



WORKERS' COMPENSATION BOARD OF BC

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Update 2004 - 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 2004 - 5.

This amendment includes:

- #15.50, *Hernia*;
- #31.20, *Amount and Duration of Noise Exposure Required by Section 7*; and
- #39.02, *Chronic Pain*.

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 at 1-866-271-4879.

Margaret Eckenfelder  
Vice President  
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Attachments

***Rehabilitation Services & Claims Manual, Volume II***

**SUMMARY OF AMENDMENTS – Update 2004 - 6**

Chapter 3	Pages 17 – 20	Policy item #15.50 Housekeeping amendments to make the policy more user friendly.
Chapter 4	Pages 55 – 56 Page 71	Policy item #31.20 and Notes Minor amendments to update and clarify policy, and to remove an ambiguity regarding the Interjurisdictional requirement for the minimum occupational noise exposure duration threshold.
Chapter 6	Pages 11 – 12	Policy item #39.02 Housekeeping amendment to correct formatting.

Exceptions may be made when:

1. a ganglion first appears between six weeks and six months following a deep penetrating wound or a contusion involving deep tissue damage at the site where the ganglion appears, or
2. a ganglion appears within six weeks of commencing work which is both unaccustomed and involves repetitive movements of joints or tendons at the site of the ganglion. This is considered an aggravation of the ganglion in a pre-disposed individual.

## **#15.50 Herniae**

There are two main types of herniae, inguinal (groin) herniae, and non-inguinal herniae (e.g., femoral, incisional, and umbilical herniae).

On the basis of the Board's present understanding of the biologic characteristics of herniae, the following principles are followed in the adjudication of hernia claims.

1. There must be increased intra-abdominal pressure, or evidence of severe direct trauma, resulting from the work or employment preceding the appearance of the hernia. Symptoms will generally appear shortly after the incident.
2. Given the preponderance of medical information indicating that herniae are multi-factorial in development, herniae will be considered an aggravation of a pre-existing condition, and surgery will be recognized as an attempt to correct the aggravation.
3. There is usually no urgency to the hernia operation, except where there are threatening complications, such as a bowel obstruction or inability to reduce the hernia. In most cases, there is no need to stop working while awaiting surgery.

Given the above, pre-operative wage loss will not normally be paid unless medical information is provided by the attending physician indicating the complication which restricts the worker's ability to continue working. Where an attending physician's report certifies that a worker is disabled pre-operatively, other objective evidence, such as a medical opinion, regarding the worker's condition may be sought to either verify or dispute the attending physician's opinion.

4. Where a worker suffers bilateral herniae, it is extremely unlikely that both will have resulted from the same incident. However, where a claim for one of those herniae is acceptable in accordance with the principles set out above, the Board will accept responsibility for both herniae if the evidence is such that it is not possible to determine which of the two herniae did result from the employment.

5. Usual recovery times for hernia surgical repair are based on medical protocols and procedures adopted by the Board.

**EFFECTIVE DATE:** June 1, 2004 - Revisions to delete an outdated timeframe for post-operative wage loss benefits, the extension of general adjudicative principles to all types of hernia claims, and removal of outdated policy for various types of non-inguinal herniae.

**PRACTICE:** For medical protocols and procedures adopted by the Board, see the Simple Herniorrhaphy Post-op Rehabilitation Guidelines at the [www.worksafebc.com](http://www.worksafebc.com) website, under the Health Care Provider Section under Resources: [http://www.worksafebc.com/for\\_health\\_care\\_providers/Assets/PDF/Post-op%20guidelines%20-%20Hernia.pdf](http://www.worksafebc.com/for_health_care_providers/Assets/PDF/Post-op%20guidelines%20-%20Hernia.pdf)

**HISTORY:** December 1, 2004 – Housekeeping change to correct grammar and to add practice reference.

**CROSS REFERENCE:** Enhancement of Disability by Reason of Pre-existing Disease, Condition or Disability (policy item #114.40B) of the *Rehabilitation Services & Claims Manual*, Volume II.

**APPLICATION:** Applies to all decisions, including appellate decisions made on or after June 1, 2004.

### **#15.51** *Prior Compensable and Non Compensable Herniae*

1. Prior Compensable Herniae

(a) Under 18 Months Since Claim Closed

If no new incident is reported the Board may reopen the decision where a ground for reopening is met (see Chapter 14).  
If a significant new trauma is reported, it is usually adjudicated as a new claim.

(b) Over 18 Months Since Claim Closed

This is generally adjudicated as a new claim and is decided on the merits of the case. This consideration, however, also includes evaluating the question of reopening the old claim. The claim can only be reopened where a ground for reopening is met (see Chapter 14).

2. Prior Non-Compensable Herniae

(a) Under 18 Months Since Prior Herniae

These are adjudicated on the merits of the case. Because of the potential for recent hernia repairs to break down, it is expected that to be acceptable there must be clear evidence to establish a relationship of the breakdown to the worker's employment.

(b) Over 18 Months Since Prior Herniae

These are adjudicated on the merits of the case.

**EFFECTIVE DATE:** March 3, 2003 (as to references to reopening)

**APPLICATION:** Not applicable.

### **#15.60 Shoulder Dislocations**

Where a worker has previously had a primary shoulder dislocation and suffers a further, or recurrent dislocation at work, if the original or primary dislocation was not sustained as a compensable injury, its acceptance as a new claim would depend upon whether there was a work incident of sufficient causative significance to induce a further dislocation. If there is a prompt reduction of the recurrent dislocation, there may be no disablement from work and consequently no need for wage-loss benefits. Where there is a disablement, this should not normally endure more than two weeks. Surgery, if directed at the pre-existing primary cause of the recurrent dislocation, would not normally be considered as an entitlement. An exception to this principle could arise where there was a non-compensable dislocation many years previously and evidence shows that the shoulder had been stable for many years without any recurrent dislocation or where the recurrent dislocation at work was induced by **severe** trauma. In such a case, entitlement might not be limited to the same extent and could include surgical repair.

Where the primary dislocation was compensable, should surgery be undertaken, it would normally be handled under the original claim unless the condition has been stable for many years with no intervening difficulty or the recurrent dislocation at work was induced by **severe** trauma. In such circumstances the surgery may be dealt with under the new claim.

### **#16.00 UNAUTHORIZED ACTIVITIES**

The mere fact that a worker's action which leads to an injury was in breach of a regulation or order of the employer or for some other reason unauthorized by the employer does not mean that the injury did not arise out of and in the course of the employment. On the other hand, there will be situations where the unauthorized nature of the worker's conduct is sufficient to take the worker out of the course of employment or to prevent an injury from arising out of the employment.

### **#16.10 Intoxication or Other Substance Impairment**

Since it is seldom possible to have blood alcohol level or other test data available in adjudicating such claims, other evidence is used to evaluate the existence and extent of any impairment.

Claims involving impairment should be classified under the following headings.

1. Workers Permitted to Drink

There may be cases where drinking was part of the permitted activities of the employment. For example, bartenders or other kinds of sales representatives may have been encouraged or permitted by their employers to drink with customers. In that kind of case, any injury resulting from intoxication would generally be compensable. But there may well be exceptions, for example, where it is concluded that the worker had gone beyond the pursuit of the employer's interests to engage in a purely social event.

2. Workers Not Permitted to Drink

Where drinking is not a permitted part of the employment, injuries resulting from intoxication or other substance impairment must be adjudicated as follows:

(a) Employment causation

If the injury arose in the course of the employment, and something in the employment relationship had causative significance in producing the injury, it is still one arising out of and in the course of employment notwithstanding the impairment. Examples are where an intoxicated sailor fell into the water while attempting to board a vessel, and where a forest industry worker was run over by a logging truck. In these kind of cases, if the injury results in death or serious or permanent disablement, it is compensable.

Once it is apparent that an injury is one arising out of and in the course of employment, it does not cease to be so merely because some other factor, extrinsic to the employment, also has causative significance. An industrial injury is often caused, for example, by inattentiveness due to nausea, depression, lack of sleep, or a variety of other factors. But it is still compensable.

(b) No employment causation

There may be cases where, although the injury occurred at work, impairment alone was the cause. Suppose, for example, a worker is walking over normal ground when, unable to maintain support as a result of impairment, stumbles to the ground and is injured in the fall. In that case, it might appear that nothing in the employment relationship had any causative significance in producing the injury. It would then not be an injury arising out of the employment and not compensable. Also, as indicated in policy item #16.60, a worker's

## **#31.20 Amount and Duration of Noise Exposure Required by Section 7**

A claim is acceptable where, as a minimum, evidence is provided of continuous work exposure in British Columbia for two years or more at eight hours per day at 85 dBA or more, and when other evidence does not disclose any cause of hearing loss not related to work. The Board considers it reasonable to set the 85 dBA minimum standard for compensation purposes and then to allow a restricted measure of discretion for the acceptance of claims where the evidence is abundantly clear that the worker is extraordinarily susceptible and has been affected by exposure to noise at a lesser level.

The Board does not accept evidence of the wearing of individual hearing protection as a bar to compensation. However, in the case of soundproof booths, where evidence shows that the booth was used regularly, was sealed and was generally effective, it may be difficult to accept that the work environment in question contributed to the hearing loss demonstrated.

Where the exposure to occupational noise in British Columbia is less than 5% of the overall exposure experienced by the worker, the claim is disallowed. Such a minimal degree of exposure is insufficient to warrant acceptance of the claim. Where the exposure to occupational noise in British Columbia is 90% or greater of the total exposure, a claim is allowed for the total hearing loss suffered by the worker. For percentages between 5 and 90, the claim is allowed for only that percentage of the hearing loss which is attributable to occupational noise in British Columbia, and the Board will accept responsibility for all health care costs related to the total hearing loss including the provision of hearing aids.

It has been suggested that after 10 years of exposure further loss is negligible. Generally speaking, the evidence is that the first 10 years has a significant effect at higher frequencies. However, where lower frequencies are concerned (up to 2,000 hz.) hearing loss continues after that time and may, in fact, accelerate in those later years. Therefore, since the disability assessment under Schedule D relies on frequencies of 500, 1,000 and 2,000 hz., no adjustments for duration of exposure are made.

**EFFECTIVE DATE:** December 1, 2004 – regarding clarification of jurisdictional requirements and minor amendments.

**APPLICATION:** Applies to all decisions made on or after December 1, 2004.

### **#31.30 Application for Compensation under Section 7**

Section 7(6) provides that “An application for compensation under this section must be accompanied or supported by a specialist’s report and audiogram or by other evidence of loss of hearing that the Board prescribes”.

Where a worker has already applied for compensation for hearing loss under section 6, a separate application under section 7 may sometimes be required. However, it will not be insisted upon if it serves no useful purpose. Therefore, no separate application need be made where all the evidence necessary to make a reasonable decision is available without it.

The original application need not be accompanied by a report and audiogram by a physician outside the Board. The Board will obtain the necessary medical evidence.

**EFFECTIVE DATE:** March 3, 2003 (as to deletion of references to appeal reconsideration)

**APPLICATION:** Not applicable.

### **#31.40 Amount of Compensation under Section 7**

No temporary disability payments are made to workers suffering from non-traumatic hearing loss.

Workers who develop non-traumatic noise induced hearing loss are, subject to the time periods referred to in section 23.1 of the *Act*, assessed for a permanent disability award under section 23 of the *Act*.

Hearing loss permanent disability awards are determined on the basis of audiometric tests conducted at the Audiology Unit of the Board or on the basis of prior audiometric tests conducted closer in time to when the worker was last exposed to 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.

## NOTES

- (1) Decision No. 231, 3 W.C.R. 87
- (2) Decision No. 3, 1 W.C.R. 11
- (3) S.6(1)(a)
- (4) Decision No. 99, 2 W.C.R. 15
- (5) Decision No. 205, 3 W.C.R. 16
- ~~(6)~~ ~~ODSC Charter, 1 W.C.R. 135~~ **DELETED**
- (7) Decision No. 207, 3 W.C.R. 21
- (8) An agreement entered into pursuant to section 8.1 of the *Act* may supersede
- (9) S.6(10)
- (10) Decision No. 232, 3 W.C.R. 91
- ~~(11)~~ ~~Decision No. 267, 3 W.C.R. 188~~ **DELETED**
- ~~(12)~~ ~~See policy item #93.24~~ **DELETED**
- (13) See Chapter 6
- (14) See policy item #13.20 and policy items #22.33-34
- (15) Decision No. 348, 5 W.C.R. 127
- ~~(16)~~ ~~Decision No. 102, 2 W.C.R. 25~~ **DELETED**
- (17) *Government Employees Compensation Act*, S.8(1)(a)



(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.