Compensation Appeal Tribunal)
APPLICATION: Not applicable.

#42.10 P.P.D. with Review

Sections 22 and 23 of the *Act* are designed to provide income support for a worker who has suffered a permanent disability. These sections are intended to be used only where the recovery or change process has, to all intents and purposes, become medically constant and stable. Realistically, such a circumstance is not totally practical since ongoing change is a feature of human physiology; but, within reason, it is designed to come into play where healing is complete or where the deterioration in the condition of the claimant has ceased and no improvement can be reasonably foreseen. P.P.D.'s with review, i.e. permanent partial disability awards with a provision for review in the future have been used in the past where the change process was still underway and where, therefore, the medical condition of the claimant was still "temporary". That practice was not in accord with the *Act* and was discontinued.

A permanent partial disability award decision may, however, be reopened where a ground for reopening is met (see Chapter 14).

EFFECTIVE DATE: March 3, 2003 (as to reference to reopening and deletion of reference to pension review)
APPLICATION: Not applicable.

#42.20 Worsening or Improvement of Disability

If the disability on which an award is based worsens, the extent of the disability is reassessed and a new award is made based on the reassessment. Conversely, if a worker should unexpectedly recover from a disability classified as permanent, the pension would be subject to termination or downward adjustment.

#42.30 Review of Old Pensions under Section 24

Section 24(2) provides that "With respect to a claim for compensation to which this section applies, the board must, on application by the worker, reconsider the compensation benefits; and, if it decides that, in its opinion, the worker is not receiving adequate compensation having regard to the projected loss of income resulting from the disability, periodic payments must be established or raised accordingly."

#42.31 *Claims to Which Section 24 Applies*

Section 24(1) provides that “This section applies to the claims for compensation that the board may by regulation determine, provided that

- (a) the worker is still suffering from a compensable disability sustained more than 10 years before the application under subsection (2); and
- (b) a permanent disability award was made by the board based on a percentage of total disability of 12% or greater, or the case is of a kind in which the board uses a projected loss of earnings method in calculating compensation.”

Regulations have been issued by the Board which are set out below:

- “1. The regulations come into effect on the 1st day of December, 1982.
- 2. The regulations with respect to the review of old disability pensions, promulgated by the Board on the 21st day of July, 1975, the 13th day of November, 1975, and the 19th day of August, 1976 (B.C. Regulations 524/75, 746/75 and 492/76) are hereby repealed.
- 3. Unless the Board otherwise determines, Section 24 of the *Workers Compensation Act* applies to claims in which all of the following conditions are present:
 - (1) The worker is still suffering from a compensable disability sustained more than ten years previous to the application under Section 24(2).
 - (2) A permanent disability award was made by the Board based on a percentage of total disability of 12% or greater, a disability award was made for an injury involving the spinal column, or a disability award was made for an injury to a part of the body other than the spinal column on or after October 1, 1977. Where the worker is still suffering from two or more compensable disabilities, this condition is satisfied if permanent disability awards were made by the Board which in aggregate were based on a percentage of total disability of 12% or greater, provided that a minimum of 5% of total disability was attributed to an injury or injuries sustained more than ten years previous to the application under Section 24(2).”

Clause 3(1) of these regulations does not mean that it is a requirement that each claim considered under Section 24 must be more than 10 years old. Where a worker has suffered several injuries with permanent disability resulting in several claims, the whole of the compensable disabilities resulting from these claims may be considered, provided that at least one of the compensable disabilities was sustained more than 10 years previous to the application under S. 24(2), and that

a minimum of 5% of total disability was attributed to an injury or injuries sustained more than 10 years previous to the application.

The requirement in Clause 3(2) that the percentage of disability exceed 12% is a separate and independent requirement from Clause 3(1). Thus, it is not necessary that the disability award should have been made more than 10 years previous to the application, or that it should have been calculated at 12% or greater at any particular time.

The requirement in Clause 3(2) that a non-spinal disability of less than 12% be one that was assessed on or after October 1, 1977, in conjunction with Clause 3(2), means that no application for such a disability can be made under Section 24 until October 1, 1987.

Notwithstanding that a worker suffering a permanent disability has received an award that has been wholly or partly commuted, or an award for a fixed term, the worker may apply under this section, but he shall be deemed to be still receiving the periodic payments that have been commuted, or the life equivalent of the periodic payments made for a fixed term. (13)

#42.32 Calculation of Benefits under Section 24

Where a worker is under the age of 65 years, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of earnings resulting from the disability. (14)

Section 24(4) provides that “Where a worker is 65 years of age or over, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of retirement income resulting from the disability.”

Where a worker is under the age of 65 years, periodical payments established or raised under this section are subject to readjustment by reference to Subsection (4) upon the worker attaining the age of 65 years. (15)

The calculation of benefits is made in the manner the Board determines. (16)

Where a worker is under the age of 65 years, the Board must determine the projected loss of earnings resulting from the disability. This involves three steps:

1. A forward projection of the earning capability of the worker as it existed prior to the disability.
2. A projection of the present earning capability of the worker.
3. A determination of the extent to which any difference between (1) and (2) is a result of the disability.

These calculations are made primarily by reference to evidence in the particular case, with two exceptions. A table of monthly average wage rates in B.C. (see Supplement No. 1, Appendix 5) is used to establish two of the variables; and an age factor is applied to those cases where the disability was suffered when the worker was under the age of 23. With regard to the former, a projection of the pre-disability earning capacity is made by comparing the claimant's actual pre-injury earnings, limited by the maximum in effect at the time of injury, with the monthly average wage rate in the table for that year and applying the same ratio to the average wage in the table for the year when the calculation is being made. In making this projection, no account is taken of promotions which the claimant might have obtained if he had not been injured.

Where a worker is 65 years of age or over, the Board must determine the projected loss of retirement income resulting from the disability. This involves a determination of:

1. The retirement income that the worker would have been likely to be receiving if he or she had not sustained the disability.
2. The retirement income the worker is receiving.
3. A determination of the extent to which any difference between (1) and (2) results from the disability.

Here again, the determinations are made to some extent by reference to evidence in the particular case; but two standard formulae are used with regard to two important items.

The first relates to retirement income from savings. Many workers save part of the earnings accrued during their working lives, and these savings, or income from the savings, become part of retirement income. The Board must consider, therefore, the loss of this element of retirement income resulting from the disability. To determine loss of retirement income from savings, a standard formula is used, based on such evidence as the Board has been able to obtain from aggregated data relating to the savings habits of Canadian families.

The second item being considered by a standard formula is the loss of retirement income from earnings by people at and above the age of 65 years. The formula selected is to use a flat rate cash amount per month for each percentage of disability.

The Board has no rule that states that the evidence of a physician is always to be preferred to that of a chiropractor or other qualified practitioner. Reports from both types of practitioner are acceptable evidence and are weighed on their merits. This principle applies even if the referral to the practitioner is contrary to Board policy. Should there, for example, be concurrent treatment by a physician and a chiropractor, the Board might not pay for the chiropractor, but any chiropractor reports received must be weighed as evidence. They are not ignored just because the referral was unauthorized. (33)

EFFECTIVE DATE: March 3, 2003 (as to new wording of section 99)

APPLICATION: Not applicable.

#97.35 *Termination of Benefits*

Where a treating physician expresses an opinion that a claimant is disabled from work by reason of a compensable disability, the Claims Adjudicator or Claims Officer may rely upon overall existing medical evidence from a doctor who has examined the worker or other substantive evidence on the file to reach a conclusion contrary to that opinion or may decide to carry out further investigation which may involve an examination by a Board physician.

#97.40 **Disability Awards**

In cases of very minor disabilities, Board officers in Disability Awards may proceed to calculate a disability award without a permanent functional impairment evaluation, if they consider that this is unnecessary having regard to the medical evidence already available. Except for those cases, the normal practice is for a permanent functional impairment evaluation to be conducted for disability awards purposes by a Disability Awards Medical Advisor or an External Service Provider.

It is the responsibility of the Board officer in Disability Awards to classify the disability as a percentage of total disability. In doing this, it is proper for the Board officer to consider other factual and medical evidence as well as the report of the Disability Awards Medical Advisor or the External Service Provider. However, although the report of the Disability Awards Medical Advisor or the External Service Provider is not the only medical input that a Board officer may use, it will usually be the primary input, and caution will be used in referring to any other medical opinion.

The report of a Disability Awards Medical Advisor or External Service Provider takes the form of expert evidence which, in the absence of other expert evidence to the contrary, should not be disregarded. This does not mean that a Board officer must adopt the percentage indicated by the Disability Awards Medical Advisor or External Service Provider. It is always open to the Board officer to

conclude that, although the functional impairment of the worker is a certain percentage, the disability (i.e. the extent to which that impairment affects the worker's ability to earn a living) is greater or less than the percentage of impairment.

The decision-making procedure for assessing entitlement to a permanent disability award for psychological impairment under section 23(1) of the *Act* is discussed in policy item #38.10.

In making a determination under section 23(1), the Board officer in Disability Awards will enquire carefully into all of the circumstances of a worker's condition resulting from a compensable injury.

EFFECTIVE DATE: January 1, 2003
APPLICATION: Applies to new claims received and all active claims that are currently awaiting an initial adjudication.

#97.50 Rumours and Hearsay

Hearsay must only be used very cautiously as evidence, and rumour must not be used as evidence at all. But even rumour is often valuable as a lead to investigation.

#97.60 Lies

A lie may be ground for drawing an adverse inference with regard to the facts to which it relates. But it is not in itself ground for denying compensation, particularly when it relates to something not relevant to the claim at all.

#98.00 INVESTIGATION OF CLAIMS

In the majority of claims the issues are decided by reference to the information received in the worker's application and the employer's and medical reports. Any insufficiency in the information is usually made good by telephone, correspondence, or by informal interview. In a minority of claims, a more formal inquiry, or medical examination, may be necessary.

#98.10 Powers of the Board

Section 87 of the *Act* provides as follows:

- “(1) The Board has the like powers as the Supreme Court to compel the attendance of witnesses and examine them under oath, and to compel the production and inspection of books, papers, documents and things.

APPENDIX 4

PERMANENT DISABILITY EVALUATION SCHEDULE – #39.10

For all section 23(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* on or after August 1, 2003, please refer to the *Permanent Disability Evaluation Schedule* in Appendix 4 of Volume II and the appropriate policies in Chapter 6 of Volume II on the application of the *Schedule*.

EXPLANATION OF THE SCHEDULE

This is the Schedule used for guidance in the measurement of partial disability using the physical impairment method. The Schedule attributes a percentage of total disability to each of the specified disablements. For example, an amputation of the arm, middle, third of humerus, is indicated to be 65%. When that percentage rate is applied, it means that a claimant will receive by way of pension 65% of 75% of average earnings as determined by the Act.

The Schedule does not necessarily determine the rate of pension. The Board is free to take other factors into account. Thus, the Schedule provides a guideline or starting point for the measurement rather than providing a fixed result.

Only a minority of disabilities are listed in the Schedule. In other cases, however, a Schedule can still be of some guidance value if the injury is similar to one that is listed.

Where a claimant is over the age of 45 at the effective date of the award, the percentage rate is increased by 1% of the assessed disability for each year over 45 up to a maximum of 20% of the assessed disability. For example, if the claimant were aged 55 at the effective date of the award and the rate indicated in the Schedule for the particular disablement is 50%, the age adaptability factor would be 10% of 50%, making an overall disability rating of 55% of total disability.

UPPER EXTREMITY

Percentage

(A) Amputations:

- | | |
|--|----|
| 1. Proximal, third of humerus or disarticulation at shoulder | 70 |
|--|----|

	Percentage
2. Middle, third of humerus	65
3. Distal, third of humerus to biceps insertion	60
4. Insertion of biceps to middle of forearm	55
5. Middle of forearm to wrist	50
6. Thumb, including metacarpal	20
7. Thumb at M.P. joint	10
8. Thumb at I.P. joint	4
• one half of distal phalanx	2
9. Thumb and index finger off at M.P. joints	24
10. Thumb and middle finger off at M.P. joints	20
11. Thumb and ring finger off at M.P. joints	15
12. Thumb and little finger off at M.P. joints	15
13. Fingers, four at M.P. joints	30
14. Fingers, four at P.I.P. joints	18
15. Fingers, four at D.I.P. joints	6
16. Finger, index at M.P. joint	4
17. Finger, index at P.I.P. joint	2.4
18. Finger, index at D.I.P. joint	.8
19. Finger, middle at M.P. joint	.4
20. Finger, middle at P.I.P. joint	2.4
21. Finger, middle at D.I.P. joint	.8
22. Finger, ring at M.P. joint	2.5