



WORKERS' COMPENSATION BOARD OF BC

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Update 2005 – 3

**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 2005 – 2.

This amendment includes housekeeping changes to the following:

- Chapter 14, Changing Previous Decisions
- Chapter 17, *Charging of Claim Costs*

A summary of the amendments is attached and the amended pages are included as part of the package effective April 8, 2005.

If you have any questions regarding subscription information for updates to the *Rehabilitation Services & Claims Manual*, please call WCB Customer Service at the following numbers:

Local phone: 604-232-9704  
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Margaret Eckenfelder  
Vice President  
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Attachments

**Rehabilitation Services & Claims Manual, Volume II**  
**SUMMARY OF AMENDMENTS – Update 2005 – 3**

Chapter 14	Pages 1, 2 and 5	Policy item #102.01 <i>Reopenings</i>
	Pages 1, 2 and 5	Policy item #103.01 <i>Reconsiderations</i>
Chapter 17	Pages 9, 10, 13 and 14	Policy item #114.40 <i>Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability</i>

**RE: Changing Previous Decisions –  
Reopenings**

**ITEM: C14-102.01**

## **BACKGROUND**

### **1. Explanatory Notes**

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

### **2. The Act**

Section 96 states, in part:

.....

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

.....

## **POLICY**

### **(a) General**

The reopening of a previous decision does not affect the application of the decision to the period prior to the significant change in the worker's medical condition or the

recurrence of the worker's injury. Rather, it enables the Board to reopen matters previously decided and determine a worker's ongoing entitlement. A reopening involves the adjudication of new matters.

**(b) A reopening is not a reconsideration**

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

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

**(c) Grounds for reopening**

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

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

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

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

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

**(d) Recurrence of injury**

A recurrence of an injury may result where the original injury, which had either resolved or stabilized, occurs again without any intervening new injury. A recurrence of an injury may result in a claim being reopened for:

- an additional period of temporary disability benefits where no permanent disability award was previously provided in respect of the compensable injury;



WORKERS' COMPENSATION BOARD OF BC

## REHABILITATION SERVICES & CLAIMS MANUAL

- CROSS REFERENCES:** Changing Previous Decisions - General (C14-101.01), Changing Previous Decisions - Reconsiderations (C14-103.01), Changing Previous Decisions - Fraud and Misrepresentation (C14-104.01), Changing Previous Decisions - Reviews (C14-105.01)
- HISTORY:** Housekeeping amendment to correct numbering effective April 8, 2005. Amendments effective January 1, 2005 to clarify recurrence of injury and to distinguish between a reopening on application and a reopening on own initiative. Amendments effective March 18, 2003 to clarify that a reopening allows compensation or rehabilitation benefits to be "varied" and that disputes over a decision to reopen or not to reopen a matter "on application" are appealable directly to WCAT under section 240(2). New Item consequential to the *Workers Compensation Amendment Act (No. 2), 2002* approved effective March 3, 2003.
- APPLICATION:** Applies to all decisions on and after January 1, 2005



**RE: Changing Previous Decisions –  
Reconsiderations**

**ITEM: C14-103.01**

## **BACKGROUND**

### **1. Explanatory Notes**

The *Act* provides the Board with a very limited time period to reconsider previous decisions or orders. Subject to certain restrictions, the Board may only reconsider a decision or order under Part 1 of the *Act* during the period of 75 days subsequent to the decision or order being made.

### **2. The Act**

Section 1, in part:

“**reconsider**” means to make a new decision in a matter previously decided where the new decision confirms, varies or cancels the previous decision or order

Section 96, in part:

.....

- (4) Despite subsection (1), the Board may, on its own initiative, reconsider a decision or order that the Board or an officer or employee of the Board has made under this Part.
- (5) Despite subsection (4), the Board may not reconsider a decision or order if
  - (a) more than 75 days have elapsed since that decision or order was made,
  - (b) a review has been requested in respect of that decision or order under section 96.2, or
  - (c) an appeal has been filed in respect of that decision or order under section 240.

.....

## **POLICY**

### **(a) Definition of reconsideration**

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

### **(b) The purpose of sections 96(4) and (5)**

The Board's authority to reconsider previous decisions and orders is found in section 96(4) and (5) of the *Act*. These provisions result from legislative amendments that came into effect on March 3, 2003. The purpose of these amendments is to promote finality and certainty within the workers' compensation system.

The same amendments establish a right to request a review by a review officer under sections 96.2 to 96.5, where a party disagrees with a decision or order made at the initial decision-making level. It is this review, rather than the application of the Board's reconsideration authority, which is intended to be the dispute resolution mechanism for initial decisions and orders of Board officers.

It is significant that section 96(4) only authorizes the Board to reconsider a decision or order "on its own initiative". This is to be contrasted with the Board's authority to reopen a matter "on its own initiative, or on application" under section 96(2). It is also to be contrasted with section 96.5 and section 256, which authorize a review officer and the appeal tribunal, respectively, to reconsider decisions on application in certain circumstances.

The use of the words "on own initiative" in section 96(4), with no provision for "on application", and the availability of a review mechanism under sections 96.2 to 96.5, indicate that the Board is not intended to set up a formal application for reconsideration process to resolve disputes that parties may have with decisions or orders.

Rather, the Board's reconsideration authority is intended to provide a quality assurance mechanism for the Board. The Board is given a time-limited opportunity to correct, on its own initiative, any incorrect decisions it may have made.

An accidental slip or omission may occur when the decision as recorded does not clearly reflect the intention of the decision-maker. For example, a decision letter states “I do accept the degenerative changes as part of the claim”, however; the remainder of the letter and the evidence on the claim clearly illustrate that the Board officer intended that the letter state “I do not accept”.

This process for correcting errors, slips or omissions, however, cannot be applied to change decisions.

## **PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

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<b>EFFECTIVE DATE:</b>	January 1, 2005
<b>AUTHORITY:</b>	ss. 96(4), (5), <i>Workers Compensation Act</i>
<b>CROSS REFERENCES:</b>	Changing Previous Decisions - General (C14-101.01), Changing Previous Decisions - Reopenings (C14-102.01), Changing Previous Decisions - Fraud and Misrepresentation (C14-104.01), Changing Previous Decisions - Reviews (C14-105.01)
<b>HISTORY:</b>	Housekeeping amendment to correct numbering effective April 8, 2005. Amendments effective January 1, 2005 to include policy on the correction of administrative errors. New Item consequential to the <i>Workers Compensation Amendment Act (No. 2), 2002</i>
<b>APPLICATION:</b>	Applies to all decisions on and after January 1, 2005



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**EFFECTIVE DATE:** March 1, 2005

**HISTORY:** Updates language, consistent with rate-making system in *Assessment Manual*; incorporates portions of, and replaces, policy item #114.50 *Sections 39(1)(d), 39(1)(e) and Federal Government Claims* of this *Manual*.

This policy continues the substantive requirements as they existed prior to the effective date.

**APPLICATION:** Applies to all decisions on and after March 1, 2005

## **#114.40 Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability**

### 1. Overview

Section 39(1)(e) requires the Board to “provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability”. Under this section, eligible claims costs are redirected from an employer’s experience rating and rate group to the section 39(1)(e) reserve.

The intent of section 39(1)(e) is to give reassurance to potential employers that in employing workers with pre-existing diseases, conditions or disabilities, they will not incur undue costs in respect of possible future injuries that are enhanced as a result of the pre-existing diseases, conditions or disabilities.

Where a claim is accepted under the *Act* for a personal *injury*, mental stress or occupational disease, the Board provides cost relief under section 39(1)(e) for any portion of a compensable *disability* that is enhanced by reason of a pre-existing disease, condition or disability. Section 39(1)(e) cost relief decisions do not impact a worker’s entitlement to compensation.

The Board is responsible for initiating section 39(1)(e) cost relief considerations with or without a specific request or application by an employer, and to decide upon the applicability of the section on a claim.

This policy applies to all employers, including deposit class employers, except for the Federal Government. As the Federal Government does not contribute to the Accident Fund, no relief of costs under this section can be made where the Federal Government is recorded as the injury employer.

## 2. Eligibility

Cost relief consideration does not occur on claims where wage loss ended and/or a permanent disability award was established on or before December 31, 1993.

Where benefits were paid between January 1, 1994 and September 27, 2002, an employer was eligible for cost relief consideration under section 39(1)(e) in two situations:

- a) on all claims where there had been 13 or more weeks of temporary total and/or temporary partial disability benefits paid;
- b) a permanent disability award had been granted.

Where benefits are paid on or after September 28, 2002, an employer is eligible for cost relief consideration under section 39(1)(e) in two situations:

- a) on all claims where there has been 10 or more weeks of temporary total and/or temporary partial disability benefits paid;
- b) a permanent disability award has been granted.

Cost relief can be considered on claims where the pre-existing disease, condition or disability arose from an earlier compensable injury or disease with the same employer, where the date of injury or disease, for the injury or disease on which relief is sought, is on or after July 1, 1998. The date of the disease, for the purpose of this paragraph, is the date that the first claim document is registered at the Board.

## 3. Evaluation Process

Any impact of the pre-existing disease, condition or disability on the occurrence of the compensable *injury* is irrelevant to the question of whether cost relief will be granted for the enhanced *disability*.

Three questions are considered when evaluating the application of section 39(1)(e).

1. *Was there a pre-existing disease, condition or disability, and if so, to what extent?*

A “pre-existing” disease, condition or disability is one that exists before the compensable injury and is established by a confirmed diagnosis or medical opinion. It does not have to be symptomatic prior to the compensable incident, nor does there have to be previous medical treatment or disability related to the pre-existing disease, condition or disability, for it to be considered for the purposes of relief of costs under section 39(1)(e).

- “Minor” severity is expected to cause either no disability or a minor disability.
- “Moderate” severity is expected to cause a disability.
- “Major” severity is expected to cause serious disability or probable permanent disability.

### *Percentage*

How much disability stems from the compensable injury and how much from the enhancement of the disease, condition or disability and, therefore, to what extent costs should be charged under section 39(1)(e) can never be more than an estimate and will always be difficult to determine.

There may be circumstances where the evidence points to a different percentage being relieved than those suggested in the grid. It is more likely that the grid would be used where the distinction between the effects of the pre-existing disease, condition or disability and the compensable injury are not easily made.

In cases of continuing wage-loss and health care benefits, it may be appropriate for the Board officer to determine that after a particular point in time, all the costs are charged under section 39(1)(e). Alternatively, it may also be determined that a percentage is relieved from a certain time onwards.

A decision on cost relief related to the payment of temporary disability wage loss benefits is distinct and separate from a decision on cost relief for a permanent disability award arising out of the same claim.

No minimum period of temporary disability is required in order for cost relief to be considered on a permanent disability award.

In respect of permanent disability awards, it is necessary for the Disability Awards officer, using his or her own best judgment and having reference to applicable medical evidence, to establish a percentage of cost relief to be granted. It is noted that 100% cost relief cannot be granted for a permanent disability award, as this would imply that no portion of the permanent disability resulted from the work-related injury.

#### 4. Timing of Cost Relief Decisions

Where an employer is eligible for cost relief consideration on a claim, the decision is made at the earliest of:

- a) there being sufficient evidence to make a determination on whether the compensable disability was enhanced by reason of a pre-existing disease, condition or disability; or
- b) the conclusion of temporary disability compensation; or

c) after six months of wage loss has been paid.

Cost relief decisions may be deferred beyond six months of wage loss payment when the impact of the pre-existing disease, condition or disability on the compensable disability is not yet clear, or major diagnostic procedures have been scheduled that would clarify the existence, and/or extent of any pre-existing disease, condition or disability.

## 5. Communication of Cost Relief Decisions

The Board notifies the eligible employer of all section 39(1)(e) cost relief decisions.

If there is a disagreement with such a decision, the employer may request a review by the Review Division. Unexercised appeal rights on relief of cost decisions made before March 3, 2003 are appealed directly to the WCAT and not to the Review Division.

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**EFFECTIVE DATE:** March 1, 2005

**CROSS-REFERENCES:** Medical Evidence (policy item #97.30)  
Appeal and Review Rights (section 41(1)(a)(i), *Workers Compensation Amendment Act (No. 2), 2002*, S.B.C. 2002, c. 66)

**HISTORY:** Housekeeping amendment effective April 8, 2005. Combines and replaces policy items #114.40A, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*, #114.40B, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*, #114.43, *Procedure Governing Applications under Section 39(1)(e)*, and #114.50, *Sections 39(1)(d), 39(1)(e) and Federal Government Claims* of this Manual. Incorporates policy previously set out in Panel of Administrators' Resolution No. 1998/04/23-03 *Re: Section 39(1)(e)*. Section 39(1)(e) cost relief consideration does not occur on claims where wage loss ended and/or a permanent disability award was established on or before December 31, 1993. On or after July 1, 1998, section 39(1)(e) cost relief consideration is available for claims in which the pre-existing disease, condition or disability arises from an earlier compensable injury or disease with the same employer as the compensable injury or disease for which relief is sought.