

July 2003

Update 2003 – 6

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

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

These amendments include:

- changes to the *Permanent Disability Evaluation Schedule* contained in Appendix 4 and associated policies contained in Chapter 6, Permanent Disability Awards;
- 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	This change is to correct an error in the percentage of permanent partial disability for hearing loss in one ear.
Policy Item #39.02	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.
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 #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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## #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 worker is psychologically disabled. It cannot be assumed that such a disability exists simply because the worker 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 worker's employment without the occurrence of any physical trauma, reference should be made to policy items #13.20, #13.30 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 policy item #39.01.

**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 worker'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 worker 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 policy item #77.30.

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

### 1.      Definitions:

Pain is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. It includes cognitive, affective, behavioural and physiological components.

The Board recognizes three main stages of pain:

- i.      Acute pain is pain that coincides with a traumatic injury or disease and the early stages of recovery. In the vast majority of cases acute pain eventually resolves, either spontaneously or with some form of treatment.
- ii.     Subacute pain is pain that an injured worker continues to experience four to six weeks after a traumatic injury or disease.
- iii.    Chronic pain is pain that persists six months after an injury or occupational disease and beyond the usual recovery time for that injury or disease. Chronic pain is further distinguished as either specific or non-specific as set out in policy item #39.02, "Chronic Pain".

Usual recovery times for injuries or diseases are based on medical protocols and procedures adopted by the Rehabilitation and Compensation Services Division. These medical protocols set out the points in time, after an injury, when a worker should regain pre-accident functional ability, or reach maximum medical recovery.

In determining the appropriate recovery time for an injury, the Board officer may, in consultation with a Board Medical Advisor, consider the medical protocols as well as other factors such as the worker's pre-injury health status and any treatments received that would likely impact the recovery time of the work injury.

### 2.      Early Intervention – Acute and Subacute Pain:

Early intervention involves the provision of early return to work assistance and/or focused multidisciplinary treatment and rehabilitation, to expedite the worker's medical recovery and return to work. Early intervention at the acute or subacute stages of pain is essential as both rehabilitation and prevention measures in

detracting the development of chronic pain. Studies indicate that even with some residual or recurrent pain symptoms, workers do not have to wait until they are completely pain free to return to work. Early intervention should be incorporated into the worker's rehabilitation plan. (See policy C11-88.00, "Nature and Extent of Programs and Services")

(a) Early Return to Work Assistance

In the majority of cases following an injury, a worker is able to return to work shortly after an injury without Board assistance. The provision of early return to work assistance for a worker experiencing acute or subacute pain that is affecting the worker's return to work efforts will be considered as soon as the worker is medically able to participate. A Board officer will coordinate the worker's early return to work plan in collaboration with the worker, the attending physician, a Board Medical Advisor, the employer and treating clinicians as needed.

In developing an early return to work plan, the Board officer may consider the worker's entitlement to vocational rehabilitation programs and services such as graduated return to work assistance, placement assistance and work site/job modifications where the Board officer concludes that they will assist in a worker's return to work. (See Chapter 11, "Vocational Rehabilitation")

(b) Multidisciplinary Treatment and Rehabilitation

In certain cases, the Board officer may consider it appropriate to refer the worker for focused multidisciplinary treatment and/or rehabilitation intervention. These interventions are preferred in cases where the Board officer concludes that they will assist in the worker's early return to work. The Board officer may also consider these interventions where they will assist in preventing the onset of chronic pain.

In making this determination, the Board officer may consult with a Board Medical Advisor and/or a Board Psychologist. The worker's attending physician may also be consulted to confirm his or her agreement with the proposed intervention.

A multidisciplinary approach may include one or more of the following: medical management, physical conditioning, work conditioning, pain and stress management, ergonomic consultation, and vocational counseling and placement.

In determining what specific treatment or rehabilitation intervention is appropriate for a worker, the Board officer may refer the worker for a multidisciplinary assessment. A multidisciplinary assessment is an evaluation of the worker by a physician, a psychologist, a physiotherapist, an occupational therapist, or other provider as the Board determines appropriate.

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, physical limitations, psychological state, behaviour, and

workplace issues. The evaluation will provide an opinion on the treatment or rehabilitation intervention, or combination of interventions that would be appropriate to aid in the worker's recovery and return to work.

(c) Early Intervention - Chronic Pain

In all cases where a Board officer considers that a worker may be experiencing chronic pain symptoms, a multidisciplinary assessment must be undertaken. This evaluation will provide an opinion on whether a worker is experiencing chronic pain as a consequence of a compensable injury. The evaluation will also 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 *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 policy item #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 worker’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 predictable routine and part of the normal operating cost of the type of work done by the worker in that plant. Usually the employer contributes to the replacement of eyeglasses by men working in this situation, and the claim came about only because the worker required replacement more frequently than the employer regarded as reasonable.

In this situation, the cost of replacing eyeglasses should be regarded as part of the wear and tear of industrial activity rather than being classified as damage by accident.”

It should not be concluded from this that if a worker’s glasses are broken as a result of a chance event arising out of and in the course of employment, compensation will automatically be payable under section 21(8). The section is limited to situations where there is a personal injury, the consequences of which include breakage or damage to this apparatus, or there is a direct injury to this apparatus which might also have caused a personal injury. To be an “accident” for the purposes of section 21(8) a chance event must be such that if it does not actually cause the worker personal injury, it must have had the potential for doing so. In other words, there must have been a reasonable probability that the accident could have caused the worker personal injury. No compensation is payable under section 21(8) if the accident involved the damaged article only and there was no reasonable probability of its harming the worker.

Consider the following examples:

- A. The worker is wearing glasses, or is not wearing them but has them about his or her person, for instance, in a pocket, and they are broken when an object flies into or falls upon them, some harmful liquid splashes onto them, the worker slips and falls to the ground, or bumps his or her head against a wall or some machinery. Even if such an accident does not injure the worker, there is usually an “accident” for the purposes of section 21(8) as there is usually a reasonable probability that it could have injured the worker.
- B. The worker drops his or her glasses, they fall out of a pocket, or off his or her face, or the worker knocks them off when removing clothing or headwear, and they break on impact with the ground or when something falls on them, or the worker takes off the glasses and places them in a position where they are broken. If such an accident does not injure the worker, there is usually not an “accident” for the purposes of section 21(8) as there is not usually a reasonable probability that it could have injured the worker.

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 permanent disability award 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 permanent disability award, the Board officer should generally refer back to the employments in which the worker was most recently engaged and base the award on their previous earnings thus discovered.

If the worker is retired and under the age of 63 years as of the commencement of the hearing loss permanent disability award, periodic payments are made until the date the worker reaches 65 years of age. If the worker is retired and is 63 years of age or older as of the commencement of the hearing loss permanent disability award, periodic payments are made for two years following such date. See policy item #41.00, Duration of Permanent Disability Periodic Payments.

**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.

## **#31.50 Compensation under Section 7**

Section 7(4) provides:

If a loss or reduction in earnings results from the loss of hearing, the worker is entitled to compensation for total or partial disability as established under this Part.

## CHAPTER 6

### PERMANENT DISABILITY AWARDS

#### #36.00 INTRODUCTION

Permanent disability awards are made when a worker fails to completely recover from a work-related injury or occupational disease, but is left with a permanent residual disability. They commence at the point when the worker's temporary disability under the claim ceases and the condition stabilizes. They may be total (section 22) or partial (section 23).

Permanent disability awards are calculated on the basis of a worker's long term "average net earnings". The computation of long term average net earnings is dealt with in Chapter 9.

#### #36.10 Transitional Provisions for Permanent Disability Awards (see Chapter 1, policy item #1.00)

#### #36.20 Canada Pension Plan Disability Benefits

Section 34(2) of the *Act* provides:

Subject to sections 7(4.1), 22(2) and 23(4), the Board must deduct, from the amount of a periodic payment of compensation paid to a worker under section 22(1) or 23(1) or (3) for an injury, an amount equal to 50% of any disability benefit that the worker is paid in respect of the injury under the *Canada Pension Plan*.

The Board deducts applicable Canada Pension Plan ("CPP") disability benefits from a worker's permanent disability award where the injury occurs on or after June 30, 2002. Where a worker was injured before June 30, 2002 and the permanent disability first occurred on or after June 30, 2002, CPP disability benefits paid to the worker for the same injury will not be deducted from the worker's permanent disability award.

Where a worker is paid CPP disability benefits for his or her dependent children, the Board does not deduct CPP disability child benefits from the worker's permanent disability award.

### *#36.21 Confirmation of CPP Disability Payments*

The Board will advise a worker of the legislative requirement that CPP disability benefits be deducted from the worker's permanent disability award. To ensure that only the portion of CPP disability benefits related to the injury is deducted from a worker's permanent disability award, the Board needs information from Human Resources Development Canada confirming that the worker is receiving CPP disability benefits, the effective dates (start and end dates), the medical condition(s) for which CPP disability benefits are being paid and benefit amount. Workers are responsible for providing CPP information to the Board.

The worker's obligation to provide information to the Board to administer the claim is discussed in policy item #93.26.

The Board will also advise a worker of the obligation to provide necessary CPP information and the consequences of failing to comply. If a worker fails to provide the necessary CPP information, the Board may reduce or suspend the worker's permanent disability periodic payments as discussed in policy item #93.26.

### *#36.22 Determination of the Amount of a CPP Disability Benefit that is Attributed to the Compensable Work Injury*

CPP disability benefit entitlement is based on total disablement which may encompass a work injury, other disabling conditions or a combination of both.

When a worker is disabled because of the work injury and there is evidence that leads the Board to determine that the disability benefits being issued under CPP are only related to the injury, 50% of the entire CPP disability benefits paid to the worker will be deducted from the worker's permanent disability award payable by the Board.

Where a worker is disabled because of the work injury and it is unclear what amount of CPP disability benefits is attributable to the compensable work injury, the amount of the CPP disability benefits attributable to the compensable work injury is determined as follows:

- Where the permanent disability award is calculated under the section 23(1) method of assessment, the amount of the CPP disability benefits attributable to the injury is determined by using the same proportion to the total CPP disability benefits as the worker's assessed percentage of disability using the section 23(1) method. The Board deducts 50% of the calculated amount from the worker's permanent disability award.

- Where the permanent disability award is calculated under the section 23(3) method of assessment, the amount of the CPP disability benefits attributable to the injury is determined by using the same proportion to the total CPP disability benefits as the worker's estimated loss of earnings bears to the worker's average net earnings. The Board deducts 50% of the calculated amount from the worker's permanent disability award.

Where a worker is disabled because of the work injury and there is evidence that leads the Board to determine that the disability benefits being issued under CPP are not related to the injury, the Board will not deduct CPP disability benefits from the worker's permanent disability award.

**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.

**#36.23**      *Deduction of Lump Sum Payments of CPP Disability Benefits*

Where the Board determines a worker's permanent disability award entitlement and the worker is later advised that he or she is entitled to CPP disability benefits and is paid a lump sum amount under the CPP, the Board will deduct 50% of the applicable CPP disability benefits paid to the worker from future benefit entitlement. The Board will, as far as possible, do this in a manner which causes the least hardship to the worker. Normally, the Board will recover the amount owing by installments.

**#36.24**      *Deduction of CPP Disability Benefits in Cases of Minimum Compensation*

A statutory minimum amount of compensation applies to a permanent disability award paid to a worker. CPP disability benefits will be deducted until the resulting permanent disability award amount falls to the statutory minimum.

If the permanent disability award is at or below the statutory minimum, the Board will not deduct CPP disability benefits.

## **#37.00 PERMANENT TOTAL DISABILITY**

Section 22(1) of the *Act* provides:

Subject to sections 34 and 35, if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the worker's average net earnings.

Some examples of permanent total disability are paraplegia, quadriplegia, hemiplegia, and total or near total blindness. Combinations of permanent partial disabilities can also become permanent total disabilities, such as bilateral amputations of arms and legs.

Permanent total disability periodic payments continue until a worker reaches age 65, or later if the Board is satisfied that the worker would have worked past age 65. (Policy item #41.00)

On reaching retirement age, a worker who has received a permanent disability award is entitled to a retirement benefit (policy item #116.00). Permanently totally disabled workers are also entitled to rehabilitation and health care services and personal supports after reaching retirement age (policy item #116.30). Board policies on the retirement benefit are contained in Chapter 18 of the *RS&CM*.

**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.

### **#37.10 Commencement of Permanent Total Disability Payments**

Awards for permanent total disability are granted as soon as the medical evidence confirms that the worker is permanently totally disabled as a result of the work injury or occupational disease.

However, it may be necessary to make these payments at a provisional rate pending clarification of the worker's pre-injury earnings. (1)

Following the calculation of a worker's permanent total disability award, the Board must deduct from a worker's periodic payment an amount equal to 50% of any Canada Pension Plan (CPP) disability benefit that the worker is paid in respect of the work injury. The required CPP disability benefit deduction is subject to the Board's statutory minimum (policy items #36.20 to #36.24).

## **#37.20 Minimum Amount of Compensation**

Section 22(2) provides that the compensation awarded for permanent total disability cannot be less per month than the minimum set out below. This minimum is subject to cost of living adjustments as described (policy item #51.20).

Date			\$ Minimum
January 1, 2002	—	December 31, 2002	1,319.06
January 1, 2003	—	December 31, 2003	1,360.85

If required, earlier figures may be obtained by contacting the Board.

## **#37.21 Statutory Minimum Application**

The statutory minimum only applies in cases where a worker is found to be 100% disabled under the section 23(1) method of permanent disability assessment. It does not apply when the percentage of disability is less than 100% but the worker is found to be totally unemployable under the section 23(3) method of permanent disability assessment. (2)

## **#37.30 Reopening Claims**

Where a claim involving a permanent total disability is reopened, no payments of wage loss can be made. Wage loss may, however, be payable where a worker receiving a permanent total disability award of less than the current maximum suffers a new injury at work. The amount payable would be the difference between the periodic payment being paid on the old claim and 90% of the long term average net earnings on the new claim, limited by the current maximum.

## **#38.00      COMPENSATION FOR PERMANENT PARTIAL DISABILITY**

Section 23 of the *Act* pertains to the determination of a worker's entitlement to compensation for a permanent partial disability award. An award granted under section 23 compensates a worker for permanent partial disability that results from a work injury. Section 23(1) is the mandatory provision that must be applied in the assessment of permanent partial disabilities. Only in exceptional circumstances will an assessment be done under section 23(3).

In all cases where a permanent partial disability results from a work injury, a worker's entitlement to a permanent partial disability award must be calculated using the method set out in section 23(1) of the *Act*. In determining the compensation payable under 23(1), the Board may be guided by section 23(2), which permits the use of a schedule of percentages of impairment of earning capacity for specified injuries or mutilations.

In all but exceptional cases, the effect of the disability on a worker will be appropriately compensated under section 23(1).

Only in exceptional cases will section 23(1) not be the method of assessment used to determine a worker's entitlement to a permanent partial disability award. In these cases the Board considers whether the combined effect of a worker's occupation at the time of injury and the disability resulting from the injury is so exceptional, that the section 23(1) method does not appropriately compensate the worker for the injury. In these exceptional cases, the Board has the discretion to assess a worker's entitlement to a permanent partial disability award under section 23(3) of the *Act*.

## **#39.00      SECTION 23(1) ASSESSMENT**

Section 23(1) of the *Act* provides:

Subject to subsections (3) to (3.2) and sections 34 and 35, if a permanent partial disability results from a worker's injury, the Board *must*

- (a) estimate the impairment of earning capacity from the nature and degree of the injury, and
- (b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment.

(emphasis added)

In all cases where a permanent partial disability results from a worker's injury, the Board must assess the worker's entitlement to a permanent partial disability award under section 23(1) of the *Act*. Section 23(1) is a mandatory legislative provision which sets out the rule the Board follows in determining a worker's impairment of earnings capacity resulting from a work injury.

The percentage of disability determined for the worker's condition under section 23(1)(a), reflects the extent to which a particular injury is likely to impair a worker's ability to earn in the future.

A permanent partial disability award calculated under section 23(1) also reflects such factors as:

- short term fluctuations in the compensable condition;
- reduced prospects of promotion;
- restrictions in future employment;
- reduced capacity to compete in the labour market; and
- variations in the labour market.

In assessing a worker's entitlement to a permanent partial disability award under section 23(1), the Board may make reference to section 23(2) of the *Act*. Section 23(2) of the *Act* provides

The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations which may be used as a guide in determining the compensation payable in permanent disability cases.

Once the percentage of disability is determined, it is applied to the worker's long term average net earnings, and the permanent partial disability award is 90% of the amount so determined. The permanent partial disability award is granted following the determination of a worker's entitlement under section 23(1) of the *Act*.

Under the section 23(1) method of permanent partial disability assessment, a worker's percentage of disability is expressed as a percentage of total disability, with one hundred percent (100%) being the maximum possible rating for a totally disabled worker. A worker's percentage of permanent partial disability is based on the whole person. A worker, therefore, cannot be more than 100% disabled as a result of a work injury or combination of injuries.

### #39.01 *Decision-Making Procedure under Section 23(1)*

Section 23(1) assessments are undertaken once a worker reaches medical plateau.

A Board officer in the Disability Awards Department is responsible for ensuring that the necessary examinations and other investigations are carried out with respect to the assessment and making a decision on a worker's entitlement to a permanent partial disability award.

Section 23(1) evaluations may be conducted by either a Disability Awards Medical Advisor or a Board authorized External Service Provider. The Rehabilitation & Compensation Services Division sets protocols and procedures for these evaluations. The Board determines whether the evaluation is referred to a Disability Awards Medical Advisor or an External Service Provider based on the nature of the injury and other relevant criteria as set out in the protocols. The Board officer in Disability Awards may determine the worker's section 23(1) entitlement without examination by a Disability Awards Medical Advisor or a Board authorized External Service Provider, if there is sufficient medical information on file to complete the assessment.

The determination of whether there is a permanent psychological impairment, and the severity of the impairment, is made by either a Board Psychologist or a Board authorized External Service Provider. Once this evaluation is completed, the claim is referred to the Psychological Disability Committee to assess the percentage of disability resulting from the permanent psychological impairment.

The Board officer in Disability Awards assesses any percentage of disability for physical impairment and, in conjunction with the Committee's percentage of psychological disability, decides the worker's permanent disability award under the section 23(1) method.

**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.

## *#39.02 Chronic Pain*

This policy sets out guidelines for the assessment of section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury.

### 1. Definitions:

Chronic pain is defined as pain that persists six months after an injury and beyond the usual recovery time of a comparable injury.

The Board distinguishes between two types of chronic pain symptoms:

Specific chronic pain - pain with clear medical causation or reason, such as pain that is associated with a permanent partial or total physical or psychological disability.

Non-specific chronic pain - pain that exists without clear medical causation or reason. Non-specific pain is pain that continues following the recovery of a work injury.

### 2. Multidisciplinary Assessment:

Where a worker has been referred for a permanent partial disability assessment under section 23(1) for chronic pain, the Board officer in Disability Awards may refer the worker for a multidisciplinary assessment. (See policy item #22.35, "Pain and Chronic Pain")

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, the impact of the pain on the worker's physical functioning, psychological state, behaviour, ability to perform the pre-injury occupation and ability to perform activities of daily living. [See policy item #22.35, "Pain and Chronic Pain", subsection 2(b)]

Based on the various assessments, the evaluation will provide the Board officer with information on whether the worker is experiencing persistent chronic pain as a result of a work injury or disease and the extent of the chronic pain. The evaluation will also provide information on the consistency of the worker's pain presentations.

### 3. Evidence Considered in a Chronic Pain Section 23(1) Assessment:

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 chronic pain resulting from a compensable injury or disease.

The evidence that a Board officer may consider in a section 23(1) assessment for chronic pain includes the following:

- i) The findings of any multidisciplinary assessments.
- ii) Information provided by the worker's attending physician as well as any other relevant medical information on the claim.
- iii) The worker's own statements regarding the nature and extent of the pain.
- iv) The worker's conduct and activities and whether they are consistent with the pain complaints.
- v) In cases of specific chronic pain, the Board officer will consider the extent of the associated physical or psychological permanent impairment and whether the specific chronic pain is in keeping with the particular permanent impairment.

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 Permanent Disability Evaluation Schedule**

Section 23(1) awards may be made with reference to the *Permanent Disability Evaluation Schedule* ("Schedule"), which is set out in Appendix 4. This is a rating schedule of percentages of disability for specific injuries or mutilations. (3)

The *Schedule* is a set of guide-rules, not a set of fixed rules. The Board officer in Disability Awards is free to apply other variables in arriving at a final award; but the "other variables" referred to means other variables relating to the degree of physical or psychological 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. (4)

In cases where the specific impairment is not covered by the *Schedule*, but the part of the body in question is covered, the Board officer in Disability Awards must first determine the percentage loss of function in the damaged area. This determination is based on the findings of the section 23(1) 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.

**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.

### *#39.11 Age Adaptability Factor*

The percentage rate derived by use of the schedule is modified by the application of an age variable. This age adaptability factor is used for workers 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 judgement.

## #39.12 *Enhancement*

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 Board officer 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 disability 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 policy items #39.21, #39.31 and #39.32.

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.

**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.

### #39.13 Devaluation

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 policy item #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 disability in schedule	18%
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 worker 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 an award 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 Digits of the Hand***

It is usually considered that there must be shortening of the bone before an award is granted for amputation of a digit of the hand.

The percentages of disability awarded in respect of an amputation of a digit of the hand are set out in hand charts 1 and 2 of the *Schedule*.

In considering the fingers and thumbs, 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) partial amputation of the phalanx, it is considered in the following fractions: 1/4, 1/3, 1/2, 2/3, 3/4.
- (c) greater than 3/4 of the phalanx, it is considered as an amputation equivalent to the whole phalanx.

### Multiple Digit Amputations:

Where a thumb and one or more fingers is amputated, 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 disabilities is then added.

Where more than one finger is amputated, hand charts 3, 4 and 5 are used and the enhancement factors for multiple finger disabilities are built into the *Schedule*.

**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.

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

Restrictions of movement in the joints of the body are measured and documented during the section 23(1) evaluation. The Board officer in Disability Awards then applies the measurement to the appropriate item in the *Schedule*.

These awards are always scheduled.

**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.

### #39.31 *Finger Restrictions*

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.

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

**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.

### #39.32 *Thumb Restrictions*

The basic principles set out in policy item #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, hand chart 1 and 2 of the *Schedule* are used. An enhancement factor of 100% of the lesser of these two disabilities is then added. Where the thumb and multiple fingers are affected, hand charts 3 to 5 are used and an enhancement factor of 100% of the lesser of the disabilities is then added.

**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.

### #39.40 **Sensory Losses**

Some sensory losses are specifically listed in the *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 38 to 41 of the *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.

**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.

### #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 an award can be granted, including the requirement that there be a disablement from earning full wages. (5)

### *#39.42 Visual Acuity*

For permanent disability award 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 *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.

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 policy item #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 $\frac{4\%(C)}{16\% (A) \times [16\% (A) - 12\% (B)]}$	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 assist in determining 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.

#### **#39.44      *Assessment of Awards 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"> <li>• Distal phalange on index, middle and ring finger = 1 point each</li> <li>• Middle phalange on index, middle and ring finger = 1 point each</li> <li>• Proximal phalange on index, middle and ring finger = 2 points each</li> <li>• All phalanges on little finger = 1 point</li> <li>• All phalanges on thumb finger = 1 point</li> <li>• Distal half of palm (top) = 1 to 2 points</li> <li>• Proximal half of palm (bottom) = 1 point</li> </ul>	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"> <li>• Additional 1 to 2 points per hand if reduction occurs</li> </ul>	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		

**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 policy item #29.00 and policy item #30.50 respectively.

In the case of non-scheduled awards, the Board officers 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 section 23(1) evaluation, the circumstances of the claimant, medical opinions of Board or non-Board doctors, and to schedules 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 policy item #39.12.) However, in making a judgment as to the correct percentage of disability, the Board officer in Disability Awards will have regard to the age of the worker, to existing disabilities in other parts of the worker's body, or to the combined effect of more than one disability in the same part of the body.

**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 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. (29)

**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 worker 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 #39.01.

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**

#### **EXPLANATION OF THE SCHEDULE**

This is the Schedule used for guidance in the measurement of partial disability under section 23(1). 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 worker will receive a section 23(1) award based on 65% of 90% of average net earnings as determined by the *Act*.

The Schedule does not necessarily determine the final amount of the section 23(1) award. 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 worker 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
2. Middle, third of humerus	65
3. Distal, third of humerus to biceps insertion	60
4. Insertion of biceps to middle of forearm	57
5. Middle of forearm to wrist	54
(B) Immobility of Joints:	
6. Shoulder, complete with no scapular movement (so called frozen shoulder)	35
(a) Flexion	14
(b) Extension	3.5
(c) Abduction	7
(d) Adduction	3.5
(e) External Rotation	3.5
(f) Internal Rotation	3.5
7. Shoulder, gleno-humeral fusion, scapula free	20
8. Elbow	20
9. Wrist	12.5
(a) Flexion	4
(b) Extension	4
(c) Radial Deviation	2.25
(d) Ulnar Deviation	2.25
10. Pronation and supination complete in mid position	10
11. Pronation alone	6

	<b>Percentage</b>
12. Supination alone	4

(C) Surgical Procedures

13. Shoulder replacement arthroplasty	6.5
14. Elbow replacement arthroplasty	5.8

(D) Upper Extremity Normal Range of Motion Values

<b>SHOULDER</b>	<b>Degrees</b>
Flexion	158
Extension	53
Abduction	170
Adduction	50
* Internal Rotation	70
* External Rotation	90

\* Arm in Abduction of 70 - 90 degrees; if unable to achieve this degree of abduction, internal and external rotation is measured in a neutral position, arm at side. The normal range in neutral position is 68 degrees for each movement

**ELBOW**

Flexion	146
Extension	0

**FOREARM**

Pronation	71
Supination	84

**WRIST**

Flexion	73
Extension	71
Radial Deviation	19
Ulnar Deviation	33

**Degrees****FINGERS**

DIPJ	Flexion	80
	Extension	0
PIPJ	Flexion	100
	Extension	0
MPJ	Flexion	90
	Extension	0

**THUMB**

IPJ	Flexion	81
	Extension	0
MPJ	Flexion	53
	Extension	0
CMCJ	Flexion	15
	Extension	50
	Palmar Abduction	50

**LOWER EXTREMITY****Percentage**

(A)	Amputations:	
15.	Hip disarticulation or short stump	65
16.	Thigh, sight of election or end bearing (requiring false knee joint)	50
17.	Short below knee stump suitable for conventional B.K. prosthesis	45
18.	Below knee, suitable for B.K. prosthesis (Patellar bearing)	35
19.	Leg, at ankle end bearing (Syme's Amputation)	25
20.	Midtarsal (Chopart's Amputation)	20
21.	Tarsometatarsal (Lisfranc's Amputation)	15
22.	Toes, all toes	5

	<b>Percentage</b>
23. Toes, great	2.5
• with head of metatarsal	5
24. Toes, great at distal	1
25. Toes, other than great, each	.5
• metatarsal, each	.5
26. Toe, little with metatarsal	2

### **LOWER EXTREMITY IMMOBILITY**

**(B) Immobility:**

27. Hip	30
(a) Flexion	9
(b) Extension	2
(c) Abduction	7
(d) Adduction	3
(e) External Rotation	6
(f) Internal Rotation	3
28. Knee	25
29. Ankle	12
30. Great toe, MP Joint	1.25
31. Great toe, distal	.5
32. (a) Talocalcaneal arthrodesis, up to	4.25
(b) Triple arthrodesis	7.0

**(C) Shortening:**

33. (a) 1.5 cm or less	0
(b) 1.6 cm to 2.5 cm	2
(c) 2.6 cm to 3.5 cm	3
(d) 3.6 cm to 4.5 cm	4
(e) 4.6 cm to 5.5 cm	6
(f) 5.6 cm to 6.5 cm	8
(g) 6.6 cm to 7.4 cm	10
(h) 7.5 cm or more	15

**Percentage**

(D) Miscellaneous Surgical Procedures

34.	i.	Total Hip Prosthesis	6
35.	ii.	Total Knee Prosthesis or Hemiarthroplasty	9
36.	iii.	Ligamentous Laxity of Knee	
	(a)	ACL or PCL	
		Grade I/Mild (5 – 9 mm)	1.67
		Grade II/Moderate (10 – 14 mm)	3.34
		Grade III/Marked (15 mm or more)	5
	(b)	MCL or LCL	
		Grade I/Mild (5 – 9 mm)	0.83
		Grade II/Moderate (10 – 14 mm)	1.66
		Grade III/Marked (15 mm or more)	2.5
	iv.	Ligamentous Laxity of Ankle, Medial or Lateral	0-2

(E) Lower Extremity Normal Range of Motion Values

**Degrees**

HIP

Flexion	113
Extension	28
Abduction	48
Adduction	31
Internal Rotation	30
External Rotation	45

KNEE

Flexion	134
Extension	0

ANKLE

Dorsiflexion	18
Plantar Flexion	40

	<b>Degrees</b>
<b>SUBTALAR</b>	
Inversion	5
Eversion	5
<b>GREAT TOE</b>	
IPJ Flexion	60
Extension	0
MPJ Flexion (Plantar Flexion)	37
Extension (Dorsi Flexion)	63

### **DENERVATION**

	<b>Percentage</b>
37. Median nerve complete at elbow	40
Median nerve complete at wrist	20
38. Ulnar nerve complete at elbow	10
Ulnar nerve complete at wrist	8
39. Peroneal, complete	10
40. Femoral nerve	12.5

### **IMPAIRMENT OF VISION**

41. Enucleation	18
42. Industrially blind, single eye	16
43. Cataract or aphakia	12
44. Double aphakia	20
45. Hemianopia, right or left field	25
46. Diplopia, all fields	10

	<b>Percentage</b>
47. Scotomata, depending on location and extent	Up to 16
Loss of Visual Acuity:	
48. 20/30	0
49. 20/40	1
50. 20/50	2
51. 20/60	4
52. 20/80	6
53. 20/100	8
54. 20/200 or poorer	16

### **IMPAIRMENT OF HEARING**

#### Unilateral Hearing Loss:

55. Difference of 20 dB average at 500 cps, 1000 cps and 2000 cps	1
56. Difference of 30 dB average at 500 cps, 1000 cps and 2000 cps	2
57. Difference of 40 dB average at 500 cps, 1000 cps and 2000 cps	3

#### Bilateral Hearing Loss:

58. 35 dB ANSI (25 ASA) in single ear	0.2
59. 40 dB ANSI (30 ASA) in single ear	0.3
60. 45 dB ANSI (35 ASA) in single ear	0.5
61. 50 dB ANSI (40 ASA) in single ear	0.7
62. 55 dB ANSI (45 ASA) in single ear	1.0

		<b>Percentage</b>
63.	60 dB ANSI (50 ASA) in single ear	1.3
64.	65 dB ANSI (55 ASA) in single ear	1.7
65.	70 dB ANSI (60 ASA) in single ear	2.1
66.	75 dB ANSI (65 ASA) in single ear	2.6
67.	80 dB ANSI (70 ASA) in single ear	3.0

## **SCHEDULE D**

### **NON-TRAUMATIC HEARING LOSS (SECTION 7)**

68.	Complete loss of hearing in both ears	15.0
69.	Complete loss of hearing in one ear with no loss in the other	3.0

<b>Loss of hearing in dbs measured in each ear in turn (ANSI)</b>	<b>Percentage of total disability Ear most affected PLUS ear least affected</b>	
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

Loss of hearing in dbs measured in each ear in turn (ANSI)	Percentage of total disability Ear most affected PLUS ear least affected	
58 - 62	2.1	8.4
63 -67	2.6	10.4
68 or more	3.0	12.0

**VISCERAL LOSS**

	Percentage
70. Loss of Kidney	15
71. Loss of Spleen	10

**THE SPINE**

**(CODIFIED MARCH 1, 1990)**

This Schedule recognizes that anatomical loss or damage resulting from injury or surgery may contribute to physical impairment of the spine. When anatomic and/or surgical impairment is present as well as loss of range of movement of the spine, the final disability rating will be based on the greater of the two.

Range of movement of the spine is difficult to assess on a consistent basis because the joints of the spine are small, inaccessible and not externally visible. Only movement of a region of the spine can be measured; it is not possible to measure mobility of a single vertebra. Spine movement also varies with an individual's body type, age and general health. Because of these, a judgment factor will continue to be necessary in spine assessment.

Cervical Spine:

	Percentage
72. (a) Compression fractures	
(i) Up to 50% compression	0-2% impaired
(ii) Greater than 50% compression	2-4% impaired

		<b>Percentage</b>
(b)	Impairment resulting from surgical loss of intervertebral disc C1 to D1	2% per level
(c)	Ankylosis (fusion) C1 to D1 including surgical loss of intervertebral disc	3% per level
73.	Loss of range of motion	
	Flexion	0-6%
	Extension	0-3%
	Lateral flexion right and left	each 0-2%
	Rotation right and left	each 0-4%
	Maximum disability rating not to exceed	21%
Thoracic Spine:		
74.	(a) Compression fractures	
	(i) Up to 50% compression	0-1% impaired
	(ii) Over 50% compression	1-2% impaired
(b)	Impairment resulting from surgical loss of intervertebral disc D1 to D12	1% per level to a maximum of 6%
(c)	Ankylosis (fusion) D1 to D12 including surgical loss of intervertebral disc	1% per level to a maximum of 6%
(d)	Loss of Range of Motion Rotation, Right and Left, Each	0-3%
	Maximum disability rating not to exceed	6%

**Percentage**

Lumbar Spine:

75.	(a)	Compression fractures to include D12	
	(i)	Up to 50% compression	0-2%
	(ii)	Over 50% compression	2-4%
	(b)	Impairment resulting from surgical loss of intervertebral disc D12 to S1	2% per level
	(c)	Ankylosis (fusion) D12 to S1 including surgical loss of intervertebral disc	4% per level
76.		Loss of range of motion	
		Flexion	0-9%
		Extension	0-5%
		Lateral flexion right and left	each 0-5%
		Maximum disability rating not to exceed	24%

**Spine Normal Range of Motion Values**

**Degrees**

CERVICAL SPINE

Flexion	40
Extension	40
Lateral Flexion	30
Rotation	60

THORACIC SPINE

Rotation	45
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## Degrees

### LUMBAR SPINE

Flexion	60
Extension	25
Lateral Flexion	25

## Psychological Disability

<b>77.</b>	<b>Aphasia and Communication Disturbances</b>	<b>%</b>
(a)	Mild - minimal disturbance in comprehension and production of language symbols of daily living	0-25%
(b)	Moderate - moderate disturbance in comprehension and production of language symbols of daily living	30-70%
(c)	Marked - inability to comprehend language symbols. Production of unintelligible or inappropriate language for daily activities	75-95%
(d)	Extreme - complete inability to communicate or comprehend language symbols	100%
<b>78.</b>	<b>Disturbances of Mental Status and Integrative Functioning</b>	
(a)	Mild - some impairment but ability remains to satisfactorily perform most activities of daily living	0-25%
(b)	Moderate - impairment necessitates direction and supervision of daily living activities	30-70%
(c)	Marked - impairment necessitates directed care under continued supervision and confinement in home or other facility	75-95%
(d)	Extreme - individual is unable without supervision to care for self and be safe in any situation	100%

<b>79.</b>	<b>Emotional (Mental) and Behavioural Disturbances</b>  The impairment levels below relate to activities of daily living, social functioning, concentration, and adaptation	
(a)	Mild - impairment levels are compatible with most useful functioning	0-25%
(b)	Moderate - impairment levels are compatible with some, but not all useful functioning	30-70%
(c)	Marked - impairment levels significantly impede useful functioning	75-95%
(d)	Extreme - impairment levels preclude most useful functioning	100%

Disability ratings greater than 0% are made in 5% increments.

**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.

# HAND CHARTS

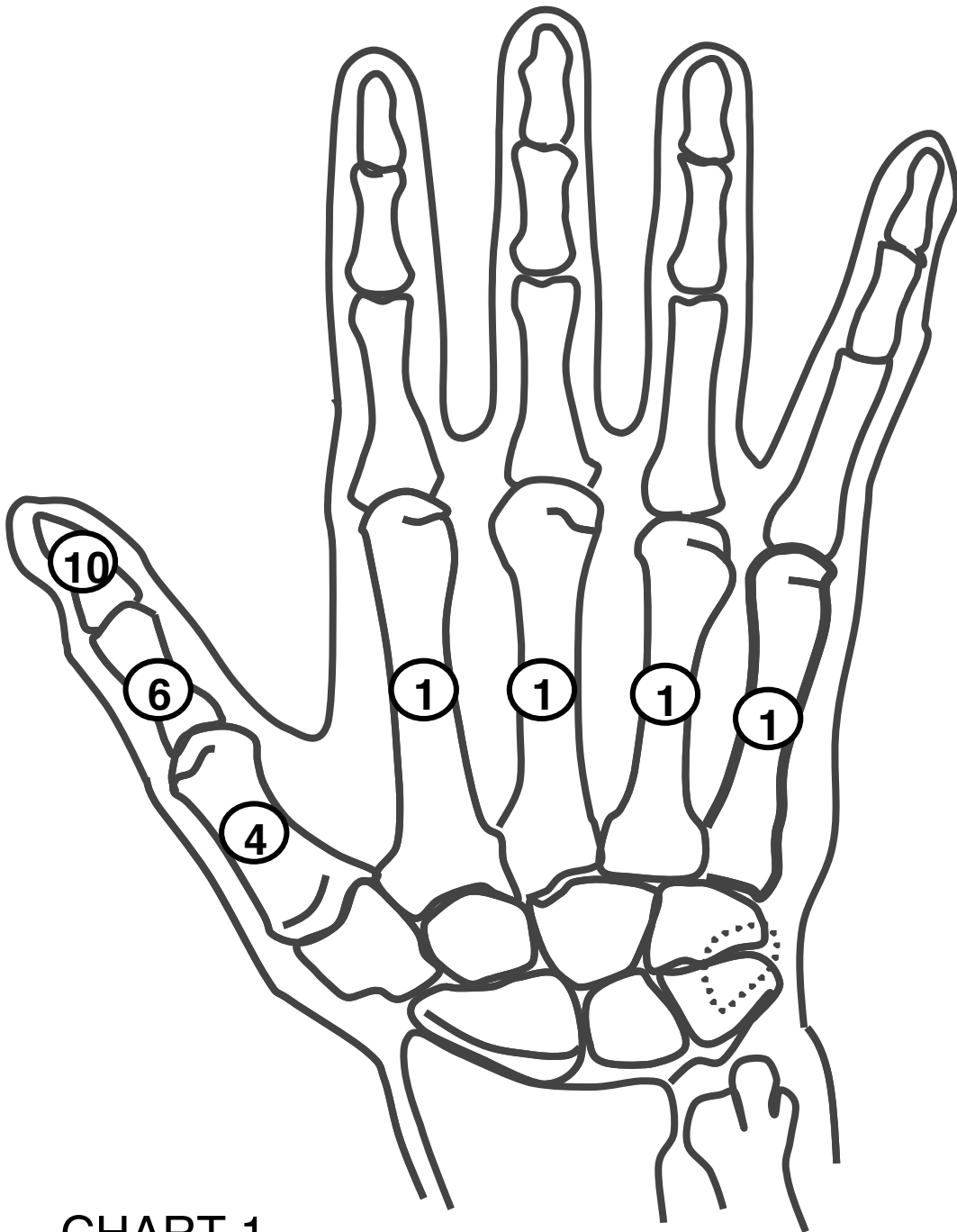


CHART 1  
THUMB AND METACARPALS

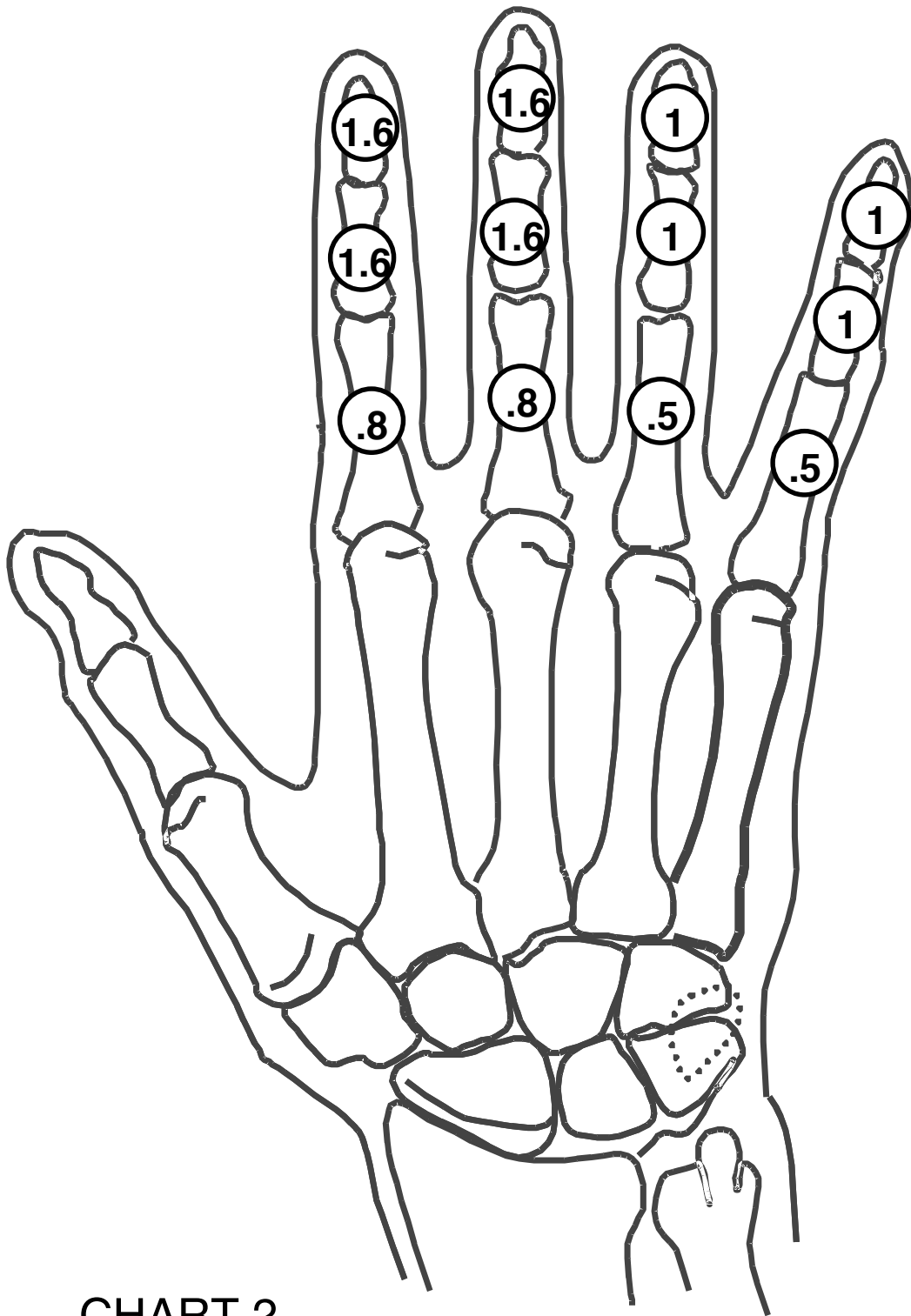


CHART 2  
SINGLE FINGER

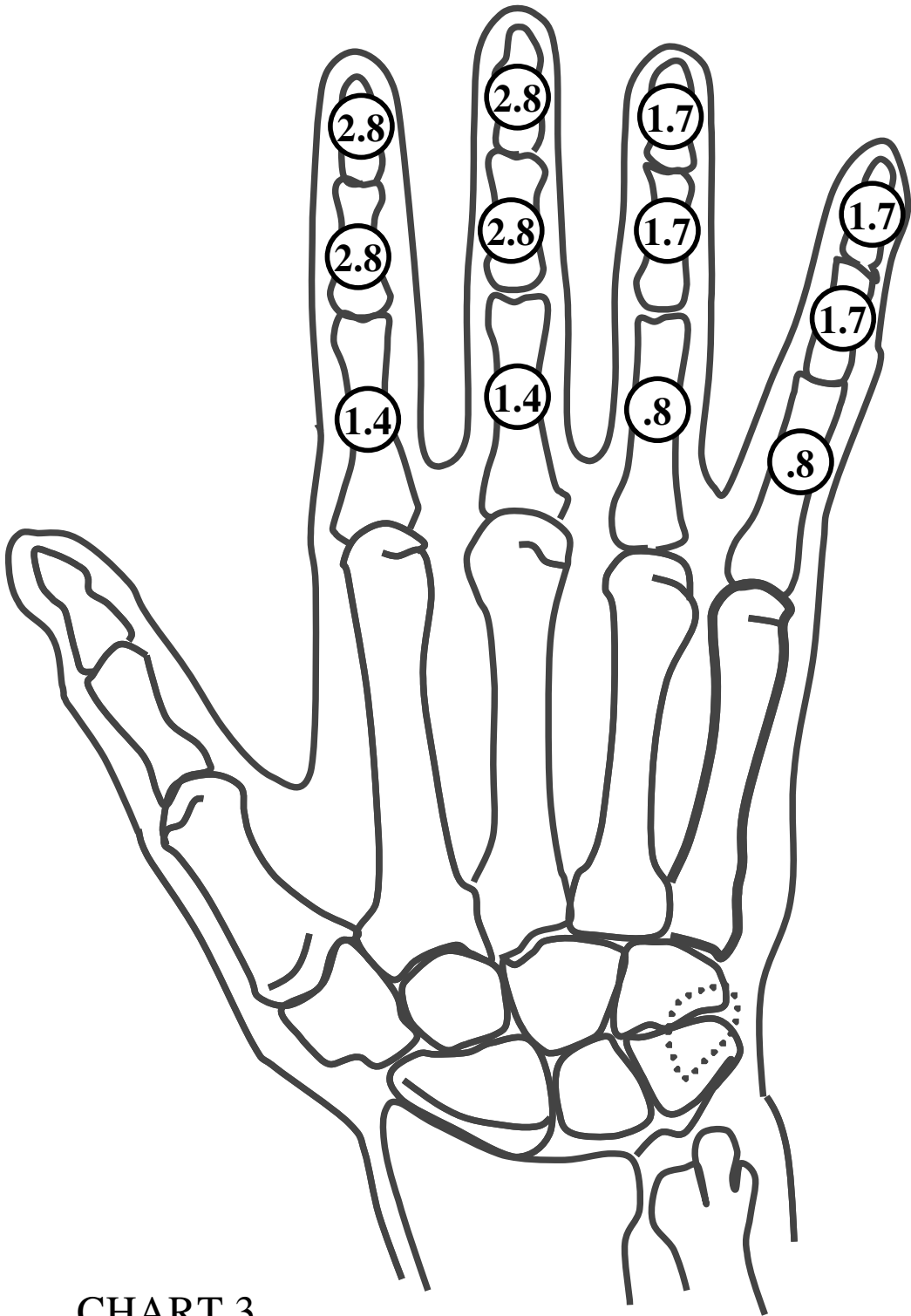


CHART 3  
TWO FINGERS

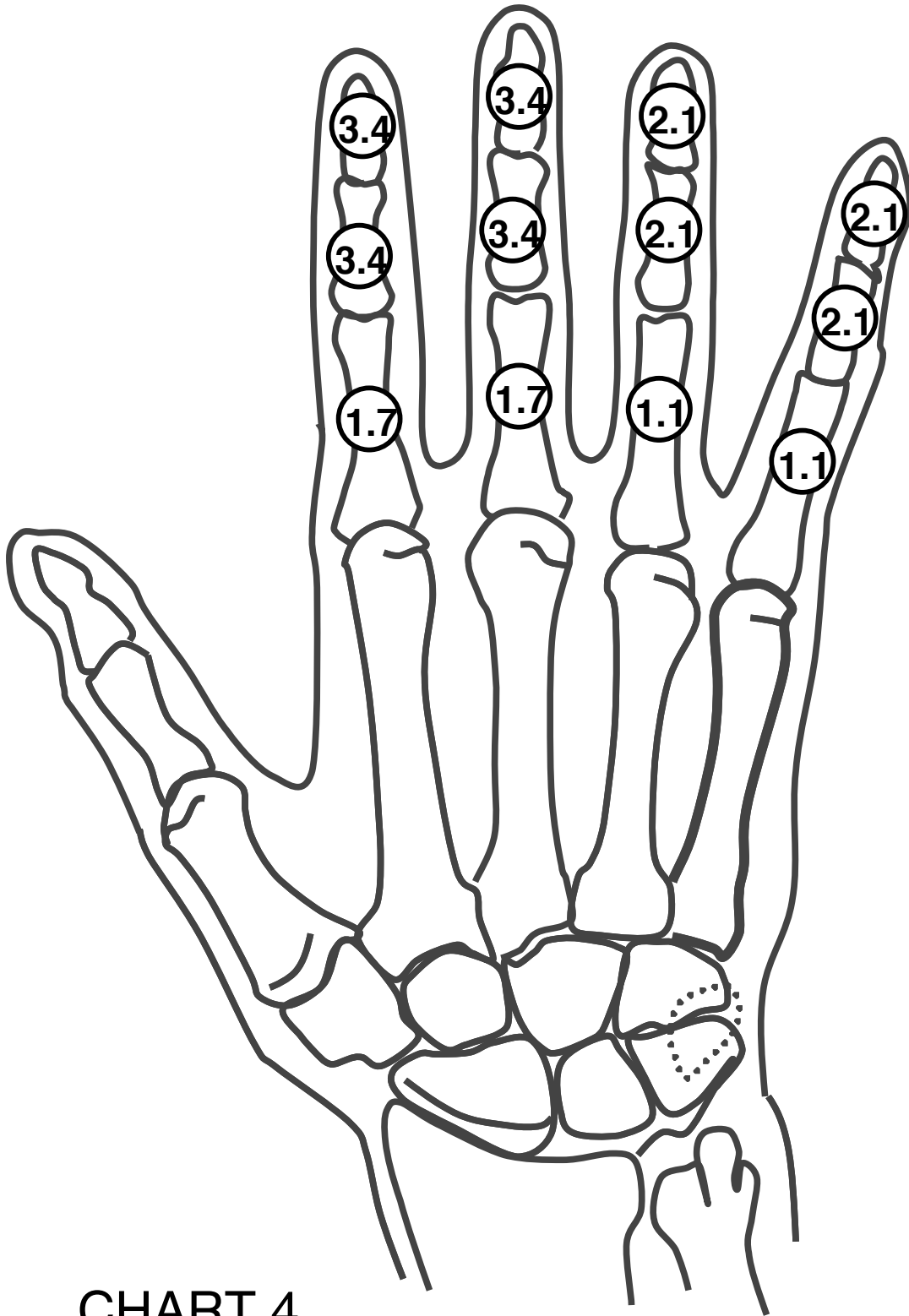


CHART 4  
THREE FINGERS

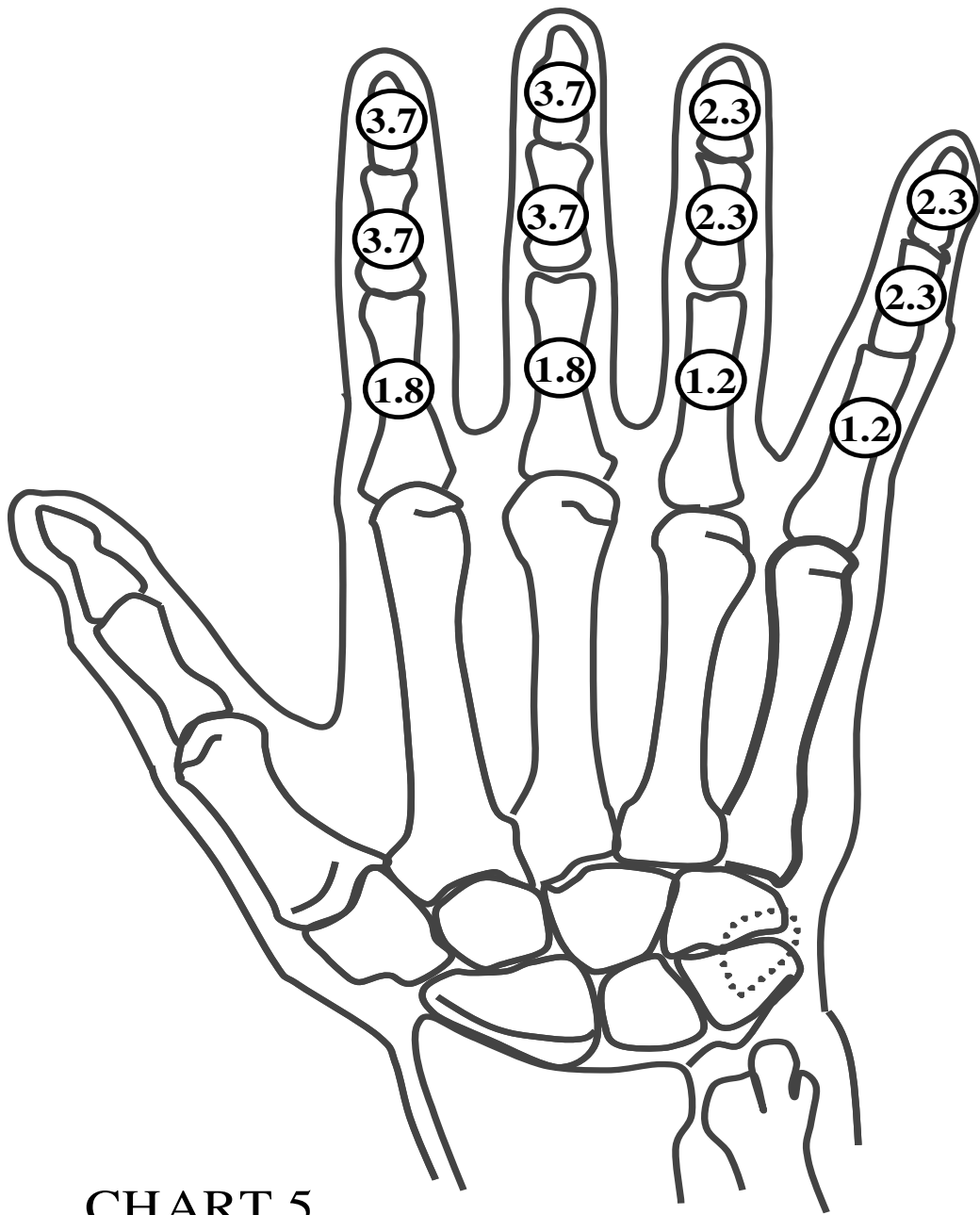


CHART 5  
FOUR FINGERS

